United States Department of Labor
Employees' Compensation Appeals Board

SIDNEY P. COLES, Appellant	)	
and	)	**Docket No. 03-1396**
	)	**Issued: January 8, 2004**
DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL BUSINSESS CENTER, Philadelphia, PA, Employer	)	

Appearances:
Sidney P. Coles, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On May 15, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated November 7, 2002 denying payment for physical therapy. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office abused its discretion in denying appellant's claim for physical therapy expenses.

FACTUAL HISTORY

On July 28, 1993 appellant, then a 32-year-old electronics mechanic, twisted her right ankle while in the performance of duty. The Office accepted the claim for a right ankle sprain.[1]

[1] The claim was filed under A3-188362.

Appellant stopped work on August 12, 1993. On September 8, 1993 appellant returned to work and was placed on light duty. The Office accepted a recurrence from September 13 until September 27, 1993, after which appellant returned to light-duty work. In a February 7, 1994 report, appellant's attending physician, Dr. John P. Salvo, a Board-certified orthopedic surgeon, released appellant for regular work. Appellant returned to full duty as an electronics mechanic on February 7, 1994. Appellant subsequently relocated to Pittsburgh and was hired as an electronics mechanic with the U.S. Army Corps of Engineers on May 15, 1995. On December 21, 1995 appellant suffered another work injury, for which the Office accepted the conditions of lumbar strain, bilateral shoulder strain and chronic left shoulder impingement.[2] Appellant returned to a permanent light-duty position as an electronics mechanic. On October 4, 1996 she was terminated by the employing establishment due to poor performance.

Appellant subsequently filed a recurrence claim beginning October 16, 1997, when her right ankle collapsed while at home.[3] By letter dated July 6, 1998, the Office accepted the claim as a no-lost time recurrence with all medical treatment benefits payable. Physical therapy was additionally authorized for up to 120 days.

On July 13, 1998 the Office issued a schedule award for a five percent permanent impairment to appellant's right leg. The period of the award ran from May 13 through August 21, 1998.

By decision dated August 23, 2000, the Office denied appellant's recurrence claim beginning October 16, 1997 on the grounds that she was capable of performing light duty and was terminated from the employing establishment for reasons unrelated to her work injuries. The Office noted that appellant remained entitled to medical treatment for her ankle condition.

In an October 31, 2002 letter, appellant requested that the Office pay for physical therapy provided for her right ankle in 2000. She advised that, contrary to her conversations with the Office, she did not have to file a recurrence claim as her right ankle is permanently disabled and, at times, requires extra treatment to strengthen it. An emergency department record dated July 2, 2000, noted that appellant was wearing her brace and walking up steps when her ankle went out on her. A sprained right ankle was diagnosed. Appellant provided physical therapy claims along with copies of physical therapy notes dated July 10 through October 10, 2000 which included exercise charts. She also submitted a July 10, 2000 report from the physical therapist noting a recurrent ankle sprain and history of the July 2, 2000 injury which occurred while appellant was wearing her lace-up sport brace and stepping off a step when her right ankle collapsed, causing her to fall, and physical therapy reports dated August 2, September 1 and October 6, 2000 signed by a physician,[4] which requested physical therapy three times a week for four weeks.

[2] This claim was filed under A3-214881. This claim is not before the Board on the present appeal.

[3] An actual copy of the recurrence claim form is not of record.

[4] The signature of the physician is not legible.

In a July 3, 2000 report, Dr. Arnold S. Broudy, a Board-certified orthopedic surgeon, advised that appellant had been previously seen in his practice for right ankle problems and was known to have significant instability. He stated that appellant was wearing an ankle lace-up brace when she tripped and reinjured her ankle. Dr. Broudy stated that the examination showed significant anterolateral ankle swelling, that neurovascular function was intact, and the x-rays from Forbes Regional Hospital showed no evidence of an acute fracture. Appellant was diagnosed with a recurrent right lateral ankle sprain and treated with a cam walker. Appellant was to return in four days to see Dr. Levine.

