

On August 28, 2001 appellant filed a claim for a recurrence of disability beginning August 23, 2001. In support of her claim appellant submitted a September 14, 2001 report by Dr. Rida N. Azer, a treating Board-certified orthopedic surgeon, and a magnetic resonance imaging (MRI) scan test dated September 27, 2001 by Dr. Verne F. Kemerer, Jr., a Board-certified diagnostic radiologist.

Dr. Azer concluded that appellant “should avoid unprotected heights, prolonged standing, prolonged walking, running and jumping.” A physical examination revealed tenderness in the medial aspect of her foot. Dr. Azer reported that appellant continued to have “pain in the right sole of the right foot and right ankle.” In an October 1, 2001 report, Dr. Azer noted the December 10, 1999 employment injury, reported normal electromyography and nerve conduction studies and that appellant continued to complain of pain in her right ankle and foot. He noted that appellant “tried to go work today, but developed symptoms,” opined that due to her symptoms appellant “cannot perform her duties” and indicated that appellant was “to remain off work.”

In a report dated October 12, 2001, Dr. Azer noted the December 10, 1999 employment injury and that appellant continued to report pain in her right ankle and foot. He opined that appellant was to “avoid strenuous activities involving prolonged standing, prolonged walking, running, jumping, unprotected heights and hazardous situations.”

By decision dated November 10, 2001, the Office denied appellant’s recurrence claim.

In a letter dated November 15, 2001, appellant requested an oral hearing on the denial of her claim. A hearing was held on May 21, 2002.

In a November 2, 2001 report, Dr. Azer stated that appellant “returned to work and the duties were strenuous.” Appellant stated that the employing establishment did not abide by her limitations “and her foot became painful and swollen” so that she stopped work on October 29, 2001.” Dr. Azer noted that appellant continued to have “pain and swelling in the right ankle and foot.” A physical examination revealed tenderness over the deltoid ligament and a negative Hoffman’s sign.

On January 14, 2002 the Office received an October 22, 2001 report by Dr. Martin McLaren, a treating Board-certified anesthesiologist, who diagnosed reflex sympathetic dystrophy which he attributed to a right ankle sprain. He noted appellant’s complaints of right foot pain and that this “pain has been bothering her, particularly over the last two weeks.”

In a January 23, 2002 report, Dr. John J. Kelly, a treating Board-certified neurologist, noted that appellant injured her “right foot with pain medial arch and into medial plantar surface when walking.” A physical examination revealed “slightly decr[eased] sensation medial plantar distribution,” tenderness over the tarsal tunnel and normal AJ and strength. Under impression, Dr. Kelly stated:

“[T]here is no increased latency of medial plantar nerve conduction across the tarsal tunnel to suggest ongoing compression but the selective denervation of the AHB suggests an injury to the medial plantar nerve on the right.”

Subsequent to the hearing, appellant submitted additional evidence including an October 4, 2001 consultation report by Dr. McLaren, a December 4, 2001 report by Dr. Richard E. Grant and a May 20, 2002 report by Dr. Bonnie Simpson,

Dr. McLaren reported appellant “was in good health until [December] 10, [19]99 when she was involved in a work-related injury” and sustained an “injury to her right foot.” An examination of the right foot revealed “no allodynia, no visible or palpable temperature change, no sweating,” no neurological deficit and no trophic changes. He diagnosed a sprained right ankle “with development of possible [r]eflex [s]ympathetic [d]ystrophy.”

Dr. Grant reported that appellant injured her right ankle on December 10, 1999 and that since then “she has experienced intractable pain and muscle spasms involving the right foot.” He reported no heel deformity and a fairly well-preserved arch. He noted that appellant “continued to have pain localized to the right medial plantar aspect of the right foot just proximal to the first metatarsal head.”

Dr. Simpson reported that she first saw appellant on November 13, 2001 for right foot pain due to a December 10, 1999 employment injury. She diagnosed cervical strain and bilateral forearm muscle and shoulder strain.

