

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA L. DANIELS and DEPARTMENT OF THE NAVY,
AIR SYSTEMS COMMAND, San Diego, CA

*Docket No. 01-1454; Submitted on the Record;
Issued February 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that her right ankle condition is causally related to her July 15, 1996 employment injury, or to other factors of her federal employment.

On August 1, 1996 appellant, then a 52-year-old aircraft electrical worker, filed a claim for traumatic injury alleging that on July 15, 1996 she developed pain and swelling in her right wrist, elbow and ankle as a result of standing and pushing and pulling on the electrical units, in the course of her employment duties. She did not stop work. The Office of Workers' Compensation Programs accepted appellant's claim for right wrist and ankle sprains. In a medical report dated October 18, 1996, appellant's treating physician, Dr. Antra Priede, a Board-certified emergency and preventive medicine physician, noted that her right wrist had improved, but that her ankle remained swollen and tender. She concluded, however, that both appellant's right wrist and right ankle sprains had fully resolved, that she had returned to a preinjury status and that she was considered cured. Dr. Priede explained that, while appellant's ankle continued to be swollen, this was not occupational, was probably due to venous congestion after long periods of standing and was not related to appellant's July 15, 1996 injury. Dr. Priede released appellant to return to her full regular job duties.

On May 21, 1998 appellant filed a claim for a recurrence of disability, Form CA-2a and submitted medical evidence. She stated that the pain and swelling in her right ankle had been continuous since the July 15, 1996 injury and that her case never should have been closed with her ankle still in that condition. Appellant indicated that the claim was for medical treatment only, so far and that she had not stopped work. By letter dated June 2, 1998, the Office informed appellant of the type of evidence needed to support her claim, including a physician's opinion with supporting explanation regarding the causal relationship between her current condition and the July 15, 1996 employment injury. In a decision dated July 30, 1998, the Office denied the claim on the grounds that the medical evidence was insufficiently rationalized to establish that appellant's current condition was causally related to the employment injury.

By letter dated July 23, 1999, appellant requested reconsideration of the Office's decision and submitted additional medical and factual evidence in support of her claim. Appellant noted that her ankle condition was ongoing and submitted evidence that on April 9, 1999 she was separated from her employment due to her disability. In addition, appellant submitted a claim for occupational disease, Form CA-2, dated August 24, 1998, on which she stated that she had filed the wrong form when she filed the CA-2a claim for a recurrence of disability in May 1998. She indicated on her claim form that she first noticed her condition on July 15, 1996, that her right ankle pain and swelling was ongoing and that standing on a hard surface had contributed to her condition.

In a decision dated May 3, 2000, the Office found the new evidence insufficient to warrant modification of the prior decision. The instant appeal follows.

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 or her claimed condition and employment.¹ Causal relationship is a medical issue² and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.³

The medical evidence submitted by appellant includes reports from her treating physician, Dr. Arnold Markman, a Board-certified preventive medicine and family practice physician. In a report dated May 4, 1998, he noted appellant's medical and occupational history and stated that on physical examination there was some right ankle swelling present. Dr. Markman noted that x-rays taken on the date of his examination were negative and ordered a magnetic resonance imaging (MRI) scan. He diagnosed chronic sprain, right ankle and noted that osteochondritis dessicans of the talar dome need to be ruled out. Dr. Markman concluded that "unless evidence is shown to the contrary, *i.e.* that [appellant] had a specific intervening injury" appellant's chronic right ankle sprain would be considered work related. In a follow-up report dated June 3, 1998, Dr. Markman noted that on physical examination appellant ambulated with a minimal limp and had swelling and tenderness of the right ankle, along with some decrease in range of motion. He further noted that appellant's neurovascular system was intact, that there was no instability, that drawer sign was negative and that the MRI showed no effusion, no AVN and no osteochondritis dessicans. Dr. Markman concluded that appellant would have permanent residuals requiring future medical care and that she should not climb and should work 50 percent of the time in a sitting sedentary position and the other 50 percent in a combination of standing and walking. In a report dated July 16, 1998, he stated that appellant's current ankle

¹ *Donald W. Long*, 41 ECAB 142 (1989).

