

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA JONES and U.S. POSTAL SERVICE,
POST OFFICE, Muskegon, MI

*Docket No. 03-920; Submitted on the Record;
Issued July 21, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she had any disability subsequent to August 20, 2001 causally related to the June 11, 2001 employment injury.

On June 11, 2001 appellant, then a 30-year-old clerk, sustained an injury when a metal mail gate fell on her right foot. The Office of Workers' Compensation Programs accepted appellant's claim for an acute contusion of the right foot and paid appropriate compensation. She did not stop work.¹

Accompanying appellant's claim were reports dated August 6, 2001 from Dr. J. Little, to whom appellant was referred by the employing establishment. He advised that appellant sustained an acute contusion of the right foot, when a mail gate fell on her and that she could return to work without restrictions but was to use an Ace wrap. In a report dated August 20, 2001, Dr. Dan F. Kreuzer, an osteopathic physician, who also treated appellant for the employing establishment, noted that her contusions had improved and advised that she could return to work without restrictions. Appellant was to wear shoes and a wrap.

On October 5, 2001 appellant filed a CA-2a, notice of recurrence of disability. In an attached statement, she reported that her right foot injury had gotten worse since August 20, 2001 and submitted a duty status report dated October 2, 2001, in which Dr. Roger L. DeYoung, a family practitioner, advised that appellant could work full time, five days a week on restricted duty. Appellant also submitted several x-ray reports of the right foot revealing a small plantar calcaneal spur.

¹ The record reflects that appellant has filed another claim for a traumatic injury to her left foot which occurred on August 20, 2001, when a shelving unit fell on her left foot, Office claim No. 092012667. The record indicates that this claim was accepted by the Office for limited medical expenses and that in October 2002 she filed a claim for an occupational disease alleging that the injury sustained to her right foot on June 11, 2001 was further aggravated by standing and walking required by her job, Office claim No. 092029905. That claim is not before the Board.

By letter dated November 2, 2001, the Office requested additional factual evidence from appellant.

Thereafter, appellant submitted reports from Dr. De Young dated November 8 and 23, 2001, in which he noted a history of her June 11, 2001 injury and diagnosed nerve entrapment of the right foot. He indicated extreme sensitivity in the dorsolateral aspect of the foot where the shelving unit had fallen and that she felt discomfort with certain activities at work. Dr. DeYoung indicated that appellant suffered a nerve injury in the dorsal aspect of the right foot from a shelving unit falling on it in August.

In a decision dated December 21, 2001, the Office denied appellant's claim, finding that the evidence was insufficient to establish that the recurrence of disability was causally related to appellant's accepted injury of June 11, 2001. The Office specifically noted that Dr. De Young's report's confused the two work-related injuries appellant sustained on June 11 and August 20, 2001 and appeared to relate her condition to the injury sustained in August 2001.

By letter dated April 2, 2002, appellant requested reconsideration and submitted additional medical evidence including reports from Dr. Jeffrey D. Recknagel, a Board-certified orthopedist, dated February 20 to March 13, 2002, in which he indicated that appellant presented with symptoms of right foot pain. He noted that appellant described an injury to her right foot which occurred in June 2001 and diagnosed right talonavicular degenerative joint disease with spurring. Dr. Recknagel further noted that the magnetic resonance imaging (MRI) scan revealed arthritic changes at the talonavicular joint with signal abnormality in the navicular bone. In a March 4, 2002 report, Dr. De Young indicated that appellant informed him that a metal gate fell on her right foot rather than a shelving unit as mentioned in his November 23, 2001 report. He indicated that it did not matter if it was a shelving unit or a metal gate and opined that appellant had a work injury. In a report dated March 12, 2002, Dr. Katherine Young, a Board-certified family practitioner, noted appellant's continued complaints related to her right foot.

In a decision dated June 11, 2002, the Office denied modification of the Office decision dated December 21, 2001.

In a letter dated November 18, 2002, appellant requested reconsideration and submitted additional medical evidence. An MRI scan of the right foot dated February 26, 2002 revealed focal arthritic changes at the talonavicular joint consistent with early degenerative arthritis. Dr. Recknagel's reports note that appellant had significant right talonavicular degenerative joint disease with possible spurring. Dr. John G. Anderson, a Board-certified orthopedic surgeon, submitted a report dated October 2, 2002, in which he indicated that appellant underwent injections but her symptoms recurred. He diagnosed maximal tenderness in the area of her doromedial navicular.

