

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSWITHA GALLELLI and DEPARTMENT OF DEFENSE,
DEFENSE PERSONNEL SUPPORT CENTER, Philadelphia, PA

*Docket No. 02-255; Submitted on the Record;
Issued June 7, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained a recurrence of disability on February 16, 1993 causally related to her February 19, 1990 employment-related right ankle injury.

This case has previously been before the Board on appeal. In a July 3, 2000 decision, the Board set aside the June 13 and December 3, 1996 decisions of the Office of Workers' Compensation Programs and remanded the case to the Office to resolve a conflict in the medical opinion evidence as to whether appellant sustained a recurrence of disability on February 16, 1993 causally related to her February 19, 1990 employment injury. The facts of the case as set forth in that decision are incorporated herein by reference.¹

On remand, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. John T. Williams, a Board-certified orthopedic surgeon, for an impartial medical examination by letter dated August 8, 2000. By letter of the same date, the Office advised Dr. Williams of the referral.

Dr. Williams submitted a November 6, 2000 report finding that appellant had recovered from her employment-related injury and that he could not determine the cause of her current ankle problem.

In a November 18, 2000 decision, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on February 16, 1993 causally related to her February 19, 1990 employment injury based on Dr. Williams' report. In a November 27, 2000 letter, appellant, through her counsel, requested an oral hearing before an Office representative.

¹ Docket No. 97-1311 (issued July 3, 2000).

By decision dated July 20, 2001, the hearing representative affirmed the Office's decision.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.² As part of her burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.³

Section 8123 of the Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.⁴ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁵ However, in a situation where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.⁶

In his November 6, 2000 report, Dr. Williams provided a history of appellant's right ankle condition and family medical background. He further provided his findings on physical examination and a review of medical records. Dr. Williams opined that based on appellant's history and his findings on physical examination that at the time of appellant's injury she sustained an acute sprain/strain of the right foot/ankle by history that had resolved, she was postoperative for a ganglion cyst of the right ankle that occurred eight years ago and postoperative for a ganglion cyst of the right ankle that took place three weeks ago. He stated that there were no positive objective findings to correlate to appellant's complaints. Dr. Williams opined that appellant was completely recovered and she was able to resume her normal preaccident activities and duties without any restrictions. He described the manner in which the various foot muscles helped appellant perform her work activities. Dr. Williams opined that appellant's pathology of the lateral border of the right foot was diagnosed as peroneal in nature and it was not secondary to a repetitive work-related injury, but to the progression of a degenerative process. He further opined that appellant had pathology in her ankle, which precipitated the formation of ganglion and/or a large synovial cyst and that it recurred because the pathology in the ankle joint had not been addressed. Dr. Williams further opined that

² *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Id.*

⁴ 5 U.S.C. § 8123; *see Shirley L. Steib*, 46 ECAB 309 (1994).

⁵ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁶ *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988); *Harold Travis*, 30 ECAB 1071, 1078 (1979).

appellant had a problem with her ankle, some intra-articulate in the ankle joint itself, which produced the synovial cyst. He concluded:

“Thus, it [i]s my opinion that [appellant] has intra-articular pathology of her right ankle, *i.e.*, there is something wrong inside her ankle to cause the synovial lining to thicken and form a synovial cyst. I have not seen the path[ology] reports from the original synovial cyst and I have not seen the path[ology] reports from the more recent one. I do n[o]t know if she [ha]s had any studies done, as she told me she did n[o]t have any studies done. I would recommend that she have a magnetic resonance imaging (MRI) [evaluation] of her right ankle to ascertain if there is any pathology that would produce the cyst.

“As far as what is the cause of her injury, I have a problem scientifically assigning cause, as the description as she gives it by using her right foot and ankle, doing the repetitive use of her machine.

“Again, I highly recommend that she have an MRI of her right ankle. When this is done, I’d be more than happy to add an addendum to my report at that time.”

The Board finds that Dr. Williams’ report is insufficient to resolve the conflict in the medical evidence as he was unable to explain the cause of appellant’s synovial cyst and he recommended further testing to assist him in this determination. For the reasons discussed above, the opinion of Dr. Williams is in need of clarification and elaboration.

Therefore, in order to resolve the continuing conflict in the medical opinion, the case will be remanded to the Office for referral of the case record, a statement of accepted facts and, if necessary, appellant, to Dr. Williams for a supplemental report regarding whether appellant sustained a recurrence of disability on February 16, 1993 causally related to her February 19, 1990 employment injury. If Dr. Williams is unwilling or unable to clarify and elaborate on his opinion, the case should be referred to another appropriate impartial medical examiner.⁷ After such further development as the Office deems necessary, an appropriate decision should be issued regarding whether appellant sustained a recurrence of disability on February 16, 1993 causally related to her February 19, 1990 employment-related right ankle injury.

⁷ *Harold Travis*, 30 ECAB 1071, 1978-79 (1979).

The July 20, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC
June 7, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member