

**United States Department of Labor
Employees' Compensation Appeals Board**

C.O., Appellant)

and)

GENERAL SERVICES ADMINISTRATION,)
PUBLIC BUILDING SERVICE,)
Washington, DC, Employer)

Docket No. 06-1943
Issued: February 27, 2007

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 21, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 9 and May 23, 2006 merit decisions denying her claims for additional employment-related conditions and periods of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained reflex sympathetic dystrophy (RSD) of the left leg, myofascial pain disorder, or pain-related depression due to her June 2, 2004 employment injury; (2) whether appellant met her burden of proof to establish that she sustained disability for the periods March 6 to 17 and April 3 to October 27, 2005 due to her June 2, 2004 employment injury; and (3) whether the Office properly denied appellant's request for an oral hearing.

FACTUAL HISTORY

On June 2, 2004 appellant, then a 39-year-old building manager, filed a traumatic injury claim alleging that she sustained injury to her left ankle at work on June 2, 2004 when she twisted it while walking on a gravel surface. Appellant stopped work on June 2, 2004. The Office accepted that appellant sustained a left ankle sprain and paid appropriate compensation for periods of disability.

Appellant initially received treatment for her condition from Alex Kor, a podiatrist, who indicated that appellant had continuing symptoms in her left ankle such as pain, numbness and swelling. Bone scan testing obtained on October 18, 2004 showed abnormal uptake at the left ankle joint medially and magnetic resonance imaging (MRI) scan testing obtained on November 5, 2004 showed “an area of an extensive contusion of the posterior part of the tibia.”

On March 16, 2005 Dr. P. Singh Ajrawat, a Board-certified internist specializing in pain medicine, stated that appellant had RSD of the left leg, myofascial pain disorder and pain associated with stress and depression due to her June 2, 2004 employment injury. He indicated that this finding was supported by the fact that appellant had constant burning pain at times throbbing in nature, a burning sensation in the left ankle, numbness and tingling in the left leg and swelling in the left foot. Dr. Ajrawat noted that November 5, 2004 MRI scan testing showed extensive contusions in the left ankle area and supported his findings.

In a report dated May 18, 2005, Dr. Ajrawat repeated his opinion that appellant sustained RSD of the left leg, myofascial pain disorder and pain-related depression due to her June 2, 2004 employment injury. He again noted that November 5, 2004 MRI scan testing showed extensive contusions in the left ankle area.

Appellant asserted that she sustained RSD of the left leg, myofascial pain disorder and pain-related depression due to her June 2, 2004 employment injury and also claimed that she sustained disability for the periods March 6 to 17 and April 3 to October 27, 2005 due to her June 2, 2004 employment injury.

The Office referred appellant to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for further evaluation of her employment-related medical conditions. On September 13, 2005 Dr. Smith determined that appellant did not sustain RSD of the left leg, myofascial pain disorder or pain-related depression due to her June 2, 2004 employment injury. He noted that examination of appellant’s left ankle showed no evidence of swelling, bruising, redness, dependent rubor, atrophic changes or any muscle atrophy. Dr. Smith indicated that appellant had normal findings on range of motion or strength testing of her left ankle and stated that he was not qualified to evaluate whether appellant had a stress-related condition.

In a report dated January 6, 2006, Dr. Ajwarat stated that he disagreed with Dr. Smith’s opinion. He indicated that bone scan testing and appellant’s clinical findings supported his diagnosis.

In a March 9, 2006 decision, the Office denied appellant’s claims that she sustained RSD of the left leg, myofascial pain disorder, or pain-related depression due to her June 2, 2004

employment injury and that she sustained disability for the periods March 6 to 17 and April 3 to October 27, 2005 due to her June 2, 2004 employment injury. The Office found that the weight of the medical evidence rested with the opinion of Dr. Smith and posited that the opinion of Dr. Ajrawat was of limited probative value.

On May 1, 2006 appellant requested a hearing before an Office hearing representative regarding her claim. In a May 23, 2006 report, the Office denied appellant's claim for a hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁴ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁵

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a left ankle sprain on June 2, 2004. Appellant asserted that she sustained RSD of the left leg, myofascial pain disorder and pain-related depression due to her June 2, 2004 employment injury and also claimed that she sustained

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act. See *Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

³ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁴ 5 U.S.C. § 8123(a).

⁵ *William C. Bush*, 40 ECAB 1064, 1975 (1989).

disability for the periods March 6 to 17 and April 3 to October 27, 2005 due to her June 2, 2004 employment injury.

The Board finds that appellant has not submitted any rationalized report from a qualified specialist showing that she has an emotional condition due to her June 2, 2004 injury. In several reports, Dr. Ajrawat, an attending Board-certified internist specializing in pain medicine, indicated that she had pain associated with stress and depression, but he did not provide any explanation for this opinion.

However, the Board finds that there is a conflict in the medical opinion between Dr. Ajrawat and Dr. Smith, a Board-certified orthopedic surgeon who served as an Office referral physician, regarding whether she had employment-related RSD of the left leg or myofascial pain disorder.

In March 16 and May 18, 2005 and January 6, 2006 reports, Dr. Ajrawat stated that appellant had RSD of the left leg and myofascial pain disorder due to her June 2, 2004 employment injury. He indicated that this finding was supported by the fact that appellant's constant burning pain at times throbbing in nature, a burning sensation in the left ankle, numbness and tingling in the left leg and swelling in the left foot. Dr. Ajrawat noted that November 5, 2004 MRI scan testing showed extensive contusions in the left ankle area and asserted that this testing supported his findings.

In contrast, Dr. Smith determined on September 13, 2005 that appellant did not sustain RSD of the left leg or myofascial pain disorder due to her June 2, 2004 employment injury. He noted that examination of appellant's left ankle showed no evidence of swelling, bruising, redness, dependent rubor, atrophic changes or any muscle atrophy. Dr. Smith also indicated that appellant's range of motion and strength testing was normal.

In order to resolve the conflict, the Office should refer appellant and the case record, pursuant to section 8123(a) of the Act, to an appropriate specialist or specialists for an impartial medical examination and an opinion on the matter.⁶ The Office should consider whether such additional development of the medical evidence shows that appellant has established employment-related disability for the periods March 6 to 17 and April 3 to October 27, 2005. After such development it deems necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that appellant did not establish an employment-related emotional condition. The Board further finds that due to a conflict in the medical evidence the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she

⁶ See *supra* note 5 and accompanying text.

sustained employment-related RSD of the left leg or myofascial pain disorder due to her June 2, 2004 employment injury.⁷

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 9, 2006 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: February 27, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁷ Due to the Board's holding with respect to the first issue of this case, it would be premature to consider the second issue, *i.e.*, whether appellant met her burden of proof to establish that she sustained employment-related disability for the periods March 6 to 17 and April 3 to October 27, 2005. Moreover, given the Board's findings on the merits of appellant's case, it is unnecessary to consider the nonmerit issue, *i.e.*, whether the Office properly denied appellant's hearing request.