United States Department of Labor
Employees' Compensation Appeals Board

S.I., Appellant	)	
and	)	**Docket No. 15-374**
	)	**Issued: April 6, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 9, 2014 appellant, through counsel, filed a timely appeal from the October 15, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained osteochondritis dissecans of her right foot/ankle due to her March 9, 2011 work injury; and (2) whether OWCP properly denied her request for authorization for April 9, 2013 surgery and her disability claim related to the surgery.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

OWCP accepted that on March 9, 2011 appellant, then a 36-year-old city carrier, sustained a right ankle sprain while delivering mail at work. She indicated that she stepped on broken steps and that the steps crumbled, causing her to twist her right ankle. Appellant stopped work on March 11, 2011 and returned to work on March 12, 2011 in a limited-duty position. The employing establishment could not accommodate her work restrictions on a full-time basis and she received partial disability compensation on the daily rolls beginning April 26, 2011.

In a June 22, 2011 report, Dr. Paul Di Liddo, an attending podiatrist, detailed appellant's medical history and indicated that she was referred to him for examination of a painful osteochondral talar dome lesion of her right foot. He indicated that she reported swelling of her right ankle commencing around November 2010. Dr. Di Liddo noted that x-rays of her right ankle were obtained in November 2010 which demonstrated an osteochondral talar dome lesion involving the medial talus. Appellant also reported that on March 9, 2011 "[appellant] sprained her ankle while going up a porch delivering mail and the stairs collapsed on her." Dr. Di Liddo diagnosed "painful medial osteochondral talar dome lesion, right ankle." On June 23, 2011 he completed an attending physician's report (Form CA-20) and checked "yes" in the portion of the form asking whether this condition was caused or aggravated by appellant's work injury. On attending physician CA-20 forms dated July 13, October 8, 26, and November 28, 2011, Dr. Di Liddo checked "no" in the space provided for causation of the diagnosis of right ankle osteochondritis dissecans that he provided.

On January 4, 2012 appellant returned to full-time work without restrictions for the employing establishment.

On February 28, 2012 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability beginning January 18, 2012.[2]

In a June 27, 2012 decision, OWCP denied appellant's claim for recurrence of disability because she did not submit sufficient medical evidence in support of the claim.[3]

In a May 15, 2013 letter, appellant's counsel at the time filed a reconsideration request on behalf of appellant in connection with the present claim involving the March 9, 2011 work injury. He requested that appellant's claim be expanded to include the diagnosis of right osteochondritis dissecans as a sequela of the March 9, 2011 work injury.

Appellant submitted a May 13, 2013 report in which Dr. Joshua Rhodenizer, an attending podiatrist, indicated that he performed microfracture surgery on her right foot on April 9, 2013

[2] It appears that appellant began working with restrictions for the employing establishment on January 10, 2012. On August 12, 2013 OWCP vacated its June 27, 2012 decision and accepted her claim for partial disability compensation for the period January 10 to 28, 2012.

[3] On June 21, 2012 appellant filed a claim alleging that she sustained injury to her right ankle while delivering mail at work on May 24, 2012, but OWCP denied this claim on August 14, 2012 under a different claim file number xxxxxx893. The question of whether she sustained a right ankle injury on May 24, 2012 is not the subject of the present appeal.

which included excision of the talar dome lesion.[4] Dr. Rhodenizer asserted that the osteochondritis dissecans condition was "due to aggravation of the underlying injury caused by the patient performing her duties as a letter carrier for the [employing establishment] on May 24, 2012."

In an August 12, 2013 letter, OWCP informed appellant about the evidence necessary to establish that the diagnosed osteochondritis dissecans, the surgery to treat this condition, and any disability related to this surgery, were causally related to the March 9, 2011 work injury. It requested that she provide all medical records for her right ankle treatment prior to the March 9, 2011 work injury. In another letter dated August 12, 2013, OWCP asked Dr. Rhodenizer to submit a rationalized medical report explaining whether objective findings showed that appellant's March 9, 2011 work injury caused or contributed to her diagnosed condition of osteochondral talar dome lesion and/or osteochondritis dissecans of the right foot as well as the need for surgery on April 9, 2013.

In an October 7, 2013 undated report, Dr. Rhodenizer was submitted to the record. He stated that appellant's April 9, 2013 surgery was warranted due to pain following continued conservative care. Dr. Rhodenizer acknowledged that she had a preexisting lesion that was noted on radiographs, but posited that "they usually do not cause too much pain." He stated:

> "However, I believe that the injury aggravated the preexisting osteochondral lesion to the right talus leading to [appellant's] current treatment regime. I probably would not have done surgery on her if she [had not] had an injury but complained of pain to the right foot and radiographs showed the osteochondral defect. Studies have shown that when these lesions are initially seen on radiograph or MRI [magnetic resonance imaging] [scan], they can be more of an incidental finding, especially if there is no trauma associated. However, once trauma occurs in the form of an inversion injury, then pain and surgical intervention are usually required.
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> "[Appellant] was taken off of work for around 10 weeks and sent back on June 13, 2013 without restrictions. She was still having swelling and paresthesias to the surgery site afterwards when we sent her back to work but were confident that she could handle the work load."

