

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LIN J. SCANLAND and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 03-374; Submitted on the Record;
Issued March 10, 2003*

DECISION and ORDER

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

The issue is whether appellant has established that she sustained a recurrence of disability on August 8, 2000 causally related to her October 26, 1998 accepted work injury sprain of her left ankle.

On October 29, 1998 appellant, then a 44-year-old budget assistant, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on that date she sustained an injury to her left ankle. On December 28, 1998 the Office of Workers' Compensation Programs accepted appellant's claim for sprain of the left ankle. Appellant, with the approval of the Office, underwent a left ankle lateral ligament reconstruction as well as excision of a posterior loose body on August 12, 1999. Appellant returned to part-time work in December 1999 and full-time work on or about January 27, 2000, at which time the Office terminated wage-loss compensation. Appellant stopped working on August 8, 2000.

In a medical report dated August 1, 2000, Dr. Guy H. Earle, a Board-certified family practitioner, gave his assessment of appellant as: (1) unstable left ankle sprain; (2) occult fracture of the talus; (3) status post left ankle reconstruction and loose body removal; and (4) post-traumatic degenerative arthritis of left tibiotalar joint. He noted that at this point appellant was "fixed, stable and fully treated."

In a medical report dated September 6, 2000, Dr. Oanh Truong, appellant's treating Board-certified family practitioner, noted:

"I am writing this letter on behalf of [appellant], who suffered a job injury at [the employing establishment], October 26, 1998, which led to ligament surgery on August 12, 1999. Since the surgery, she has continued to have chronic foot pain despite her physical therapy. Her physical well being continues to be affected and results in poor health, continuous migraine headaches, nausea and high blood pressure. All these symptoms are due to the pain generated from the foot injury. This has also resulted in hip and lower back pain which creates a continuous cycle

of pain which cannot be broken without proper treatment. [Appellant's] activities at work and at home have been severely hampered and as of August 8, 2000, she has been under my care and on indefinite medical leave because of the complications from her foot injury. It is my opinion that she should see a pain specialist and receive continued medical treatment. I have advised [appellant] to seek a medical retirement as she is not physically able to continue working with this disability."

On September 12, 2000 appellant saw Dr. Louis C. Saeger for a pain consultation. Dr. Saeger noted that appellant had a significant degree of persisting pain in the left ankle and that a severe sprain of this nature was likely to produce additional soft tissue injury and joint sequelae, which probably accounted for her ongoing chronic pain. He continued:

"The secondary results of the chronic pain have been fairly devastating to her quality of life and have resulted in depression and an autonomic stress response, which is, more likely than not, directly related to exacerbation of migraines, blood pressure problems and GI [gastrointestinal] problems. In addition to this, she has subjective symptoms of sacroiliac pain with an apparent etiology related to her chronic gait disturbance, which is attributable to the ankle. The sacroiliac area pain probably involves both articular surface pain generators as well as overlying soft tissue generators, which is quite common in sacroiliac dysfunction, wherein pain develops within the ligament attachments overlying the joint."

He recommended that appellant's options regarding orthopedic treatment should be addressed by someone within that field.

On September 15, 2000 appellant filed a claim for compensation for the period August 28 to September 28, 2000.

By letters dated October 12, 2000, the Office referred appellant to Dr. Lewis Almaraz, a Board-certified neurologist, and Dr. Stanley Kopp, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated October 20, 2001, Drs. Almaraz and Kopp reviewed appellant's record, and noted that the records do not adequately discuss appellant's cerebral palsy condition. The doctors also noted that there was a discrepancy in the record with regard to whether appellant had a prior history of any ankle problems before the work-related injury. The doctors' diagnoses were status post left ankle reconstruction, excision and posterior ankle loose body with good result and history of cerebral palsy. In response to questions propounded by the Office, Drs. Almaraz and Kopp indicated that they believed appellant's ankle condition to be healed; that there were no objective findings on clinical examination of any ongoing progressive ankle condition or disease entity at this time. They also noted that appellant's cerebral palsy was not significant enough for her to require a wheelchair. Drs. Almaraz and Kopp indicated that appellant reported that prior to her injury she was able to walk five miles without difficulty, and that, based on their clinical examination, "we do not note any significant condition of the left ankle that affects her ability to walk." They indicated that appellant's left ankle "is fixed and stable and is not in need of any additional formal treatment." They also did not believe that appellant was in need of any chronic pain management program.

In an October 27, 2000 report, Dr. Richard McCollum, a Board-certified orthopedist, indicated that appellant's date of maximum medical improvement was April 4, 2000. He indicated that as the medical records contained no ongoing mention of an arthritic condition, "it seems unexpected and improbable that she would have narrowing of the space between the tibia and the talus in August 2000, which would be related to the accepted condition, which is instability and strain of the left ankle." Dr. McCollum requested further medical information.

