

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

O.W., Appellant)

and)

DEPARTMENT OF THE ARMY,)
DIRECTORATE OF ENGINEERING &)
HOUSING, Fort Sam Houston, TX, Employer)

**Docket No. 09-2268
Issued: June 9, 2010**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 10, 2009 appellant filed a timely appeal from a May 14, 2009 merit decision of the Office of Workers' Compensation Programs finding that he did not establish a recurrence of a medical condition. 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 has established that he sustained a recurrence of a medical condition beginning March 19, 2008 causally related to his June 27, 1992 employment injury.

FACTUAL HISTORY

On June 28, 1992 appellant, then a 41-year-old firefighter, filed a claim alleging that he sustained a right ankle sprain on June 27, 1992 "while participating in an organized sprint." He stopped work on June 28, 1992 and returned to work on July 13, 1992. The Office accepted the claim for right ankle sprain.

On September 10, 2007 appellant requested that the Office reopen his case for medical treatment.¹ On February 6, 2008 the Office informed him that to establish a need for further medical care he must submit a rationalized medical report from his attending physician addressing the cause between the need for further treatment and the accepted employment injury.

On March 19, 2008 Dr. Mark M. Casillas, a Board-certified orthopedic surgeon, evaluated appellant's complaints of right ankle pain. He attributed the condition to a "severe inversion injury that occurred while working" for the employing establishment. Dr. Casillas diagnosed probable post-traumatic ankle arthrosis, metatarsalgia of unknown etiology and possible diabetic peripheral neuropathy. He recommended diagnostic studies.

A magnetic resonance imaging (MRI) scan study of the right ankle, performed on March 24, 2008, revealed large cystic osteochondral lesions in the medial talar dome and a large osteochondral defect in the medial tibial articular surface with degenerative changes and a mild subcondral bone marrow reaction.

In an April 9, 2008 progress report, Dr. Casillas noted that the MRI scan study of the ankle revealed "advanced osteoarthritic change with osteochondral lesions on both sides of the joint on the medial tibial plafond and medial talar dome" and mild early arthritis of the first metatarsophalangeal (MTP) joint. He diagnosed peripheral neuropathy secondary to diabetes, metatarsalgia, early arthritis of the MTP joint and advanced arthritis changes of the ankle. Dr. Casillas discussed surgical options.

On August 11, 2008 Dr. Darryl D. Cuda, a Board-certified orthopedic surgeon, reviewed the diagnostic studies and diagnosed ankle arthritis/arthrosis with osteochondritis dissecans (OCD) on the right. He recommended either an ankle fusion or four weeks in a cast. In a progress report dated February 2, 2009, Dr. Cuda diagnosed ankle arthritis/arthrosis with metatarsalgia. He again recommended casting.

On February 18, 2009 appellant filed a recurrence of a medical condition claim on March 19, 2008 causally related to his June 27, 1992 employment injury. He related that he had tenderness "in the same ankle part as previously affected."

By decision dated May 14, 2009, the Office found that appellant had not submitted sufficient medical evidence to establish that he sustained a recurrence of a medical condition causally related to his June 27, 1992 work injury.

LEGAL PRECEDENT

The Office's procedure manual defines a recurrence of medical condition as follows:

"This term is defined as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage.

¹ Appellant also requested that the Office reopen his claim for a 1979 injury to the knee.

Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.”²

The Office’s procedure manual further provides:

“*After 90 days of Release from Medical Care* (Again, this should be based on the physician’s statement or instruction to return PRN, or computed by the [claims examiner] from the date of last examination.) The claimant is responsible for submitting an attending physician’s report which contains a description of the objective findings and supports causal relationship between the claimant’s current condition and the previously accepted work injury.”³

ANALYSIS

The Office accepted appellant’s claim for right ankle sprain. Appellant resumed work on July 13, 1992. He alleged that he sustained a recurrence of a medical condition such that he required further medical treatment beginning March 19, 2008 due to his June 27, 1992 work injury.⁴ Appellant related that he experienced tenderness over the ankle in the same location as his original injury. As it is more than 90 days after receipt of medical care for his employment injury, it is his responsibility to submit an attending physician’s report which contains a description of the objective findings and supports causal relationship between the current condition and accepted employment injury.⁵

In a report dated March 19, 2008, Dr. Casillas related that appellant asserted that he sustained a severe inversion injury while working for the employing establishment. He diagnosed probable post-traumatic ankle arthrosis, metatarsalgia of unknown etiology and possible diabetic peripheral neuropathy. Dr. Casillas did not, however, relate any diagnosed conditions to appellant’s work injury. He did not address how appellant’s ankle injury in 1992 would cause or contribute to the diagnosed conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship.⁶

On April 9, 2008 Dr. Casillas reviewed the result of an MRI scan study of the ankle. He diagnosed peripheral neuropathy secondary to diabetes, metatarsalgia, early arthritis of the MTP joint and advanced arthritis changes of the ankle. Again, Dr. Casillas did not address causation and his report is of diminished probative value.⁷

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

³ *Id.* at Chapter 2.1500.5(b) (September 2003).

⁴ The record indicates that appellant last received medical care for his right ankle prior to March 19, 2008 in 2006.

⁵ *See J.F.*, 58 ECAB 124 (2006).

⁶ *A.D.*, 58 ECAB 149 (2006); *Conrad Hightower*, 54 ECAB 796 (2003).

⁷ *Id.*

On August 11, 2008 Dr. Cuda diagnosed ankle arthritis/arthrosis with OCD on the right side. He recommended either an ankle fusion or four weeks in a cast. On February 2, 2009 Dr. Cuda reiterated his findings but did not address causation. As noted, medical evidence that does not address the cause of a diagnosed condition is of diminished probative value. The Office has not accepted ankle arthritis/arthrosis with metatarsalgia as employment related and Dr. Cuda did not explain how appellant's 1992 injury would result in the diagnosed condition. Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.⁸

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.⁹ He must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁰ Appellant had the burden to provide sufficient medical evidence to document the need for further medical treatment.¹¹ He did not submit the evidence required and therefore failed to discharge his burden of proof.¹²

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of a medical condition beginning March 19, 2008 causally related to his June 27, 1992 employment injury.

⁸ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁰ *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

¹¹ *See J.F.*, *supra* note 5.

¹² Appellant submitted new medical evidence with his appeal. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2009 is affirmed.

Issued: June 9, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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