

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

S.A., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Albany, NY, Employer)

**Docket No. 09-2339
Issued: July 22, 2010**

Appearances:

*Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 23, 2009 appellant, through counsel, filed an appeal from a March 30, 2009 decision of the Office of Workers' Compensation Programs denying her claim for a consequential injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that she sustained a consequential right ankle fracture due to her accepted left hip and pelvis strain.

On appeal, appellant contends that the medical evidence is sufficient to establish her consequential injury claim.

FACTUAL HISTORY

On December 11, 2006 appellant, then a 54-year-old nurse, filed a traumatic injury claim alleging that on November 28, 2006 she sprained/strained her left groin while lifting and

dumping full linen hampers. The Office accepted the claim for left hip and pelvis strain and her claim for a recurrence of disability beginning February 6, 2007. By letter dated August 14, 2007, appellant was placed on the periodic rolls for temporary total disability.

On March 13, 2007 Dr. Frederick J. Fletcher, a treating Board-certified orthopedic surgeon, diagnosed a nondisplaced ankle fracture. He opined that the ankle injury arose from appellant's left hip injury. Dr. Fletcher stated that she "apparently tripped due to pain and suffered a fractured right tibia and fibula fracture." On March 20, 2007 he diagnosed a right ankle nondisplaced trimalleolar fracture. Dr. Fletcher advised that appellant had difficulty leaving her home and was disabled as a result of both her ankle fracture and her left hip and pelvis injuries.

In a March 6, 2007 report, Dr. Fletcher reiterated that appellant sustained a trimalleolar fracture. He related that she was having trouble with her left side when she injured her right leg as a result of a fall on Sunday. Appellant was having "severe left groin trouble secondary to her work-related injury."

On March 19, 2007 appellant filed a claim for a recurrence of total disability beginning March 4, 2007. While leaving her home to attend church, she fell and broke her ankle in three places. In an April 6, 2007 letter, the Office acknowledged receipt of appellant's claim and informed her that it would be developed as a consequential injury claim based on her description of how the ankle injury occurred. Appellant was advised of the factual and medical evidence necessary to establish a consequential injury and provided 30 days to submit such evidence.

Appellant submitted an April 4, 2007 statement addressing how her ankle fracture occurred and why she attributed it to her accepted employment injury. She was on her way to church on March 4, 2007 when she felt her right knee and leg buckle under her while walking down some steps. At this point, appellant fell and fractured her right ankle as a result of this buckling. She went to the emergency room at Albany Medical Center where she was diagnosed with a severe fracture and placed in a cast. Appellant saw Dr. Fletcher on March 6, 2007 and he clearly stated that the injury sustained to her right leg and ankle resulted because of the weakness in her left groin and leg.

By decision dated May 10, 2007, the Office denied appellant's claim for a consequential ankle injury.

On April 25, 2007 Dr. Fletcher reported that appellant's ankle fracture was healing and that she was currently disabled. He attributed the fracture as secondary to her left groin injury. Appellant stated that her left groin problems caused her to fall on the steps which resulted in the fracture.

In a letter dated March 15, 2008, appellant's counsel requested reconsideration and submitted a September 5, 2007 from Dr. Fletcher, who noted that appellant was first seen on March 5, 2007 when she related a history of injuring her left groin at work. A magnetic resonance imaging scan was performed and revealed degenerative changes in the labrum and left femoral head. Dr. Fletcher noted that appellant used a cane to get around and had limited ambulatory capability. This resulted in appellant's right knee giving out and causing her to fall.

Dr. Fletcher opined that her right ankle fracture was causally related to her left lower extremity pain. He explained that appellant's groin injury resulted in limited ambulatory capability and resulted in her fall and the fracture of her right ankle.

In a September 10, 2007 report, Dr. David J. Dixon, a treating Board-certified orthopedic surgeon, noted that appellant sustained an employment-related left groin injury on November 28, 2006 and a right trimalleolar fracture on March 7, 2007. He stated that, "secondary to the weakness she developed in her left groin, she felt weak and fell on her right leg." Dr. Dixon was unable to provide an opinion as to whether appellant's right ankle fracture was a consequence of her left hip injury and deferred to the opinions of Dr. Fletcher and Dr. Katz.

In a March 30, 2009 decision, the Office denied modification of its May 10, 2007 decision.¹

LEGAL PRECEDENT

It is an accepted principle of workers' compensation law that, 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 intentional conduct.² In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson states:

"Thus, it is accepted that, once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."³

ANALYSIS

The Office accepted appellant's claim for left hip and pelvis strain sustained on November 28, 2006 and a recurrence of disability claim beginning February 6, 2007. Appellant was placed on the periodic rolls in receipt of temporary total disability as a result of her injury. The question is whether she sustained a consequential right ankle fracture causally related to her accepted left hip and pelvis conditions.