In response to a December 1, 2000 letter from the Office, appellant submitted a December 19, 2000 statement indicating:

"[Appellant] had a horrible injury to her left lower extremity on October 26, 1998, which resulted in surgery on August 12, 1999, and severe permanent partial impairment. She went back to work in limited duty but stopped work in August 2000. One of the symptoms is severe swelling in the left lower extremity. The swelling worsens when [appellant] does lifting and walking and both are required in her job as a financial technician. It is conceivable that [appellant] could return to work of some kind with a wheelchair with leg lifts."

In a November 15, 2000 report, Dr. Truong noted that appellant has done much better since quitting her job. In a December 21, 2002 note, Dr. Truong stated that appellant "was instructed to refrain from her working activities because the walking and lifting activities were causing the condition of her left ankle and lower extremity to worsen."

In a December 21, 2000 note to the Office, appellant indicated that, after returning to work from the surgery on her left ankle, the activities of her job caused her condition to worsen. Specifically, she noted the standing, lifting reams of paper and the walking to the fax machine, copier, meetings and the rest room caused the condition of her left ankle to worsen until Dr. Truong pulled her out of work in August 2000.

In a December 31, 2000 report, Dr. Earle indicated that appellant's history of an unstable left ankle sprain coupled with occult fracture of the talus and post left ankle reconstruction with loose body removal was more than adequate history of trauma to produce post-traumatic degenerative arthritis.

In a letter dated March 1, 2001, Dr. Kopp indicated that appellant was "at a fixed and stable state on April 4, 2000."

In a January 3, 2002 letter to the Office, Dr. Peter E. Krumins, appellant's Board-certified orthopedic surgeon, indicated that, despite appellant's lateral ankle ligament surgery, her ankle continues to give way, that these events were accompanied by swelling and pain, that he believed that her regular job duties would likely aggravate this problem and that, therefore, it would be difficult for her to return to her regular work.

By decision dated January 4, 2002, the Office rejected appellant's claim for recurrence beginning August 8, 2000, finding that appellant had not established that her claimed condition was causally related to her accepted work injury. By letter dated January 8, 2002, appellant requested a hearing, which was held on July 9, 2002.

After the hearing appellant submitted, *inter alia*, a July 18, 2002 medical report by Dr. Krumins, wherein he indicated that he was appellant's treating orthopedic surgeon for ongoing problems with her left ankle, that she initially injured her ankle on October 26, 1998, that despite physical therapy she is continuing to have problems with pain and laxity about the ankle. He indicated that appellant was presently ambulating using an AFO brace and using a cane. He then stated:

"I think her ability to function at her previous job was limited, as this required considerable walking and the ability to go up and down stairs to get in and out of the office. She has not been able to do this. Thus, I think she has some permanent residuals from this problem, based in part on her injury and in part from the underlying cerebral palsy."

By decision dated September 12, 2002, the hearing representative affirmed the January 4, 2002 decision of the Office, as he found that there was insufficient medical evidence to prove that beginning August 8, 2000 appellant had a recurrence of her October 26, 1998 work-related injury.

The Board finds that this case is not in posture for decision due to an unresolved conflict in the medical opinion evidence.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. As part of this burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment and supports that conclusion with sound medical reasoning.¹ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causation.²

In the instant case, appellant's treating physician, Dr. Truong, indicated that appellant has been on indefinite medical leave since August 8, 2000 because of complications from her foot injury. He did not believe that appellant was physically able to continue working with her disability. In his January 3, 2002 report, Dr. Krumins, appellant's treating orthopedic surgeon, indicated that, despite some improvement, appellant continued to be severely limited by her ankle. In his report dated July 18, 2002, Dr. Krumins stated his belief that appellant had permanent residuals to her ankle, based in part from her injury and part from her cerebral palsy. The physicians to whom the Office referred appellant for a second opinion had a contrary view. Drs. Almaraz and Kopp indicated that they believed that appellant's ankle condition had healed and that there were no objective findings on clinical examination of any ongoing progressive ankle condition or disease at this time. They noted that appellant did not require any additional formal treatment for her ankle.

¹ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

² *Id.*

Section 8123(a) of the Federal Employees' Compensation Act provides that, when there is a disagreement between a physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.³ Accordingly, this case will be remanded to the Office for resolution of the conflict. On remand, the Office shall refer appellant, along with the case record and a statement of accepted facts, to an appropriate specialist for a rationalized opinion on the issue in conflict. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated September 12 and January 4, 2002 are hereby set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
March 10, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Lawrence C. Parr*, 48 ECAB 445, 453 (1997).