United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 08-194**
	)	**Issued: April 28, 2008**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Tampa, FL	)	
Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 22, 2007 appellant filed a timely appeal of March 13 and August 30, 2007 decisions of the Office of Workers' Compensation Programs, denying his claim for a recurrence of disability. 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 appellant sustained a recurrence of disability on December 8, 2006 causally related to his September 4, 2003 employment injury.

FACTUAL HISTORY

On September 4, 2003 appellant, then a 54-year-old equipment operator, filed a claim for a traumatic injury alleging that he injured his left leg when it was struck by the tow bar of a mail container. He had abrasions to both sides of his leg and pain. On September 4, 2003 Dr. Edward N. Feldman, an attending orthopedic surgeon, noted that appellant had pain in his left hip, leg and foot. He diagnosed a sprain and strain of the left lower extremity. On

September 18, 2003 Dr. Feldman indicated that appellant could return to full duty without restrictions. However, the record shows that appellant underwent physical therapy at Dr. Feldman's office on October 1, 8, 14, 17 and 20, 2003. A disability certificate dated October 7, 2003 signed by Dr. Feldman indicated that appellant underwent neurodiagnostic testing on that date. The results of the testing are not of record. On June 25, 2004 the Office accepted his claim for a left hip strain.

In a July 27, 2004 report, Dr. Edwin M. Melendez, an attending orthopedic surgeon, provided a history of a left hip and leg injury that occurred when a container fell onto appellant's leg in September 2003. Appellant had pain in the medial aspect of his left leg with tingling to palpation. Dr. Melendez provided findings on physical examination and diagnosed a complete resolution of appellant's left hip strain. He also diagnosed a left ankle and leg crushing injury with a sensitive superficial saphenous nerve. Dr. Melendez recommended scar massage and desensitization techniques. No additional treatment was required and appellant could perform regular work.[1]

On January 4, 2005 the Office advised appellant that his case was closed based on the opinion of Dr. Melendez that his accepted injury had resolved.

On January 4, 2007 appellant filed a claim for a recurrence of disability on December 8, 2006, alleging that his left leg injury never healed. On January 26, 2007 the Office asked appellant to submit medical evidence establishing a worsening of his September 4, 2003 accepted left hip strain such that he became disabled on December 8, 2006. A February 1, 2007 telephone memorandum indicated that appellant believed that he sustained nerve damage to his leg due to his September 4, 2003 employment injury. A claims examiner advised appellant to submit medical evidence addressing the issue of causal relationship.

In a report dated February 21, 2007, Dr. Ira D. Shandles, an attending Board-certified podiatrist, indicated that he read the Office's January 26, 2007 letter to appellant. He noted that the Office requested medical evidence regarding a "worsening" of appellant's employment-related leg condition. Dr. Shandles stated:

> "I think you do n[o]t understand and that it is unclear to you that what is going on is a totally untreated aspect of the original condition, one that has provided chronic pain to [appellant] since the time of injury and was well documented by the examining physician [Dr. Feldman]. If you will look at the original report by him, the leg pain that was present at the time, and has been present ever since, was untreated in that the doctor discharged him having done everything he felt he could do for him, but leaving this last pathology untreated and essentially undiagnosed. I am therefore just continuing the care related to the original injury. I am in no way amplifying or restating anything more than what the original doctor stated and have[,] through diagnostic ultrasound[,] discovered the actual nature of the condition as being a nerve entrapment or neuroma of the superficial

[1] Appellant began treatment with Dr. Melendez because Dr. Feldman stopped treating workers' compensation patients.

nerve in the specific region of the leg. Unfortunately, this has been untreated to date.

"I hope this letter amplifies for you the need for care for a condition related to the original injury and which has never been treated[,] although documented."

By decision dated March 13, 2007, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained a recurrence of disability on December 8, 2006 causally related to his September 4, 2003 employment injury. The Office indicated that his claim was updated to include a sprain of the left hip and thigh and a crushing injury to the left lower leg.

On April 9, 2007 appellant requested reconsideration. In a March 22, 2007 report, Dr. Shandles reiterated his opinion that appellant sustained a nerve entrapment in his left leg on September 4, 2003 that was never completely treated by Dr. Feldman. He noted that appellant received physical therapy through Dr. Feldman but no treatment for nerve pathology. Dr. Shandles requested authorization to treat him for his left leg injury that had caused acute and chronic pain since September 4, 2003. In notes dated July 26, 2007, he stated that appellant had experienced a 50 percent improvement since a recent injection in his left leg. Dr. Shandles diagnosed persistent nerve entrapment or neuroma pain of the saphenous nerve in the left lower leg, along with the development of a new nerve pain location in the leg.