¹ The Board notes that, following the March 30, 2009 decision, the Office received additional evidence. However, the Board may not consider new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *M.B.*, 60 ECAB ___ (Docket No. 09-176, issued September 23, 2009); *J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

² Larson, *The Law of Workers' Compensation* § 10.00 (2007); *see also John R. Knox*, 42 ECAB 193 (1990).

³ Larson, *supra* note 2 at 10.02 (2003); *see also Kathy A. Kelley*, 55 ECAB 206 (2004); *Stuart K. Stanton*, 40 ECAB 859 (1989); *Robert R. Harrison*, 14 ECAB 29 (1962).

In support of appellant's claim for a consequential right ankle fracture she submitted medical reports from Dr. Fletcher and Dr. Dixon.

On March 6, 2007 Dr. Fletcher mentioned appellant's recent fall and her ongoing left groin and left side pain. He stated that "she apparently already was having trouble with her left side." This report made no reference to the possibility of a consequential injury. Dr. Fletcher did not address whether the accepted injury was causative in the recent fall. In a March 13, 2007 follow-up report, he reported only that "apparently the cause of her injury stemmed from an injured left hip."

On April 4, 2007 appellant made no mention of any left groin or left-sided pain when she described how the injury to her right ankle occurred. She attributed her fall and subsequent right ankle fracture to her right leg and knee buckling beneath her.

In a September 5, 2007 report, Dr. Fletcher attributed appellant's fall and right ankle fracture to her limited ability to ambulate and use of a cane. He stated that her right knee gave out which caused the fall. Dr. Fletcher stated that appellant's right ankle was "100 percent causally related to her left lower extremity pain." He explained that her groin injury resulted in "limited ambulatory capability and hence resulted in her subsequent fall and fracture of her right ankle." The Board notes that Dr. Fletcher did not adequately explain how appellant's limited ambulatory capability caused her right knee to give out or buckle. He failed to address how her right knee giving out and causing her to fall and fracture her right ankle was a natural consequence of her accepted injury, rather than the result of an intervening cause. Dr. Fletcher did not fully address his conclusion that her left hip and pelvis condition would cause weakness in the right leg and knee.⁴ His opinion that appellant's right ankle fracture was employment related as it was caused by her left groin and left-sided pain is conclusory. Dr. Fletcher provided insufficient medical reasoning explaining causal relationship between her fracture and the accepted left hip and pelvis conditions. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.⁵ The reports of Dr. Fletcher are insufficient to establish appellant's consequential injury claim.

Dr. Dixon's September 10, 2007 report is also insufficient to support appellant's claim. He related that she had sustained an employment-related left groin injury on November 28, 2006 and a right trimalleolar fracture on March 7, 2007. Dr. Dixon reported that "secondary to the weakness [appellant] developed in her left groin, she felt weak and fell on her right leg." He noted, however, that he was unable to provide an opinion as to whether appellant's right ankle fracture was a consequence of her left hip injury. Dr. Dixon deferred to her attending physicians. His opinion is speculative and equivocal on the issue of causal relation and of diminished probative value.⁶ Dr. Dixon did not provide adequate medical rationale to support of his opinion.

⁴ *Id.*

⁵ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁶ *T.M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009); *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005) (The Board has held that medical opinions which are speculative or equivocal in character have little probative value).

He did not describe the history of appellant's accepted condition in any detail or sufficiently explain how the November 28, 2006 injury caused appellant to fall and fracture her right ankle. Dr. Dixon attributed her fall to the development of weakness in her left groin, but she stated that the fall occurred due to her right leg and knee giving out. The Board finds that his report is insufficient to establish that appellant sustained a right ankle fracture as a consequence of her accepted left hip and pelvis injuries

On appeal, appellant's counsel contends that the reports from Drs. Dixon and Fletcher are sufficient to establish her consequential injury. Appellant cites to the cases of *King Palermo (Travis Palermo)*⁷ and *Clement Jay After Buffalo*⁸ as support that her right ankle fracture was a natural consequence flowing from her accepted employment injury. While these cases pertain to establishing a consequential injury, a rationalized medical opinion is still required to establish that appellant's right ankle fracture was a natural consequence of her left hip and pelvis conditions. As noted, the reports from Dr. Fletcher and Dr. Dixon are not sufficient as the physicians did not provide sufficient rationale explaining how her right ankle fracture was a natural and direct consequence of her accepted employment injury.

Appellant failed to submit sufficient medical evidence to support her consequential left injury claim. She failed to demonstrate how her right ankle fracture arose as a natural consequence of her accepted injuries.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a consequential right ankle fracture causally related to her November 28, 2006 employment-related left hip and pelvis injuries.

⁷ 45 ECAB 308 (1994).

⁸ 45 ECAB 707 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2009 is affirmed.

Issued: July 22, 2010
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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