

injured her chest, abdomen and face in a motor vehicle accident while in the performance of duty. She stopped work on July 20, 2002. In an attached report, an emergency room physician stated that appellant sustained right foot, chest, abdominal and face injuries as a result of the July 19, 2002 motor vehicle accident.

In a report dated July 22, 2002, Dr. Paul Bizzigotti, a Board-certified orthopedic surgeon who treated appellant for her foot injury, noted a familiarity with appellant's history of injury indicating that she was involved in a motor vehicle accident on July 19, 2002. He reviewed x-rays and diagnosed appellant with a fracture of the right navicular bone, minimally displaced. Dr. Bizzigotti also noted that a sprained ankle associated with the foot fracture.

On August 6, 2002 Dr. Geoffrey K. Turner, a Board-certified internist who treated appellant's chest, neck and facial injuries, noted continuous symptoms of chest pain as a result of her recent motor vehicle injury. On August 14, 2002 Dr. Bizzigotti prescribed stiff-soled shoes as a result of her right navicular fracture. On August 26, 2002 Dr. Bizzigotti stated that appellant was off work until September 19, 2002 due to foot pain.

On September 10, 2002 the Office accepted the claim for a broken right foot and authorized physical therapy. Appellant received continuation of pay from July 20 to September 4, 2002. On September 13, 2002 Dr. Turner stated that a computerized tomography scan (CTS) was normal. On September 18, 2002 Dr. Bizzigotti released appellant to return to work on October 1, 2002 with a stand/sit option for two months, and full duty on December 1, 2002. On September 30, 2002 Dr. Turner placed appellant on total disability as a result of the July 19, 2002 injury.

On October 2, 2002 the Office authorized stiff-soled shoes. In reports dated October 8, 2002, Dr. Turner noted treating appellant for a broken foot and multiple contusions of the jaw, chest, shoulder and face. He opined that appellant's injuries were a "direct result" of her July 19, 2002 work-related motor vehicle accident and released her to return to light duty for eight hours a day in a sitting position with breaks every two hours to accommodate her neck injury. Appellant returned to light duty on October 10, 2002 for one day and returned to work on her scheduled workday on October 17, 2002 but stopped work after four hours of her eight-hour shift and did not return to work. In a report dated October 18, 2002, Dr. Turner indicated that appellant had multiple areas of soft tissue injury in the chest and neck secondary to the motor vehicle accident.

On October 21, 2002 the Office expanded the claim to include shoulder contusion, neck/facial contusion and chest contusion and authorized additional physical therapy.

In a report dated October 25, 2002, Dr. Turner stated that appellant remained symptomatic with neck pain and numbness and left-sided chest tingling and noted that she believed she was unable to work. He referred her to Dr. Richard D. Ball, a Board-certified physiatrist. On October 28, 2002 Dr. Turner placed appellant on total disability due to her July 19, 2002 injury. On November 19, 2002 Dr. Turner stated that appellant had a whiplash injury with continuing symptoms and was totally disabled.

On November 20, 2002 Dr. Bizzigotti stated that appellant could continue to work in a light-duty position with a sit/stand option for two months.

On November 25, 2002 appellant filed a claim alleging that on October 17, 2002 she sustained a recurrence of disability for which she stopped work on that date. She stated that her symptoms returned that day while at work including swelling of the neck, shoulder, foot and knee and that she could not work due to the neck condition.²

In a report dated December 3, 2002, Dr. Turner stated that appellant's November 15, 2002 magnetic resonance imaging (MRI) scan showed spondylolisthesis but no disc herniation or other abnormality. He maintained appellant on total disability.

On December 9, 2002 Dr. Ball opined that the July 19, 2002 accident may have caused nerve compression of her preexisting cervical condition. He also stated that the myofascial neck and shoulder pain were related to her degenerative cervical spine disease. On December 31, 2002 Dr. Turner stated that appellant's cervical spine disease was exacerbated by her recent accident.

