

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BENJAMIN M. YACONO and U.S. POSTAL SERVICE,  
POST OFFICE, Riverhead, NY

*Docket No. 02-603; Submitted on the Record;  
Issued September 13, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a recurrence of disability on June 12, 2000 causally related to his August 2, 1998 employment injury.

On August 2, 1998 appellant, then a 52-year-old building and grounds maintenance worker, filed a claim for a traumatic injury occurring on that date when he fell off a ladder 20 feet to the ground. The Office of Workers' Compensation Programs accepted his claim for a left closed fracture of the tibia/fibula shaft, a fracture of the patella, a fracture of the right calcaneus, a right vertebral fracture and lumbosacral strain. Appellant stopped work on August 2, 1998 and returned to limited-duty employment on December 14, 1998. He stopped work on December 21, 1999, when he retired on disability.<sup>1</sup>

On August 10, 2000 appellant filed a notice of recurrence of disability on November 6, 2000 causally related to his August 2, 1998 employment injury. He related that he sought medical treatment following his alleged recurrence of disability on June 12, 2000.<sup>2</sup>

By decision dated November 14, 2000, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained a recurrence of disability on June 12, 2000 causally related to his accepted employment injury.

Appellant, in a letter dated September 18, 2001, requested reconsideration of his claim. By decision dated November 14, 2001, the Office denied modification of its prior decision.

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<sup>1</sup> The Office accepted that appellant sustained a recurrence of disability on October 22, 1999. Appellant returned to work following his recurrence of disability on November 19, 1999.

<sup>2</sup> On August 29, 2001 appellant filed a notice of recurrence of disability which he alleged was ongoing since his original injury. Appellant indicated that he stopped work on December 21, 1999 when he began disability retirement.

The Board finds that the case is not in posture for decision.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.<sup>3</sup> This burden includes the necessity of furnishing evidenced from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>4</sup>

In this case, appellant has submitted evidence which suggests that the claimed recurrence of disability was causally related to his accepted employment injury. The record indicates that on June 22, 2000, Dr. Steven P. Sampson, a Board-certified orthopedic surgeon, diagnosed right Charcot foot, an infection/abscess and dislocated joints and performed an irrigation and debridement of the right foot. In a letter dated April 6, 2001, Dr. Sampson indicated that he had treated appellant for right Charcot foot since June 13, 2000 and found that he was totally disabled from employment. He listed the date of injury as August 2, 1998 and stated that the “occurrence described above was the competent producing cause of the injury and current disability.” Dr. Sampson, however, did not describe appellant’s employment injury. On April 19, 2001 he requested approval from the Office to amputate appellant’s leg below the right knee.

In a report dated August 1, 2001, Dr. Daniel Yellon, a Board-certified internist, related that appellant was scheduled for a right leg amputation the following date “due to chronic osteomyelitis and Charcot foot. These conditions were a direct result of the injury he sustained in 1998 to his right foot.”

In reports dated June 4, 2001, Dr. Edward D. Wang, an orthopedic surgeon, noted appellant’s history of a left knee bicondylar tibial plateau fracture and indicated that he had performed surgery on appellant for the fracture on August 13, 1998. He listed his findings on physical examination and opined that appellant was “probably developing post-traumatic arthritis in the left knee.” He stated:

“[Appellant] has been under my care since August 6, 1998. On August 13, 1998 I operated on a very severe left bicondylar tibial plateau fracture. Since then he has gone on to develop post-traumatic degenerative arthritis of the left knee and also developed severe Charcot arthropathy of the right foot. In addition, at the time of his original injury, [appellant] suffered a lumbar spine fracture, which was under treatment by Dr. Fred Orcutt. His right foot is currently under the treatment of Dr. Sampson and [he] should be consulted regarding further details of the right foot.

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<sup>3</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>4</sup> *Id.*

“In my opinion, [appellant’s] medical problems of his lumbar spine, right foot and left knee are causally directly related to the original fall that he suffered while on the job on August 2, 2000.”<sup>5</sup>

While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.<sup>6</sup> When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee’s attending physician.<sup>7</sup> In this case, while the reports of Drs. Sampson, Yellum and Wong are not sufficiently detailed or rationalized to discharge appellant’s burden of proving by the weight of the reliable, substantial and probative evidence that he sustained a recurrence of disability causally related to his accepted employment injury, the Board finds that the medical evidence raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.<sup>8</sup>

On remand the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on the issue of whether appellant sustained a recurrence of disability causally related to his accepted employment injury.<sup>9</sup> After such development of the case record as the Office deems necessary, it shall issue a *de novo* decision.<sup>10</sup>

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<sup>5</sup> It appears from the context of Dr. Wang’s medical report that listing August 2, 2000 rather than August 2, 1998 as the date of appellant’s injury was a typographical error.

<sup>6</sup> *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.*

<sup>9</sup> In a report addressed to the state workers’ compensation board dated July 7, 2000, Dr. Jungyop Kim noted that appellant had “multiple medical problems incurred in an industrial accident resulting in extensive lower extremity injuries.” Dr. Kim related, “[Appellant] had right foot injury requiring a surgical intervention which later became infected, then [an] abscess formed, and eventually [he] developed osteomyelitis. On this hospitalization, the abscess was incised and drained.” On remand the Office should determine whether the industrial accident referred to by Dr. Kim was appellant’s August 2, 1998 employment injury.

<sup>10</sup> Appellant submitted new evidence with his appeal; however, the Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated November 14, 2001 is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC  
September 13, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member