² *Mary J. Briggs*, 37 ECAB 578 (1986).

³ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

condition was causally related to her July 15, 1996 employment injury, noting that she had persistent ankle swelling even at the time she was pronounced “cured” by her then treating physician.

On September 22, 1999 the Office referred appellant, together with a statement of accepted facts, copies of her medical records and a list of questions to be answered, to Dr. Henry R. Krumholz, a Board-certified internist and rheumatologist and Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon, for second opinion examinations and evaluations. On November 9, 1999 appellant underwent a bone scan and a computerized tomography (CT) scan ordered by the second opinion examiners.

In a report dated December 14, 1999, Dr. Krumholz noted appellant’s history of injury and reviewed the medical records and the results of the November 9, 1999 diagnostic studies. Dr. Krumholz performed a physical examination and diagnosed generalized degenerative arthritis, Achilles tendinitis and plantar fasciitis, unrelated to either appellant’s July 15, 1996 employment injury or other factors of her employment. He stated that appellant’s degenerative arthritis in the right mid foot was likely exacerbated by her employment, but that this exacerbation was temporary and resolved within weeks or months after the incident, without permanent sequale. Dr. Krumholz added that appellant’s generalized degenerative arthritis is nonindustrial and preexisting and that there were no injury-related factors of disability. He noted that there was no evidence of instability to support a diagnosis of chronic sprain. Dr. Krumholz concluded that due to her generalized degenerative arthritis, appellant is unable to participate in an occupation requiring even a moderate degree of physical activity.

In a report dated February 9, 2000, Dr. Dorsey noted appellant’s history of injury and reviewed the medical records and the results of the November 9, 1999 diagnostic studies. He performed a physical examination and diagnosed: degenerative joint disease, cuneiform/metatarsal joints, right foot arthritis; degenerative joint disease, first and second metatarsal phalangeal joints, right foot; and right ankle strain, minimal, resolved. Dr. Dorsey stated that these diagnoses were entirely nonindustrial, that appellant had no diagnosed conditions medically connected to the work injury of July 15, 1996 or to factors of appellant’s employment and that there was no basis to believe that there was any material aggravation or acceleration of any ankle conditions as a result of the employment injury, or factors of employment. Dr. Dorsey concluded that appellant’s nonindustrial condition precluded her working in her date-of-injury position, but that she could work eight hours a day within restrictions.

The Board finds that the weight of the medical opinion evidence rests with the well-rationalized narrative reports of Drs. Krumholz and Dorsey. Both of which provided a history of injury and appellant’s medical history, reviewed the results of early and recent tests and performed a complete physical examination. Both physicians diagnosed appellant as suffering from preexisting degenerative joint disease, unrelated either directly, or by aggravation or acceleration, to either her July 15, 1996 accepted ankle sprain, or to factors of her employment. While Drs. Krumholz and Dorsey found appellant unable to perform her date-of-injury position, both physicians explained that this was due to her nonindustrial degenerative conditions. Furthermore, the record contains no contrary probative medical evidence, which establishes that appellant’s current condition is causally related to her July 15, 1996 work injury, or to factors of her employment. While Dr. Markman concluded that appellant’s diagnosed conditions were

causally related to her employment, he clearly based his opinion on the lack of findings on the MRI scan and did not have the benefit of the more extensive objective test results obtained by Drs. Krumholz and Dorsey.⁴ In addition, Dr. Markman did not explain his diagnosis of chronic right ankle sprain in light of his concurrent finding that appellant had no ankle instability on physical examination.⁵ As appellant failed to submit sufficient probative medical evidence to indicate that her current condition is causally related to either the July 15, 1996 employment injury or to factors of her employment, she has failed to establish the requisite causal relationship⁶ and the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated May 3, 2000 is hereby affirmed.

Dated, Washington, DC
February 4, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁴ *Id.*

⁵ *Id.*

⁶ *See Mary J. Briggs, supra note 2.*