In a January 13, 2003 decision, the Office denied appellant's claim for a recurrence of disability beginning October 17, 2002 due to her July 19, 2002 work injury. The Office noted that the case remained open for medical treatment for her accepted work conditions. On January 15, 2003 appellant requested an oral hearing. On January 16, 2003 the Office expanded the initial July 19, 2002 work-related injury to include whiplash (cervical condition).

In a report dated February 19, 2003, Dr. Bizzigotti stated that appellant ambulated poorly but had minimal swelling of the foot and ankle. He noted tenderness along the medial border of the foot in the region of the prior fracture. Appellant had full range of motion of the ankle and toes with intact sensation. Dr. Bizzigotti stated that the right ankle had good strength of flexion and dorsiflexion with no instability but determined that the foot fracture could cause chronic pain and residual swelling.

In a report dated February 20, 2003, Dr. Turner stated that appellant's neck condition was improving but that she remained disabled.

In a report dated March 6, 2003, Dr. Bizzigotti stated that appellant had a "hot" bone scan over the navicular bone and that he was concerned about possible avascularity of the bone. He recommended an MRI scan. On March 7, 2003 Dr. Turner stated that appellant was totally disabled.

On March 17, 2003 the Office received a CA-7 claim for compensation signed by appellant on September 24, 2002 and received by the employing establishment on January 13, 2003 in which appellant claimed compensation beginning September 8, 2002. The employing establishment reported that appellant was in a leave-without-pay status from September 8, 2002

² Appellant did not receive compensation for total disability from September 4, 2002, the expiration date of her continuation of pay entitlement, and October 17, 2002, the date she returned to light duty.

to January 27, 2003.³ On March 27, 2003 appellant filed a CA-7 claim for compensation from February 1, 2003, noting she was in a leave-without-pay status.

On March 31, 2003 Dr. Turner noted that appellant was unable to perform domestic activities and was restricted from lifting over five pounds as a result of her July 19, 2002 injury.

On April 3, 2003 Dr. Bizzigotti stated that appellant's MRI and bone scans revealed discrepancies which required further review. He noted that appellant was not suited for any ambulatory job.

On April 22, 2003 Dr. Ball examined appellant for her cervical condition and noted that she was "past the point where rest really has any role and that she probably would be benefited by more activity rather than less."

In an April 24, 2003 letter, the Office advised appellant that because her recurrence of disability claim was denied it could not pay disability compensation from October 10, 2002 because the dates of disability were too closely related to the recurrence claim.

On May 8, 2003 Dr. Bizzigotti recommended a second opinion. The Office referred appellant to Dr. David J. Licht who, after ordering a new CT scan of her foot, advised on July 22, 2003 that appellant needed corrective surgery for a complex navicular fracture. On November 19, 2003 Dr. Licht performed surgery on appellant's right foot and on January 12, 2004 noted that x-rays revealed a healing right midfoot fusion.

An oral hearing was held on November 3, 2003.⁴ Appellant testified she returned to light duty on October 10, 2002, but was unable to work because of her neck condition.

On January 29, 2004 the hearing representative modified the Office's January 13, 2003 decision to include a whiplash injury as a consequential injury of the July 19, 2002 injury but affirmed the Office's denial of the claim for a recurrence of disability on or after October 17, 2002.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,⁵ the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally

³ The record does not include an Office decision on this claim.

⁴ On March 27, 2003 appellant filed a claim for wage-loss compensation from work from February 1 to March 31, 2003. On April 24, 2003 the Office advised appellant that it was unable to pay compensation as a claim for recurrence of disability was denied on January 13, 2003.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Richard T. DeVito*, 39 ECAB 668 (1988).

related to the accepted injury.⁷ This burden includes the necessity of furnishing 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 injury and supports that conclusion with sound medical reasoning.⁸

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁹

The Board has held that an award of compensation may not be based on surmise, conjecture or speculation, or upon appellant's belief that there is a causal relationship between her condition and her employment.¹⁰

ANALYSIS

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence and for continuing disability. The record does not contain a medical report providing a reasoned medical opinion that appellant sustained a recurrence beginning October 17, 2002 causally related to the July 19, 2002 employment injury.