By decision dated August 30, 2007, the Office upheld its denial of appellant's claim for a recurrence of disability on December 8, 2006.

LEGAL PRECEDENT

An employee 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 related to the accepted injury.[2] 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 rationale.[3] Where no such rationale is present, medical evidence is of diminished probative value.[4]

"*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."[5]

[2] *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[3] *Lourdes Davila*, 45 ECAB 139 (1993).

[4] *Michael Stockert*, 39 ECAB 1186 (1988).

[5] 20 C.F.R. § 10.5(x).

ANALYSIS

Appellant has the burden to provide medical evidence establishing that he sustained a recurrence of disability on December 8, 2006 causally related to his September 4, 2003 accepted left hip and thigh strain and lower left leg crushing injury. However, it is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[6] The Office has an obligation to see that justice is done.[7] Once the Office undertakes development of the record, it has the responsibility to do so in a proper manner.[8]

There are unresolved questions in this case that require further development of the medical evidence. It is unclear why the Office initially accepted only a left hip strain on September 4, 2003 when the tow bar of a mail container struck appellant's leg. Appellant claimed an injury to his left leg. Dr. Feldman noted that appellant had pain in his left hip, leg and foot and diagnosed a sprain and strain of the left lower extremity. There is an unresolved question as to when appellant's left lower extremity condition resolved. On September 18, 2003 Dr. Feldman indicated that appellant could return to full duty without restrictions. However, the record shows that appellant underwent physical therapy through October 20, 2003, which suggests a continuing problem with his left leg.

Regarding appellant's left leg nerve condition, an October 7, 2003 disability certificate, signed by Dr. Feldman, indicated that appellant underwent neurodiagnostic testing. However, the test results are not of record. On July 27, 2004 Dr. Melendez noted that appellant had pain in the medial aspect of his left leg with tingling to palpation. He diagnosed a complete resolution of his left hip strain. However, Dr. Melendez also diagnosed a left leg crush injury with a sensitive superficial saphenous nerve. On February 21, 2007 Dr. Shandles stated that appellant had a nerve entrapment or neuroma that went essentially undiagnosed and untreated at the time of the September 4, 2003 injury.[9] On March 22, 2007 he reiterated his opinion that appellant sustained a nerve entrapment in his left leg on September 4, 2003 that was never completely treated by Dr. Feldman. Dr. Shandles noted that appellant received physical therapy through Dr. Feldman but no treatment for nerve pathology. Appellant had experienced chronic pain since that time. On July 26, 2007 Dr. Shandles diagnosed persistent nerve entrapment or neuroma pain of the saphenous nerve in the left lower leg.

In February 2007 the Office apparently accepted a crush injury to appellant's left leg and alluded to its acceptance of this condition in its March 13, 2007 decision. However, the Office did not properly develop the medical evidence regarding this accepted condition. The Office did not attempt to obtain medical evidence explaining the nature and severity of the crush injury and the parts of the body that were involved, such as skin, muscles, ligaments or nerves. If the

[6] *See Udella Billups*, 41 ECAB 260 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *See Henry G. Flores, Jr.*, 43 ECAB 901 (1992).

[9] Dr. Shandles indicated that he had performed an ultrasound but the results are not of record.

accepted crush injury involved nerves, the Office did not seek medical evidence explaining the specific nerves involved and a specific diagnosis. The Office did not develop the medical evidence as to how the crush injury affected appellant's capability for work. The Office did not attempt to determine whether the left leg crush injury, which was not accepted until February 2007, was causally related to appellant's claimed recurrence of disability on December 8, 2006. Although the medical evidence is not sufficient to establish that appellant's claimed December 8, 2006 recurrence of disability was causally related to his accepted left hip and thigh strain and left lower leg crush injury, it does suggest such a causal relationship, and is sufficient to require further development of the medical evidence.[10] On remand, the Office should refer appellant to an appropriate medical specialist for an examination and evaluation of whether he sustained a work-related recurrence of disability on December 8, 2006.

CONCLUSION

The Board finds that this case requires further development of the medical evidence. On remand, the Office should refer appellant to an appropriate specialist for an examination and evaluation as to whether he sustained a work-related recurrence of disability on December 8, 2006. After such further development as the Office deems necessary, it should issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 30 and March 13, 2007 are set aside and the case is remanded for further development consistent with this decision.

Issued: April 28, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[10] *John J. Carlone, supra* note 7.