In an October 8, 2013 decision, OWCP denied appellant's claim because she did not submit sufficient medical evidence to establish that she sustained osteochondritis dissecans of her right foot/ankle due to her March 9, 2011 work injury. It found that, therefore, her request for authorization of the April 9, 2013 surgery was denied and that her claim for disability compensation for her work stoppage beginning April 9, 2013 due to the surgery was also denied.

Appellant requested a hearing with an OWCP hearing representative. During the hearing held on April 17, 2014, counsel argued that the diagnosed condition of osteochondritis dissecans was generally a post-traumatic condition. He asserted that Dr. Rhodenizer's opinion established a causal relationship between this condition, its need for surgery, and any time lost due to

[4] Appellant stopped work at the time of the surgery and returned to regular duty in mid-June 2013.

treatment of the condition. Appellant testified that she was treated periodically for right ankle pain as far back as 2010. Counsel stated that she was not relying upon the opinion of Dr. Di Liddo to establish her claim and argued that the existence of a preexisting right ankle condition did not cast doubt upon Dr. Rhodenizer's opinion regarding causal relationship. Appellant was asked to provide, within 30 days, a rationalized medical report on causal relationship for the relevant issues of the case as well as any diagnostic tests taken prior to the March 9, 2011 injury. No additional evidence was received within the allotted time.

In an October 15, 2014 decision, the hearing representative affirmed the October 8, 2013 decision denying appellant's claim for right osteochondritis dissecans related to the March 9, 2011 work injury and for the authorization of the April 9, 2013 surgery and any related disability.

On July 29, 2014 appellant requested reconsideration. In support of her request, she submitted an April 18, 2014 medical report of Dr. Rhodenizer. In his report, Dr. Rhodenizer acknowledged that the talar dome lesion was present prior to the March 9, 2011 work injury and that there were instances where talar dome lesions are present since adolescence. Usually they are a benign or accidental finding on x-ray or MRI scan. Dr. Rhodenizer noted that appellant's ankle injury "could have" aggravated a previous condition, but that "it is difficult to say for sure." He stated:

> "Whether the lesion was there prior to [appellant] ankle sprain or not, my opinion is that she suffered the injury, did not respond to multiple rounds of conservative care, and therefore was addressed surgically. I still stand by my opinion that each ankle sprain aggravated the talar dome lesion which would lead to pain and the eventual repair.
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> "I agree that the findings do show a previous osteochondral defect (or talar dome defect) but from review of the records, the pain she was in prior to the two injuries was not on a scale as compared to afterwards.
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> "The basic idea and plan from me was that there was pathology seen on MRI [scan]/x-ray, she was in significant pain and was not responding to conservative care, therefore surgery was recommended and performed."

In an October 15, 2014 decision, OWCP affirmed its October 15, 2014 decision denying appellant's claim for right osteochondritis dissecans related to the March 9, 2011 work injury and for the authorization of the April 9, 2013 surgery and any related disability.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally

related to the employment injury.[5] The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative, and substantial medical evidence.[7] The fact that a condition manifests itself or worsens during a period of employment[8] or that work activities produce symptoms revelatory of an underlying condition[9] does not raise an inference of causal relationship between a claimed condition and employment factors. The Board has long held that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship.[10]

ANALYSIS -- ISSUE 1

OWCP accepted that on March 9, 2011 appellant sustained a right ankle sprain while delivering mail at work. Appellant indicated that she stepped on broken steps and that the steps crumbled, causing her to twist her right ankle. However, she later alleged that she sustained a more serious medical condition due to the March 9, 2011 work injury, osteochondritis dissecans of her right foot/ankle. OWCP denied appellant's claim because she did not submit rationalized medical evidence in support of her claim.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained osteochondritis dissecans of her right foot/ankle causally related to her March 9, 2011 work injury. Appellant was seen following the March 9, 2011 work injury by Dr. Di Liddo, an attending podiatrist, who indicated in several reports that the osteochondritis dissecans condition was not causally related to the March 9, 2011 work injury. She was then treated by Dr. Rhodenizer, a podiatrist, who performed right foot/ankle surgery on April 9, 2013[11] and asserted that the osteochondritis dissecans condition was causally related to her employment.

[5] *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[6] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[7] *W.D.*, Docket No. 09-658 (issued October 22, 2009).

[8] *William Nimitz, Jr.*, 30 ECAB 567 (1979).

[9] *Richard B. Cissel*, 32 ECAB 1910 (1981).

[10] *See Leonard J. O'Keefe*, 14 ECAB 42 (1962); *James P. Reed*, 9 ECAB 193 (1956).