The Office accepted that appellant sustained a right foot fracture and contusions to her scalp, neck and face, and a whiplash injury to her neck. The medical evidence concerning her neck condition consisted of multiple reports from Dr. Turner, her treating physician, dated October 25, November 19 and December 3, 2002 and March 30, 2003. However, these reports are not sufficient to meet appellant's burden of proof because they did not contain a rationalized medical opinion establishing a causal relationship between appellant's disability on or after October 17, 2002 and the July 19, 2002 employment-related injuries.¹¹

In the October 25, 2002 report, Dr. Turner noted appellant's continued neck pain and left-sided chest tingling. His examination of her head, ears, eyes and throat were normal, but noted his opinion that appellant could not work. Although he placed her on total disability, his opinion was not supported by a rationalized medical opinion establishing a basis for her disability or any relationship to any of the work-related injuries. In his November 19, 2002 report, Dr. Turner

⁷ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

⁸ *Jose Hernandez*, 47 ECAB 288 (1996).

⁹ *Gus N. Rodes*, 46 ECAB 518 (1995).

¹⁰ *Bonnie Goodman*, 50 ECAB 139 (1998).

¹¹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

stated that appellant wore a soft cervical collar and that she had some improvement in her neck pain. He also noted minimal vertebral tenderness to palpation, but noted no other symptoms. Although he advised her that she was not able to work, he did not fortify that opinion with medical rationale based on objective findings supporting a disability from work. On December 3, 2002 Dr. Turner noted results from the MRI scan which revealed spondylolisthesis and some spur formation, but no obvious disc herniation or any other abnormality. He again found appellant totally disabled but did not support his finding of disability with a rationale explaining how this resulted from the employment injury. Dr. Turner's March 30, 2003 report is a form report listing appellant's work restriction but without any medical rationale. Without such a rationalized medical opinion, Dr. Turner's reports are insufficient to establish causal relationship.¹²

Dr. Ball's December 9, 2002 report attributing cervical pain to her work-related injury also failed to establish a recurrence of disability as a result of her neck condition on October 17, 2002. He opined that the work-related injury caused nerve compression of her preexisting cervical condition but that her myofascial neck and shoulder pain were probably related to her degenerative cervical spine disease. Dr. Ball did not specifically opine that appellant had disability due to her employment injury beginning October 17, 2002.

In his September 18, 2002 report, Dr. Bizzigotti, a Board-certified orthopedic surgeon, who treated appellant for her right foot fracture, released her to return to light duty with restrictions effective October 1, 2002 and on November 20, 2002 extended her light duty for an additional two months. These reports do not support total disability as the doctor affirmed her ability to work with restrictions during this time period. Dr. Bizzigotti's subsequent reports address appellant's continuing symptoms and pain as a result of her right foot fracture, but the physician did not indicate in any of these reports that appellant's right foot condition was such that she was unable to work within her restrictions. He noted the possibility of chronic pain and swelling and ordered additional testing to determine other causes of her conditions, but did not indicate that her symptoms caused total disability. Indeed, he noted minimal swelling and good range of motion in the ankle and toes and stated that the right ankle had good strength of flexion and dorsiflexion with no instability. In his April 3, 2003 report, Dr. Bizzigotti stated that appellant was not suited for any ambulatory job related to the right foot and was unable to identify a continuing basis for her symptoms, noting no visible atrophy of the ankle, full range of motion in the ankle and toes, normal sensation, no visible swelling, no midfoot instability and adequate strength against resistance.

The Board accordingly finds that appellant did not meet her burden of proof and the Office properly denied the claim.

¹² *Jennifer L. Sharp*, 48 ECAB 209 (1996).

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability on and after October 17, 2002 causally related to her accepted July 19, 2002 employment injury and, therefore, failed to discharge her burden of proof.¹³

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2004 is affirmed.

Issued: January 21, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹³ This decision does not address appellant's entitlement, if any, to compensation prior to October 17, 2002, nor does it address any entitlement to wage-loss compensation due to the November 19, 2003 surgery.