United States Department of Labor
Employees' Compensation Appeals Board

RUBY ABEBE, Appellant	)	
and	)	**Docket No. 05-1031**
	)	**Issued: December 19, 2005**
DEPARTMENT OF AGRICULTURE, FOOD SAFETY INSPECTION SERVICE, Waterloo, IA, Employer	)	

Appearances:
Martin Ozga, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On March 31, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated April 21, 2004, denying her claim for continuing disability, and a March 4, 2005 decision, affirming the April 21, 2004 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the April 21, 2004 and March 4, 2005 decisions.

ISSUE

The issue is whether appellant had any disability or medical condition after January 26, 2002 causally related to her December 3, 2001 employment injury.

FACTUAL HISTORY

On January 10, 2002 appellant, then a 53-year-old food inspector, filed an occupational disease claim alleging that on December 3, 2001 she sustained tarsal tunnel syndrome and

plantar fasciitis of her feet due to the prolonged standing required in her job. She stopped work on December 26, 2001.[1]

In a January 17, 2002 report, Dr. William E. Knudson, an attending podiatrist, diagnosed tarsal tunnel syndrome and recommended that appellant avoid work activities that required prolonged standing or walking.

The Office referred appellant to Dr. Douglas M. Cooper, a Board-certified orthopedic surgeon, for an evaluation of her foot condition.

In reports dated June 4 and 14 and October 5, 2002, Dr. Cooper provided a history of appellant's condition and findings on physical examination and diagnosed mild tarsal tunnel syndrome. He indicated that her condition was preexisting and temporarily aggravated by her prolonged standing at work during her five months at the employing establishment. Dr. Cooper opined that the aggravation would have ceased within one month after appellant stopped work.

On October 17, 2002 the Office accepted that appellant sustained a temporary aggravation of bilateral mild tarsal tunnel syndrome with no disability after January 26, 2002.

By decision dated October 18, 2002, the Office denied appellant's claim for compensation after January 26, 2002.

On November 27, 2002 appellant filed a claim for disability beginning in January 2002.

In a May 5, 2003 report, Dr. Knudson stated that appellant continued to have severe pain, could walk only 25 to 30 yards and any amount of standing or activity beyond this caused severe pain in both lower extremities. He indicated that she could perform only sedentary work.

Appellant requested a hearing that was held on October 22, 2003.

In an October 27, 2003 report, Dr. Knudson stated that he first evaluated appellant on January 4, 2002 for a three- to four-month history of pain in both heels. He stated:

> "I feel there are a multitude of factors which have had a causal relationship in [appellant's] tarsal tunnel syndrome, but I feel the fact that she had no preexisting problems prior to working for the [employing establishment], certainly provides evidence of a causal link between her work duties and her subsequent symptoms.
>
> "I do not agree with Dr. Cooper's conclusion that [appellant's] work caused only a temporary aggravation of her underlying symptoms. If this was the case, upon her termination with the [employing establishment] on [December 26, 2001] and return to prework activities, her symptoms should have subsided; however, she continues to have significant symptomatology.

[1] The record shows that appellant began working for the employing establishment on July 16, 2001.

"Standing and walking on concrete floors, which were a significant part of her work environment … if not being the definitive causal link, certainly has caused, to this date, permanent aggravation of her condition."

By decision dated January 30, 2004, an Office hearing representative remanded the case for further development.

Due to the conflict in the medical opinion evidence between Dr. Knudson and Dr. Cooper, the Office referred appellant, together with a statement of accepted facts, a list of questions and the case record, to Dr. Scott B. Neff, a Board-certified orthopedic surgeon.

In a report dated March 22, 2004, Dr. Neff provided a history of appellant's condition and course of treatment and indicated that he had reviewed the medical records extensively. He noted that electromyography studies revealed a mild tarsal tunnel syndrome. Dr. Neff stated:

"On physical examination, [appellant] is not undressed because I can easily examine her lower extremities and feet from the knees down…. In the seated position, she has no obvious pretibial edema. Ankle motion actively is normal. In the seated position, with her feet resting on the floor, she has flatfeet with minimal arches. Viewed from the front and from the back, the posterior calcaneus is in valgus. When I ask her to stand, the arches collapse and she significantly hyperpronates. This puts the weight bearing axis medial to the middle of the talus and puts the foot over in a pronated and externally rotated fashion which puts significant stretch on the posteromedial capsular ligamentous and neurologic structure. Pulses are full. There is no sign of skin abnormality in the feet. Her toenails appear well vascularized, and her feet appear to be consistent with her stated age. There is thick skin on the heels consistent with a normal callus. The weight bearing angle is developmentally significantly abnormal. There is no precise tenderness over the origin of the plantar fascia. There is a mildly positive Tinel's sign over the posterior tibial nerve. The posterior tibial pulses are intact. She is able to stand on her toes. With some difficulty, she is able to stand on her heels. This difficulty is related to balance rather than peripheral muscle weakness."

