

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WARNER A. ROLLINGS, JR. and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 01-1292; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant's right foot neuroma is causally related to his November 14, 1976 employment injury.

In a decision dated September 6, 2000, the Office of Workers' Compensation Programs found that the weight of the medical evidence failed to support that appellant's right foot neuroma was causally related to his November 14, 1976 employment injury and that authorization for neuroma surgery was properly denied.

In a decision dated January 3, 2001, the Office denied modification of its prior decision.

The Board finds that the medical opinion evidence fails to establish that appellant's right foot neuroma is causally related to his November 14, 1976 employment injury.

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.³

Because the Office accepts that appellant sustained a low back injury in the performance of duty on November 14, 1976, it remains for appellant to establish that his diagnosed Morton's neuroma is causally related to that employment injury.

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.⁴

Appellant has submitted no such medical opinion evidence and has therefore failed to discharge his burden of proof. His attending podiatrist, Dr. George N. Merritt, proposed surgery to remove a neuroma at the second and third interspace on the right, but an Office medical adviser felt that this condition was not related to the accepted L5-S1 neuralgia. The Office asked Dr. Merritt whether he concurred. On March 17, 1999 Dr. Merritt reported that there was a possibility that the neuroma might be causing appellant's neuralgia causalgia and that there was a possibility that removing the neuroma could alleviate the neuralgia. He made no attempt, however, to explain whether the neuroma was a result of appellant's federal employment or November 14, 1976 employment injury. His March 17, 1999 report is therefore of no evidentiary value in establishing the critical element of causal relationship.

The Office referred appellant and a statement of accepted facts to Dr. Robert J. Grube, Jr., an orthopedist, for an opinion on whether it was medically reasonable that appellant's Morton's neuroma was the result of his November 14, 1976 lumbar spine injury. In a report dated May 28, 1999, Dr. Grube related appellant's history, medical course and findings on physical examination. He explained that because appellant denied a cure of discomfort with nerve block, his pain was probably a result of a referral pattern from his low spine along with numbness and weakness. Dr. Grube advised appellant that a Morton's neuroma was not related to a spine injury.

Responding to questions posed by the Office, Dr. Merritt reported: "I do n[o]t feel it is reasonable that a Morton's neuroma is the result of the November 14, 1976 lumbar spine injury. Morton's neuromas are usually secondary to local causes such as bone spurring and/or other creators of local trauma such as things as simple as a shoe with a tight toe box."

Appellant's attending orthopedist, Dr. Winston R. Ortiz, agreed. On July 30, 1999 he reported: "The question [appellant] has is whether or not the Morton's neuroma is related to his back injury and I do n[o]t think that is the case." On November 10, 1999 Dr. Ortiz advised that he had reviewed Dr. Grube's evaluation and agreed with his assessment and recommendations: "I do not see any discrepancies in the second opinion."

⁴ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

A Board-certified gastroenterologist reported on August 25, 1999 that appellant's chronic right foot pain was "possibly" related to hepatitis C, an accepted condition, "but most likely is related to some other event." Speculation is of little evidentiary value,⁵ and in this case the specialist made clear that appellant's right foot pain was most likely related to something other than his accepted hepatitis C.

The only medical opinion in this case that tends to support a relationship between a Morton's neuroma and appellant's November 14, 1976 lumbar spine injury is the November 1, 2000 report from Dr. Merritt, who stated:

"[Appellant] has been a patient of mine since 1994, after he was referred by a neurosurgeon for evaluation of continued pain in his right foot after treatment for a sustained back injury. Prior to his back injury he had no problems with his foot; since his back injury, he [ha]s had continued pain in his foot. Dr. Lowder has done everything he can to help his foot problem, but he [i]s not been able to do so, and referred [appellant] here for evaluation and treatment of his foot. On multiple examinations, I found [appellant] to have a palpable painful mass in both the second and third interspaces of his right foot. He was diagnosed with neuromas. He was treated conservatively with cortisone injections not only for therapeutic, but also for diagnostic purposes, to ascertain if this was indeed his diagnosis and it was found to be so. The proposed treatment was to remove the neuroma of the second and third interspaces, which I think are directly related to his back injury, since before his injury he was not having problems with his foot."

The Board has held that when a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.⁶ Dr. Merritt has noted a temporal relationship between the accepted employment injury and appellant's foot pain, and the record shows that the employment injury resulted in a right foot neuralgia secondary to L5-S1 nerve root damage. The question for determination, however, is whether the subsequently diagnosed Morton's neuroma is also a result of appellant's November 14, 1976 employment injury. On this issue Dr. Merritt offers no medical reasoning to establish a causal relationship.

With a reasoned opinion from Dr. Grube that a Morton's neuroma was not a result of appellant's November 14, 1976 lumbar spine injury, with appellant's own orthopedist agreeing, and with no probative medical opinion explaining otherwise, the clear weight of the medical opinion evidence in this case negates the element of causal relationship. Appellant has not met his burden of proof.

⁵ See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

⁶ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

The January 3, 2001 and September 6, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
January 25, 2002

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member