U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN L. FIELDS and U.S. POSTAL SERVICE,
HARRY S. TRUMAN STATION, Independence, MO

Docket No. 02-596; Submitted on the Record;
Issued October 29, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied authorization for the surgery performed on November 1, 2001 and appellant's claim for subsequent wage loss.

On February 4, 2000 appellant, then a 26-year-old mail carrier, filed claims asserting that he had developed various foot problems as a result of wearing his postal shoes at work.

In a decision dated May 11, 2000, the Office denied appellant's claims on the grounds that the medical evidence of record was insufficient to establish the element of causal relationship.

In a decision dated January 22, 2001, an Office hearing representative found that further development of the medical evidence was warranted. The hearing representative directed the following:

> "Upon remand, the district office is directed to prepare a statement of accepted facts and refer the claimant and case file to a second opinion orthopedist for an opinion and determination with regard to whether the claimant has developed a medical condition in one or both of his lower extremities in any way causally related to factors of his federal employment. Such physician should display an accurate history of injury, definite diagnosis(es) and an unequivocal opinion regarding causal relationship (indicating if the diagnosed condition was caused and/or aggravated) and provide medical rationale for any opinion rendered. Period and status of disability should also be indicated."

On May 4, 2001 the Office determined that receipt of additional evidence had enabled the case to be accepted and that referral to a second opinion physician was unnecessary.[1] The Office notified appellant that it accepted his claim for the condition of bilateral plantar fasciitis. Appellant received compensation for wage loss.

In September and October 2001, appellant requested authorization for foot surgery. His podiatrist and reconstructive foot surgeon, Dr. Sheldon Grossman, submitted the following treatment note dated September 10, 2001:

> "Examination, history and physical. [Appellant] is a 28-year-old black male who presented to our office with the chief complaint of painful feet. Patient states his feet make his life difficult. Patient states he works as a postman and had a mail route. He cannot tolerate his shoe gear. This has been a chronic problem to him starting approximately 3 [to] 4 years previous. His past history is remarkable in that he had a bilateral bunionectomy performed in 1999 by Dr. E[c]ton and subsequently had revision of surgery in the year 2000. He states he did not improve after the surgical procedures. X-ray taken weight-bearing view show evidence of the following. Moderate to severe hallux abductor valgus, forefoot abductus, pes planus aquinus deformity, and foot pronation. Clinically, range of motion of the 1st metatarsal shows a hypermobile foot with the following. Range of motion of 1st MPJ is dorsiflexion 25 degrees, plantar flexion 35 degrees. Patient has digital abductus. He has hallux interphalangeal abductus. Vascular examination was unremarkable as well as neurological see internal chart results. Patient did have after surgical intervention orthotics and he periodically wears them, however, he does not have a lot of relief. It is interesting to note the extent that the patient had pain upon range of motion of the 1st MPJ especially on the right side due to scar inhibiting the function of the extensor hallucis longus tendon. Patient was shown his x-rays and discussion concerning surgical intervention. Patient was explained the risk and complication involved with surgery. No guarantee or assurances was made about the procedure. Patient was informed that this case was severe in nature and that he would need to address a multitude of his problems. I feel the foot pronation must be controlled to prevent a reoccurrence of his hallux abducto valgus deformity and, therefore, I think he will need a subtaylor arthroerisis or an evans procedure. He was informed that his surgical intervention was no guarantee of assurance and the results, not limited to, infection, reoccurrence of the deformity, stiff toe, etc. Patient decided to undergo surgical intervention. In addition physical examination showed the patient to have not only a hypermobile of the first ray with the forefoot valgus flexible in nature. He had a keratosis which was very painful beneath the 5th metatarsal head on the left foot an keratosis of beneath the 3d metatarsal head on the right foot. These are causing a retractable plantar tyloma beneath the metatarsal heads. I feel that these also may need to be addressed where osteotomy of metatarsals might need to be performed to try to alleviate the patients discomfort."

[1] The Office later identified this additional evidence as the November 6, 2000 report of Dr. T. Reid Ecton, appellant's podiatrist. The hearing representative reviewed this report in his January 22, 2001 decision.

A surgery worksheet dated September 10, 2001 indicated diagnoses of hallux abducto valgus, hammertoe and flat foot. Outpatient surgery was scheduled for November 1, 2001 to include the following procedures: bunion, right; desis 1, 2, 3 right; and arthroerisis right.

The Office referred the case file to an Office medical adviser and asked whether the recommended surgery was medically necessary treatment for appellant's accepted condition.

On October 17, 2001 the Office medical adviser noted that the Office had accepted only plantar fasciitis. The medical adviser also noted, however, that the Office did not appear to clarify, after the decision of hearing representative, whether appellant's more distal foot complaints were due to factors of federal employment. The medical adviser stated: "The claimant's file must be reviewed in a 2nd opinion as to what diagnosis(es) can be accepted and if the procedure discussed in the September 10 2001 note by [Dr. Grossman] is an appropriate procedure for either lower extremity."

In a decision dated October 22, 2001, the Office denied authorization for surgery on the grounds that it was not medically necessary treatment due to a job-related injury.

Appellant filed a claim for wage loss resulting from his November 1, 2001 surgery.

In a decision dated November 9, 2001, the Office denied appellant's claim on the grounds that there was no evidence to establish that he was temporarily disabled from work due to his work injury, which the Office accepted for bilateral plantar fasciitis.

The Board finds that the Office has not properly developed the issue pertaining to authorization for the surgery performed on November 1, 2001.

Section 8103(a) of the Federal Employees' Compensation Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.[2] The Office must, therefore, exercise discretion in determining whether the particular service, appliance, or supply is likely to effect the purposes specified in the Act.[3]

The Office denied authorization for the November 1, 2002 surgery and appellant's claim for subsequent wage loss because there was no medical evidence to establish that the surgery and wage loss were causally related to the accepted condition. This lack of medical evidence is a consequence, however, of the Office's failure to obtain a second opinion on the issue of causal relationship. The hearing representative directed the Office to obtain a reasoned opinion from a referral orthopedist to establish a definite diagnosis of appellant's medical condition(s) and to establish unequivocally whether the diagnosed condition(s) were causally related to appellant's federal employment. Later, when Dr. Grossman scheduled surgery for November 1, 2001, the

[2] 5 U.S.C. § 8103(a).

[3] *See Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

Office consulted an Office medical adviser on whether the surgery was medically necessary treatment for appellant's accepted condition. The medical adviser noted that the Office had accepted only plantar fasciitis and had never clarified whether appellant's more distal foot complaints were due to factors of federal employment. The Office medical adviser reported that appellant's file should be reviewed in a second opinion "as to what diagnosis(es) can be accepted and if the procedure discussed in the September 10, 2001 note by [Dr. Grossman] is an appropriate procedure for either lower extremity."

The Office did not comply with the January 22, 2001 decision of the hearing representative nor follow the advice of the medical adviser after seeking his consultation. As a result the record lacks the medical opinion evidence the Office now deems necessary. The Board will set aside the Office's October 22 and November 9, 2001 decisions and remand the case for further development on whether the diagnosed conditions for which appellant underwent surgery on November 1, 2001 were causally related to his federal employment. After such further development the Office shall issue an appropriate final decision on authorization for the November 1, 2001 surgery and on appellant's claim for subsequent wage loss.

The November 9 and October 22, 2001 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this opinion.

Dated, Washington, DC
October 29, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member