* * *

"In my opinion, the tarsal tunnel [syndrome] was directly the result of developmental abnormality and alignment in her feet and calcaneal angles resulting in a stretch of the tarsal tunnel and the medial structures combined with morbid obesity. If indeed the tarsal tunnel syndrome was aggravated by work activity or had been contributed to by work activity, one would assume that following the cessation of that activity and the resumption of a more sedentary lifestyle that those symptoms would diminish. She has not worked in this job now for two years and states that her symptoms are persistent and unrelenting. This in and of itself corroborates my opinion that her work activity is not an aggravating factor to her tarsal tunnel syndrome."

* * *

> "In my opinion, there is no causative relationship between the tarsal tunnel [syndrome] and her activity of walking and standing. This would be considered a coincidence of location. If she were walking and standing in a nonwork environment … the same amount of weight bearing and load would be applied to her feet."

* * *

> "[Appellant] has a posterior tendinitis, flatfeet or pes planus, and valgus heels. This combined with age and morbid obesity … has contributed to the development of plantar fasciitis, tarsal tunnel syndrome, lower extremity edema and general foot pain. It cannot be stated within a reasonable degree of medical certainty that her tarsal tunnel syndrome [has] been contributed to, caused or aggravated by work activities which included standing and moving around. Consequently, further treatment recommendations cannot be attributed to work injury."

By decision dated April 21, 2004, the Office denied appellant's claim for compensation after January 26, 2002.

In an April 20, 2004 letter, appellant's attorney, Martin Ozga, stated that appellant reported discrepancies in Dr. Neff's March 22, 2004 report. She noted that his report contained findings on physical examination such as flat feet, thick calluses and full pulses, but she alleged that he sat at least four feet away from her and did not examine her feet. She offered to remove her stockings and shoes but Dr. Neff indicated this was unnecessary. Appellant indicated that she was wearing heavy leather pants that extended below her ankles but Dr. Neff indicated that she was "considerate enough to wear clothing which allows easy examination of the lower extremities." Dr. Neff stated in his report that, when he asked appellant to stand, her arches collapsed and she hyperpronated and she was able to stand on her toes and stand on her heels with difficulty. She asserted that she sat through the entire interview. Appellant noted that Dr. Neff stated in his report that a member of his office staff was present during the interview but she indicated that only she, her husband and Dr. Neff were present. She asserted that Dr. Neff's report should not be given any weight because he did not conduct a physical examination of her feet.[2]

Appellant requested a hearing that was held on December 9, 2004.

By decision dated March 4, 2005, an Office hearing representative affirmed the April 21, 2004 decision.

[2] Appellant also submitted a copy of a July 5, 2001 press release from the State Board of Medical Examiners noting disciplinary action taken against Dr. Neff for inappropriately spraying two health care providers with a power irrigation device during a surgical procedure.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she was disabled for work as the result of an employment injury.[4] Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.[5] 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.[6]

Under the Act, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[7] When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.[8]

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary of Labor shall appoint a third physician who shall make an examination.[9] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[10]

ANALYSIS

Due to the conflict in the medical opinion evidence between Dr. Knudson and Dr. Cooper as to whether appellant had any disability or medical condition after January 26, 2002, the Office properly referred appellant to Dr. Neff, a Board-certified orthopedic surgeon, for an independent medical examination.

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[3] 5 U.S.C. §§ 8101-8193.

[4] *Thomas M. Petroski*, 53 ECAB 484 (2002).

[5] *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

[6] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[7] *Raymond W. Behrens*, 50 ECAB 221 (1999).

[8] *Id.*

[9] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

[10] *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

Dr. Neff provided a history of appellant's condition, course of treatment and indicated that he had conducted an extensive review of the medical records. He provided detailed findings on physical examination and stated his opinion that appellant's tarsal tunnel syndrome was due to a developmental abnormality and alignment in her feet, which, combined with her morbid obesity, had resulted in a stretching of the tarsal tunnel and the medial structures. Dr. Neff indicated that any aggravation of her mild tarsal tunnel syndrome due to work activities should have diminished with the cessation of that work activity and the resumption of a more sedentary lifestyle. He noted that appellant had not worked in her job at the employing establishment for two years. Dr. Neff stated his opinion that any work-related temporary aggravation of her preexisting mild tarsal tunnel syndrome ceased when she stopped work in 2001. The Board finds that Dr. Neff's thorough and well-rationalized medical report is entitled to special weight and establishes that appellant's temporary aggravation of her mild tarsal tunnel syndrome ceased as of January 26, 2002.

Appellant alleged that Dr. Neff did not perform a physical examination of her feet and indicated other discrepancies in his report which she asserted should invalidate his opinion. However, his report contains detailed physical findings and is comprehensive and well reasoned. There is insufficient evidence to support appellant's allegations.

CONCLUSION

The Board finds that the report of Dr. Neff, an impartial medical specialist and Board-certified orthopedic surgeon, is well rationalized and based on a proper factual and medical background and is therefore entitled to special weight. The report of Dr. Neff establishes that appellant's work-related temporary aggravation of her mild bilateral tarsal tunnel syndrome ceased as of January 26, 2002, one month after she stopped working at the employing establishment.[11] Accordingly, the Office properly denied her claim for disability after January 26, 2002.

[11] As noted above, appellant worked for the employing approximately five months, from July 16 to December 26, 2001.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 4, 2005 and April 21, 2004 are affirmed.

Issued: December 19, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board