In an August 21, 2001 note, Dr. Young described appellant's symptoms and treatment with regard to a left foot injury sustained in August 2001. Her report of September 28, 2001 noted treatment for appellant's foot injuries. Dr. Young noted that, in June 2001, a gate fell on appellant's right foot which caused continuing pain. Her report of January 23, 2002 noted the findings of a bone imaging scan of the right foot revealing abnormal bone imaging in the right talonavicular articulation. Dr. Young's February 28, 2002 report noted appellant's continued

complaints of right foot pain and she diagnosed status post fracture talonavicular area of the right foot and Morton's neuroma. Dr. Young noted that appellant currently had a sedentary position and worked under restrictions. Her report of June 18, 2002 noted that she began treating appellant on August 21, 2001 and indicated that appellant had an injury to her left foot, which dated back to June 11, 2001. Dr. Young indicated that it appeared that appellant's injury was work related and was not a chronic problem. Her report of October 16, 2002 noted a history of appellant's injury, indicating that she sustained the injury June 11, 2001, when a metal gate fell on her right foot. Dr. Young noted that appellant was asymptomatic prior to this injury. She indicated that appellant came in to see her on August 21, 2001 for significant pain on the third, fourth and fifth metatarsals of her foot. Dr. Young noted that appellant was seen in consultation with Dr. Anderson, who believed that there was a definite correlation between her work injury and this given problem.

In a decision dated February 11, 2003, the Office denied modification of the prior Office decision.

The Board finds that appellant has failed to establish that her condition during the claimed period of disability is causally related to the accepted employment injury of June 11, 2001.

Under the Federal Employees' Compensation Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury has no disability as that term is used in the Act.²

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, she must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between her disability and the federal employment.³

The Office accepted appellant's claim's for acute contusion of the right foot. However, the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning August 20, 2001 is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

The medical records submitted most contemporaneously with the period of disability claim indicated that appellant could return to work without restrictions.⁴ Specifically, the report

² *Cherly I. Decavitch*, 50 ECAB 397 (1999).

³ *See Nicolea Bruso*, 33 ECAB 1138 (1982).

⁴ The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; *see Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

dated August 6, 2001 from Dr. Little, to whom appellant was referred by the employing establishment, advised that she sustained an acute contusion of the right foot, but she could return to work without restrictions but was to use an Ace wrap. Additionally, in a report dated August 20, 2001, Dr. Kreuzer, who also treated appellant for the employing establishment, noted that appellant's contusions had improved and advised that she could return to work without restrictions. She was to wear shoes and a wrap.

Appellant also submitted reports from Dr. Young dating from August 21, 2001 to October 2002, many of which describe her symptoms and treatment with regard to a left foot injury sustained in August 2001, a claim not before the Board at this time. Her reports of January 23 and February 28, 2002 noted appellant's continued complaints of right foot pain. Even though Dr. Young noted that appellant was still experiencing symptoms of her right foot condition, she did not in this report or in others, specifically address whether appellant had any employment-related disability beginning August 20, 2001 causally related to her June 11, 2001 employment injury. Dr. Young did not indicate any specific dates on which the accepted employment injury caused disability. Her note of June 18, 2002 indicated that she began treating appellant on August 21, 2001 and noted that appellant had an injury to her "left foot" which dated back to June 11, 2001. Dr. Young indicated that "it appears that the injury is related to her work-inflicted injury and not a chronic problem." However, Dr. Young appears to be confusing appellant's June 11, 2001 injury, when a metal gate fell on her right foot causing a contusion and appellant's August 20, 2001 injury, when a shelving unit fell on her left foot. However, these injuries are separate claims accepted by the Office and only the right foot injury is before the Board on this appeal.⁵ Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted treatment notes from Dr. DeYoung who noted treating her on September 29, 2001 and diagnosed her with nerve damage to her right foot. However, he did not indicate an accurate knowledge of appellant's work injury as he noted in his reports of November 8 and 23, 2001, appellant's complaints of pain in the "left fourth and fifth metatarsal head areas." It is unclear what injury Dr. De Young is referring to in these reports. He indicated extreme sensitivity in the dorsolateral aspect of the foot where the "shelving unit" had fallen on appellant's foot. Dr. De Young's November 23, 2001 report noted treating her on October 17, 2001 for discomfort and he indicated that she suffered a nerve injury in the dorsal aspect of the "right foot" from a "shelving unit" falling on it in August. He appears to confuse the June 11, 2001 injury, when a gate fell on her right foot and the August 20, 2001 injury when a shelving unit fell on her left foot. The Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship.⁶

The reports from Dr. Recknagel dated February 20 to March 13, 2002 noted that appellant presented with symptoms of right foot pain. Even though he noted that she was still experiencing symptoms of her right foot condition, Dr. Recknagel did not in this report or in others, specifically address whether appellant had employment-related disabilities beginning

⁵ See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

⁶ See *id.*

August 20, 2001, nor did he indicate any specific dates on which the accepted employment injury caused disability. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁷

The remainder of the medical evidence fails to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of June 11, 2001. Consequently, the medical evidence did not establish that the claimed period of disability was due to appellant's employment injury of June 11, 2001.

The decisions of the Office of Workers' Compensation Programs dated February 11, 2003 and June 11, 2002 are hereby affirmed.

Dated, Washington, DC
July 21, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Theron J. Barham*, 34 ECAB 1070 (1983).