

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNITTA L. WRIGHT and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Baltimore, MD

*Docket No. 01-1858; Submitted on the Record;
Issued May 1, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability beginning July 7, 1997 related to her August 30, 1991 employment injury.

Appellant, then a 36-year-old special delivery messenger, sustained an injury to her right foot on August 30, 1991 when a lock bar fell on it. The Office of Workers' Compensation Programs accepted that appellant sustained a contusion of the right foot and the right great toe and a crush injury of the right foot.

The Office initially denied appellant's claim for a recurrence of disability from February 15 to 26, 1994, but accepted this recurrence of disability as related to appellant's August 30, 1991 employment injury after a referral to Dr. Steven Shapiro, an orthopedic surgeon. In a report dated February 13, 1995, Dr. Shapiro stated that appellant's residuals of her crush injury -- weakness and stiffness -- were not expected to resolve and that she had a permanent impairment of her right foot related to her employment injury.

On July 27, 1997 appellant filed a claim for a recurrence of disability beginning July 7, 1997 causally related to her August 30, 1991 employment injury. She stated that her ankle gave way during a church roller skating function, causing her to fall, fracturing her right arm. In a November 8, 1998 letter, appellant contended that the July 7, 1997 injury was a consequence of her August 30, 1991 employment injury.

Appellant submitted a January 29, 1999 report from her attending podiatrist, Dr. David L. Reicher, stating that her intractable tarsal tunnel syndrome of the right foot, which he indicated in an earlier report was related to her August 30, 1991 employment injury, had caused weakness and atrophy of the plantar muscles of the foot and inability to maintain a normal life style due to an antalgic gait. She also submitted a July 7, 1997 emergency room note stating that appellant "was roller skating when she fell down and landed on her overstretched right hand" and diagnosing a nondisplaced fracture of the radial head.

On January 14, 2000 the Office referred appellant to Dr. Donald I. Saltzman, an orthopedic surgeon, for a second opinion on her condition and its relation to her employment. In a report dated February 11, 2000, Dr. Saltzman stated:

“In answer to the questions posed to me, I do not feel that [appellant’s] ankle giving way while roller skating is related to the crush injury. She has no ankle instability and the injury did not cause that. It does appear that [appellant] sustained some permanent impairment of the foot from the crush injury.”

By decision dated October 18, 2000, the Office found that the evidence failed to establish that the recurrence of disability beginning July 7, 1997 was causally related to appellant’s August 30, 1991 employment injury.

By letter dated December 12, 2000, appellant requested reconsideration. She later submitted a January 2, 2001 report from Dr. Jerome S. Slavitt, a podiatrist, stating that appellant’s “injury is of such a nature, which could be the cause of the further foot pathologies over the nine years due to muscle weakness, atrophy, numbness and paresthesias.... Over the years her condition has progressed with additional injuries stemming from the weakness and paresthesias of the original injury.” Dr. Slavitt concluded that all of appellant’s subsequent foot problems arose as a result of her primary injury.

By decision dated April 4, 2001, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

The Board finds that the evidence does not establish that appellant sustained a recurrence of disability beginning July 7, 1997 related to her August 30, 1991 employment injury.

Appellant filed a claim for a recurrence of disability, which is defined by the Office’s regulations as “an inability to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”¹ Appellant’s November 8, 1998 letter clarified that her claim was actually for a consequential injury resulting from her August 30, 1991 employment injury.

It is an accepted principle of workers’ compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee’s own intentional misconduct.² Once the work-connected character of any condition is established, “the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial

¹ 20 C.F.R. § 10.5(x).

² *Frank Barone*, 30 ECAB 1119 (1979).

cause.”³ An employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related injury has the burden of proof to establish that such was the fact.⁴

The evidence does not establish that appellant’s July 7, 1997 injury sustained while roller skating was a consequence of any residual due to her August 30, 1991 employment injury. Although the evidence indicates that appellant continued to have residuals of the August 30, 1991 employment injury, it does not establish that such residuals contributed to her July 7, 1997 fall while roller skating. The only medical opinion directly addressing this question is that of Dr. Saltzman, who stated that he did not feel appellant’s ankle giving way while roller skating was related to her crush injury and explained that appellant had no ankle instability. The report from Dr. Slavitt that appellant submitted with her request for reconsideration addresses subsequent injuries in a general way, stating that appellant’s “condition has progressed with additional injuries stemming from the weakness and paresthesias of the original injury,” but does not specifically address the July 7, 1997 accident. This report is insufficient to establish that appellant’s July 7, 1997 accident was a consequence of her August 30, 1991 employment injury, especially in light of the report from Dr. Saltzman negating a causal relationship. The triggering episode for appellant’s claimed recurrence of disability was the July 7, 1997 roller skating accident and not due to the “natural progression” of her prior right foot injury. For this reason, her disability is not compensable under the Act.

The decisions of the Office of Workers’ Compensation Programs dated April 4, 2001 and October 18, 2000 are affirmed.

Dated, Washington, DC
May 1, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Robert W. Meeson*, 44 ECAB 834 (1993); *Dennis J. Lasanen*, 41 ECAB 933 (1990).

⁴ *Glyndol N. Henderson*, 31 ECAB 989 (1980).