[11] Dr. Rhodenizer performed microfracture surgery on appellant's right foot which included excision of a talar dome lesion.

In an undated report received on October 7, 2013, Dr. Rhodenizer stated that appellant's April 9, 2013 surgery was warranted due to pain following continued conservative care.[12] He acknowledged that she had a preexisting lesion that was noted on radiographs, but posited that "they usually do not cause too much pain." Dr. Rhodenizer stated, "However, I believe that the injury aggravated the preexisting osteochondral lesion to the right talus leading to [appellant's] current treatment regime." He generally indicated that, when such "lesions are initially seen on x-rays or MRI [scan], they can be more of an incidental finding, especially if no trauma is associated with it." However, once trauma occurs in the form of an inversion injury, then surgery is usually required.

Dr. Rhodenizer did not otherwise provide sufficient medical rationale in support of his opinion given appellant's preexisting condition. He acknowledged that she had a preexisting osteochondritis dissecans condition and asserted that her employment aggravated it, but he did not explain how the March 9, 2011 work injury objectively worsened her preexisting condition. Dr. Rhodenizer failed to acknowledge that appellant was receiving treatment for right ankle pain due to the osteochondritis dissecans condition prior to March 9, 2011. The Board has held that the mere fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.[13]

Dr. Rhodenizer did not provide objective evidence, based on an evaluation of diagnostic testing and physical findings before and after the March 9, 2011 work injury, to show that appellant's symptoms were a result of a work-related aggravation rather than the underlying, preexisting condition. Lacking a complete and accurate factual and medical history and medical rationale on causal relationship, his opinion is of little probative value and does not establish that the observed right osteochondritis dissecans condition was related to the March 9, 2011 work injury.[14]

Appellant submitted an April 18, 2014 medical report of Dr. Rhodenizer. This report also has little probative value with respect to her claim that her right osteochondritis dissecans condition was related to the March 9, 2011 work injury. In this report, Dr. Rhodenizer again acknowledged that the talar dome lesion was present prior to the March 9, 2011 work injury and that there were instances where talar dome lesions are present since adolescence. He indicated that these lesions usually were a benign or accidental finding on x-ray or MRI scan. Dr. Rhodenizer stated that appellant's ankle injury "could have" aggravated a previous condition, but that "it is difficult to say for sure." He noted, "Whether the lesion was there prior to her ankle sprain or not, my opinion is that she suffered the injury, did not respond to multiple rounds of conservative care and therefore was addressed surgically."

[12] An undated medical report may be of diminished probative value because the lack of a date makes it impossible to place the report in the context of other evidence.

[13] *See supra* notes 8 and 9.

[14] In a May 13, 2013 report, Dr. Rhodenizer related appellant's osteochondritis dissecans condition to a May 24, 2012 work incident. Appellant's claim for a May 24, 2012 right foot injury was denied under a separate claim file and is not the subject of the present appeal.

In this report, Dr. Rhodenizer again failed to provide a complete factual and medical history, adequately discuss relevant diagnostic testing and examination findings, and provide a detailed explanation of how appellant's claimed right foot/ankle condition was related to the March 9, 2011 work injury. In addition, this report is of little probative value on the relation between the observed condition and the March 9, 2011 work injury, because Dr. Rhodenizer's opinion on causal relationship is speculative and equivocal in nature.[15]

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."[16]

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.[17] The only limitation on OWCP's authority is that of reasonableness.[18] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[19]

In order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.[20] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[21]

ANALYSIS -- ISSUE 2

For the reasons described above, appellant did not establish that she sustained osteochondritis dissecans of her right foot/ankle due to her March 9, 2011 work injury. Dr. Rhodenizer explicitly indicated that the right foot/ankle surgery he performed on April 9, 2013 was for the condition of osteochondritis dissecans. As OWCP has great discretion in determining modalities or the medical evidence does not establish that the April 9, 2013 surgery was necessitated by appellant's March 9, 2011 work injury, it was reasonable for OWCP to deny

[15] *See supra* note 10.

[16] 5 U.S.C. § 8103.

[17] *Vicky C. Randall*, 51 ECAB 357 (2000).

[18] *Lecil E. Stevens*, 49 ECAB 673 (1998).

[19] *Rosa Lee Jones*, 36 ECAB 679 (1985).

[20] *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

[21] *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

her request for authorization for the surgery. Appellant claimed that she had disability beginning April 9, 2013 and continuing April 9, 2013 due to the effects of the April 9, 2013 surgery and the Board also finds that OWCP properly denied this compensation claim given the nonwork-related nature of the surgery. Moreover, she did not show that this claimed period of disability was related to the accepted condition of right foot sprain.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained osteochondritis dissecans of her right foot/ankle due to her March 9, 2011 work injury. The Board further finds that OWCP properly denied appellant's request for authorization for April 9, 2013 surgery and her disability claim related to the surgery.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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