In a July 7, 2000 report, Dr. Michael Levine, a Board-certified orthopedic surgeon, noted that appellant had reinjured her ankle recently and that Dr. Broudy had placed her in a cam walker. Examination revealed significant swelling over the anterolateral aspect of the joint of the right ankle. Dr. Levine advised that he was going to start appellant on a physical therapy program and give her a new lace-up ankle support.[5] In an August 4, 2000 report, Dr. Levine advised that appellant was 50 percent improved but still had some swelling anterolaterally. She was advised to complete her physical therapy program and return in one month's time. In a September 13, 2000 report, Dr. Levine stated that the ankle was clinically intact, although appellant was still experiencing discomfort, and there was swelling along the posterior tibial tendon. Appellant was advised to continue the physical therapy program. In an October 11, 2000 report, Dr. Levine advised that appellant continued to have problems with ankle instability. Given the duration of the symptoms, the physician recommended a Brostrom procedure, but noted that appellant was reluctant to proceed at the present time given her shoulder symptoms.

By decision dated November 7, 2002, the Office denied appellant's claim for payment of physical therapy bills beginning July 10, 2000 as appellant had sustained a new injury superimposed on a chronically weak ankle which was not incurred during a period of employment.

LEGAL PRECEDENT

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.[6] Proof of causal relation in a case such as this must include supporting rationalized medical evidence.[7] Therefore, in order to prove that physical therapy is warranted, appellant must submit evidence to show that the physical therapy is for a condition causally related to the employment

[5] Other findings, which deal with conditions not related to this claim, were also provided.

[6] *See* 5 U.S.C. § 8103(a) (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, that the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of any monthly compensation). To be entitled to reimbursement of medical expenses, however, the employee must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation must include supportive rationalized medical evidence. *Carolyn F. Allen*, 47 ECAB 240 (1995).

[7] *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

injury and that the physical therapy is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[8]

ANALYSIS

The medical and factual evidence submitted in support of this claim confirm that appellant required medical care and physical therapy for a right ankle injury of July 2, 2000 and that she has a known problem of significant instability in her right ankle. Although the record reflects that appellant had a chronically weak ankle, there is no evidence of record which contains a well-rationalized opinion causally relating appellant's July 2, 2000 ankle strain and need for physical therapy to the effects of the July 23, 1993 work injury. In his July 3, 2000 report, Dr. Broudy diagnosed a recurrent right lateral ankle sprain and noted that appellant was wearing an ankle lace-up brace when she reinjured herself on July 2, 2000. However, this report is insufficient to establish appellant's claim for reimbursement of physical therapy expenses because it fails to provide any discussion of how appellant's recurrent ankle condition and subsequent fall on July 2, 2002 was caused or aggravated by the July 23, 1993 incident.[9] Although Dr. Levine had recommended physical therapy and provided progress reports on appellant's right ankle condition, his reports fail to attribute her fall on July 2, 2000 to the July 23, 1993 injury or provide an explanation as to how or why her ankle condition was caused or aggravated by the July 23, 1993 injury. These opinions, therefore, are of diminished probative value as they lack a rationalized medical opinion on causal relationship relating appellant's recurrent ankle condition and subsequent fall on July 2, 2000 to the accepted July 23, 1993 work injury.[10] Since, appellant did not provide any rationalized medical evidence to describe or explain how the July 23, 1993 employment injury caused the claimed injury of July 2, 2000 and the need for physical therapy, the Board finds that the Office properly denied authorization of physical therapy. Accordingly, such denial does not constitute an abuse of discretion.

[8] *Carolyn F. Allen, supra* note 6.

[9] *Daniel Deparini*, 44 ECAB 657, 659 (1993).

[10] *See Ruth Seuell*, 48 ECAB 188, 193 (1996); *Val D. Wynn*, 40 ECAB 666, 668 (1989).

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's claim for physical therapy expenses for a July 2, 2000 ankle strain.[11]

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] The Board notes that subsequent to the November 7, 2002 decision appellant submitted new evidence, which included a November 6, 2002 report of Dr. Levine. This evidence was also submitted in appellant's appeal to the Board. The Board has no jurisdiction, however, to review evidence for the first time on appeal that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b)(1999).