By decision dated July 8, 2002, the Office hearing representative affirmed the November 10, 2001 decision. The hearing representative found that none of the medical reports contained a rationalized opinion explaining how or why her disability on and after August 23, 2001 was causally related to her accepted December 10, 1999 employment injury.

LEGAL PRECEDENT

Section 10.5(x) of the Office’s regulation provides, in pertinent part:

“Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”¹

The Board has held that, in order to establish a claim for a recurrence of disability, appellant must establish that she suffered a spontaneous material change in the employment-related condition without an intervening injury.²

ANALYSIS

The Office accepted that appellant sustained a right foot strain due to the accepted December 10, 1999 employment injury. Appellant submitted a claim for a recurrence of disability commencing August 23, 2001. The Board finds that the medical evidence submitted

¹ 20 C.F.R. § 10.5(x).

² *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Carlos A. Marrero*, 50 ECAB 117 (1998).

by appellant does not establish a causal relationship between the accepted injury and her disability beginning August 23, 2001. The various reports by Dr. Azer noted complaints of pain in appellant's right foot and ankle and set limitations regarding walking, running, jumping, hazardous situations and unprotected heights. In reports dated October 1 and November 2, 2001, Dr. Azer noted that appellant returned to work, but stopped work because the duties were strenuous. He also reported that appellant stopped work on October 29, 2001 because her foot became swollen and painful. Dr. Azer did not provide an opinion relating appellant's disability as of August 23, 2001 to her accepted injury. Medical reports not containing a rationalized medical opinion on causal relationship are entitled to little probative value.³ Dr. Azer's reports are insufficient to support appellant's claim of a recurrence of disability.

Dr. Simpson noted that appellant sustained a right foot injury on December 10, 1999 and diagnosed cervical strain and bilateral forearm muscle and shoulder strain, conditions not accepted by the Office as related to the accepted injury. She provided no opinion as to the cause of these conditions. In a January 22, 2002 report, Dr. Kelly diagnosed a right medial plantar nerve without providing an opinion as to disability or cause of the nerve condition. Dr. Grant reported appellant's complaints of pain in the right foot, but did not provide any opinion as to the cause of these symptoms or if she had any disability as a result of this condition. Medical reports which do not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁴ The Office has not accepted that appellant sustained cervical strain and bilateral forearm muscle and shoulder strain as a result of the December 10, 1999 employment injury and appellant has not submitted any evidence supporting these conditions as a consequence of the accepted employment injury.⁵ Thus, the Board finds that the reports, by Drs. Grant, Kelly and Simpson are insufficient to support the recurrence of disability claim.

Dr. McLaren diagnosed a right ankle sprain and possible reflex sympathetic dystrophy. In an October 22, 2001 report, he attributed appellant's reflex sympathetic dystrophy to her right ankle sprain and noted appellant's complaints of right foot pain. Dr. McLaren also noted appellant's employment injury history in his December 4, 2001 report. However, these reports are insufficient to establish the claim as they do not contain a rationalized opinion as to the cause of appellant's disability. As noted previously, medical reports containing a rationalized medical opinion on causal relationship are entitled to little probative value.⁶ Dr. McLaren's reports are insufficient to support appellant's recurrence claim of disability. The additional medical report of an MRI scan does not include a medical opinion finding a causal relationship between appellant's accepted injury and her disability beginning August 23, 2001.

³ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁴ *Conard Hightower*, 54 ECAB ____ (Docket No. 02-1568, issued September 9, 2003).

⁵ *Charles W. Downey*, 54 ECAB ____ (Docket No. 02-218, issued February 24, 2003) (When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own conduct).

⁶ *Jimmie H. Duckett*, *supra* note 3.

CONCLUSION

The Board finds that appellant has not established a recurrence of disability on and after August 21, 2003 due to her accepted December 10, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 8, 2002 is affirmed.

Issued: March 3, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member