

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

C.S., Appellant)

and)

DEPARTMENT OF COMMERCE, CENSUS)
BUREAU, Dallas, TX, Employer)

**Docket No. 14-1323
Issued: October 9, 2014**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On May 19, 2014 appellant, through counsel, filed a timely appeal from a January 30, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 continuing disability or residuals after July 20, 2011 causally related to her November 12, 2009 employment-related injury.

FACTUAL HISTORY

OWCP accepted that on November 12, 2009 appellant, then a 66-year-old field representative, sustained a right ankle injury when she fell while exiting out of her car in the performance of duty. Appellant stopped work. Her claim was accepted for closed fracture of the

¹ 5 U.S.C. § 8101 *et seq.*

tibia and fibula. On November 28, 2009 appellant underwent right ankle surgery. She received disability compensation and was placed on the periodic rolls.

This case was previously before the Board.² By decision dated April 16, 2013, the Board affirmed the August 2, 2012 OWCP decision terminating appellant's wage-loss and medical benefits effective July 20, 2011. The Board found that the June 9, 2011 report of the second opinion examiner, Dr. Kenneth Heist, M.D., represented the weight of the medical evidence. The Board determined that his opinion was detailed and well rationalized and based upon an accurate history in establishing that appellant had no further disability or residuals due to her accepted right ankle injury. The facts and the law contained in this decision are incorporated herein by reference.

By letter dated and received on November 1, 2013, appellant's attorney requested reconsideration. He alleged that the enclosed October 1, 2013 report by Dr. Munir Ahmed, M.D., demonstrated that appellant still suffered residuals of her right ankle injury and subsequent surgery. Counsel contended that the Board's decision affirming the termination of wage-loss and medical treatment was in error and, at a minimum, a conflict in medical evidence existed between Dr. Ahmed and Dr. Heist, which required a referral to a referee physician pursuant to 5 U.S.C. § 8123(a).

In the October 1, 2013 report, Dr. Ahmed provided an accurate history of the November 12, 2009 employment injury and stated that he initially examined appellant on November 27, 2009 for right ankle pain and swelling following a November 12, 2009 fall at work. He noted that she had no previous history of right ankle pain prior to the November 12, 2009 fall at work. Dr. Ahmed related that appellant underwent right ankle surgery and physical therapy but she continued to experience right ankle pain and intermittent swelling. He reviewed her records and noted that a July 7, 2010 CT scan of the right ankle revealed degenerative changes at the tibiotalar joint, irregularity of the articulating surface of the tibia, and an old injury involving the medial and lateral malleolus. Dr. Ahmed reported that he last examined appellant on July 12, 2011 and observed instability with swelling and limited range of motion with dorsiflexion and plantarflexion. He also noted pain with palpation to the lateral and medial joint line with some swelling, negative erythema or allodynia.

Dr. Ahmed diagnosed right ankle pain and instability, arthritis of the right ankle, and status post fracture of the right ankle with an open reduction internal fixation. He stated that appellant's injuries were causally related to the November 12, 2009 accident. Dr. Ahmed opined that her "injuries are permanent in nature and will require ongoing care for the right ankle." He disagreed with Dr. Heist's May 25, 2011 examination and pointed out that his July 12, 2011 examination revealed right ankle pain, swelling and instability.

In a decision dated January 30, 2014, OWCP denied modification of its previous August 2, 2012 decision. It found that Dr. Ahmed merely concluded that appellant continued to be disabled and did not provide a well-rationalized opinion explaining how she continued to be disabled as a result of the November 12, 2009 employment injury.

² Docket No. 13-455 (issued April 16, 2013).

LEGAL PRECEDENT

As OWCP met its burden of proof to terminate appellant's compensation benefits as of July 20, 2011, the burden shifted to appellant to establish that she had continuing disability or residuals causally related to the accepted November 12, 2009 injury.³ Causal relationship is a medical issue. 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 causal relationship between the claimed condition or disability and the employment injury.⁴

ANALYSIS

In support of her request for continuing disability, appellant, through her attorney, submitted an October 1, 2013 medical report by Dr. Ahmed. In the October 1, 2013 report, Dr. Ahmed provided an accurate history of the November 12, 2009 employment injury and noted that appellant had no previous history of right ankle pain. He reviewed appellant's records and noted that a July 7, 2010 CT scan of the right ankle revealed degenerative changes at the tibiotalar joint, irregularity of the articulating surface of the tibia, and an old injury involving the medial and lateral malleolus. Dr. Ahmed reported that he observed instability with swelling, limited range of motion with dorsiflexion and plantarflexion, and pain with palpation to the lateral and medial joint line with some swelling, negative erythema or allodynia. He diagnosed right ankle pain and instability, arthritis of the right ankle, and status post fracture of the right ankle with an open reduction internal fixation. Dr. Ahmed stated that appellant's injuries were causally related to the November 12, 2009 accident. He disagreed with Dr. Heist's May 25, 2011 examination on the basis that his July 12, 2011 examination revealed right ankle pain, swelling and instability. Dr. Ahmed opined that appellant's "injuries are permanent in nature and will require ongoing care for the right ankle."

The Board notes that Dr. Ahmed provided no opinion on whether appellant continued to be disabled due to her accepted injury. He merely stated that she continued to experience pain, swelling and instability of the right ankle. Dr. Ahmed provided no opinion explaining why the ankle pain, swelling and the instability were causally related to the 2009 ankle injury. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition or disability is of limited probative value.⁵

Dr. Ahmed diagnosed arthritis of the right ankle and status post fracture of the right ankle with an open reduction internal fixation. The Board notes, however, that right ankle arthritis was not accepted by OWCP as causally related to the November 12, 2009 employment injury. Although Dr. Ahmed reported that appellant's current condition resulted from the November 12, 2009 employment injury, he does not provide any explanation, based on medical rationale, of

³ See *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003); see also *D.F.*, Docket No. 14-30 (issued August 26, 2014).

⁴ *Id.*; see also *J.B.*, Docket No. 13-2098 (issued August 19, 2014).

⁵ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

how the condition of right ankle arthritis was causally related to the accepted injury. The Board has found that medical conclusions unsupported by rationale are of little probative value.⁶

The Board finds that Dr. Ahmed's October 1, 2013 report fails to establish that appellant had continuing residuals or disability as a result of the November 12, 2009 employment injury.

The Board finds that appellant has not met her burden of proof to establish that she continued to suffer disability or residuals causally related to her accepted November 12, 2009 employment-related right ankle injury.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals after July 20, 2011 causally related to her November 12, 2009 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2014 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

⁶ *Willa M. Frazier*, 55 ECAB 379 (2004).