

FACTUAL HISTORY

This case has previously been before the Board. In a September 24, 2009 decision, the Board reversed a hearing representative's July 28, 2008 decision affirming a March 3, 2008 loss of wage-earning capacity determination.² The Board found that the Office failed to establish that appellant was capable of performing the duties of the selected position full time. In a December 15, 2009 decision, the Board affirmed a January 28, 2009 Office decision denying her claim for wage-loss compensation for the period September 4 to 8, 2005.³ The facts and the circumstances of this case as set forth in the prior decisions are hereby incorporated by reference.⁴ The facts relevant to this appeal are set forth.⁵

Appellant requested that her claim be expanded to include RSD. She submitted a report from Dr. Roger A. Fontes, a treating Board-certified orthopedic surgeon, who diagnosed left lower limb RSD in medical reports dated May 15 to September 21, 2005. Dr. Fontes noted diffuse swelling and tenderness of the left ankle in a May 16, 2005 CA-20 form and reported that a bone scan showed an increased uptake on a June 13, 2005 CA-20 form.

In a May 19, 2005 report, Dr. Jerold Sherman, a second opinion Board-certified orthopedic surgeon, reviewed appellant's injury history, the medical record and statement of accepted facts. A physical examination of the left ankle revealed no swelling and a normal appearance. Dr. Sherman reported that appellant screamed with pain on any light touch of the left foot or ankle and any left heel palpation. He diagnosed a normal left foot and ankle with no neurologic or mechanical deficits. Dr. Sherman found no evidence of a left foot sympathetic dystrophy as there was no swelling, a normal skin appearance and no osteoporosis on x-ray interpretations. He also found appellant no longer had any residuals or disability due to her accepted employment injury.

In a report dated June 13, 2005, Dr. Fontes noted his disagreement with Dr. Sherman regarding his conclusion that appellant did not have RSD.

On September 21, 2005 the Office referred appellant for an impartial medical examination with Dr. Donald R. Mackay, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Fontes and Dr. Sherman as to whether appellant had RSD related to her accepted conditions.

² Docket No. 08-2296 (issued September 24, 2009).

³ Docket No. 09-979 (issued December 15, 2009).

⁴ On June 21, 2004 appellant, then a 44-year-old transportation security screener, filed a traumatic injury claim alleging that on June 16, 2004 she twisted her left ankle while retrieving a bag from the rollers. The Office accepted the claim for left ankle tibiofibular strain, which was subsequently expanded to include the condition of chronic left posterior tibial tendinitis. It accepted appellant's claims for recurrences beginning March 15, 2005 and April 27, 2006. By letter dated March 8, 2007, the Office placed appellant on the periodic rolls for temporary total disability.

⁵ Appellant filed a claim for a schedule award. However, no final decision has been issued on her schedule award request. There shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case. 20 C.F.R. § 501.2(c)(2); *Jennifer A. Guillary*, 57 ECAB 485 (2005).

On October 11, 2005 Dr. Mackay noted findings on physical examination and reviewed the medical evidence and statement of accepted facts. He concluded that there was no objective evidence to support a diagnosis of RSD. Appellant reported pain with pressure over the medial malleolus, distal medial left leg, Achilles tendon, lateral left ankle, anterolateral left ankle and left ankle mid-dorsum. On physical examination, there was noticeable soft tissue swelling of the left ankle anterolateral aspect, normal temperature and skin color of both feet and ankles, normal left lower extremity circulation and no toe discoloration. Dr. Mackay concluded that appellant's medial left ankle pain was employment related but not the remainder of the left ankle pain. He also found a normal left lower extremity sensory examination. Dr. Mackay advised that the diagnosis of RSD was not supported by the evidence, as appellant had no sensory changes, no skin changes and no circulatory changes. He concluded that she could work in a sedentary position such as a ticket puncher.

In a letter dated September 24, 2009, the Office informed appellant that the evidence did not support her claim for RSD. It noted that both Drs. Sherman and Mackay determined there was no objective evidence of RSD and Dr. Fontes failed to provide rationale for his diagnosis of RSD. The Office provided appellant 30 days to submit additional medical evidence. No evidence was received by the Office.

By decision dated October 14, 2009, the Office denied appellant's request to expand her claim to include the condition of RSD. It found the medical evidence insufficient to establish the condition as employment related. The weight of medical opinion found no evidence of RSD and Dr. Fontes failed to provide adequate rationale supporting his diagnosis.

On October 19, 2009 appellant's counsel requested a telephonic hearing, which was held on February 18, 2010.

By decision dated May 6, 2010, an Office hearing representative affirmed the October 14, 2009 denial of RSD.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.⁶ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a casual relationship.⁷

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a

⁶ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁸ *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

causal relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

The Board finds that the medical evidence is insufficient to establish that appellant sustained RSD due to her federal employment. The Office accepted that appellant sustained a left ankle tibiofibular strain and chronic left posterior tibial tendinitis. Appellant submitted reports from Dr. Fontes supporting that she had RSD while Dr. Sherman, an Office referral physician, found no evidence of RSD. To resolve the conflict in medical opinion, the Office referred her to Dr. Mackay, a Board-certified orthopedic surgeon.

In an October 11, 2005 report, Dr. Mackay set forth findings on examination and reviewed the medical record, including results of prior diagnostic testing. On examination he found that appellant a noticeable soft tissue swelling of the left ankle anterolateral aspect and normal temperature, skin color and left lower extremity circulation with no toe discoloration. Dr. Mackay noted a normal left lower extremity sensory examination. He explained that appellant did not have RSD as a physical examination revealed no sensory, skin changes or circulatory changes in her left lower extremity.

The Board finds that the report of Dr. Mackay is well rationalized and based upon a proper factual background such that it is entitled to special weight. The Office properly relied on his medical opinion to find that appellant's claim should not be expanded to include the condition of RSD.

The Board finds that as the medical evidence included in the record does not contain the necessary medical reasoning to explain his diagnosis of RSD or its relationship to appellant's accepted left ankle tibiofibular strain and chronic left posterior tibial tendinitis conditions, she has not met her burden of proof and the Office properly declined to expand her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her RSD was causally related to the accepted employment injuries.

⁹ *Phillip L. Barnes* 55 ECAB 426 (2004); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 6, 2010 is affirmed.

Issued: May 24, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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