

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

J.M., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Cleveland, OH, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 10-2003
Issued: June 1, 2011**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2010 appellant, through her attorney, filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 29, 2010. Pursuant to the Federal Employees' Compensation Act¹ 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 sustained a consequential left ankle condition causally related to her accepted January 26, 2007 right ankle injury.

FACTUAL HISTORY

This case has previously been before the Board. On August 10, 2007 appellant, then a 62-year-old baggage screener, filed an occupational disease claim under File No. xxxxxx713,

¹ 5 U.S.C. § 8101 *et seq.*

alleging a left ankle condition causally related to factors of her employment. She previously sustained a right ankle sprain at work on January 26, 2007. Appellant asserted that she developed a left ankle condition because the ligaments and tendons in her right ankle had not fully healed, causing her to favor her right foot. She indicated that she worked light duty.

In an August 22, 2007 report, Dr. Rebecca Frederick, an osteopath, stated that she treated appellant on February 1, 2007 for a right ankle injury which occurred at work on January 26, 2007. She stated that appellant's right ankle was swollen and she had sharp pains over the next several days. On examination, Dr. Frederick noted that appellant had flat feet bilaterally. She recommended that appellant consult a podiatrist to get measured for orthotics in order to avoid future ankle injuries. Dr. Frederick gave appellant an air cast and prescribed work restrictions. She examined appellant on February 27, 2007, at which time she found a normal range of motion and full strength in the right ankle. Appellant informed Dr. Frederick that she no longer needed to wear the air cast and wanted to return to full duty.

Appellant returned to Dr. Frederick on August 9, 2007 for treatment of left ankle pain. She attributed her left ankle pain to favoring her right ankle since the January 26, 2007 work injury and using her left ankle to bear more of her weight. Dr. Frederick stated that on examination appellant's left ankle was tender to palpation, anterior to the left medial malleolus. She stated that x-ray testing showed some arthritis in the heel, but no fracture. Dr. Frederick diagnosed a left ankle strain, secondary to favoring the right ankle, which had been previously injured. She provided work restrictions and recommended that appellant consult a podiatrist.

By decision dated May 23, 2008, the Office denied the claim, finding that she failed to submit sufficient medical evidence to establish that her claimed left ankle condition was sustained in the performance of duty.

By letter dated May 30, 2008 appellant, through her attorney, requested an oral hearing, which was held on September 22, 2008. She testified at the hearing that she had injured her right ankle on January 27, 2007 and subsequently returned to work. Appellant began to experience pain in her left ankle because she favored her injured right ankle.

By decision dated December 4, 2008, an Office hearing representative affirmed the May 23, 2008 decision. The Office hearing representative found that appellant did not provide sufficient medical evidence to show a causal relationship between her January 2007 right ankle injury and her claimed left ankle condition. The Office hearing representative noted that appellant could pursue a consequential injury claim under File No. xxxxxx978.

In an order dated September 2, 2009,² the Board set aside the December 4, 2008 Office decision. The Board noted that factual and medical evidence pertaining to appellant's accepted right ankle injury was not of record. The record on appeal did not contain any medical reports which discussed appellant's medical condition from January through August 2007. The Board remanded the case for consolidation of the case records. The Board instructed the Office to prepare a statement of accepted facts and develop whether appellant sustained a left ankle condition as a consequence of her accepted January 26, 2007 right ankle injury.

² Docket No. 09-615 (issued September 2, 2009).

On remand, the Office referred appellant, the case record and a statement of accepted facts, to Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, for a second opinion examination. In a January 4, 2010 report, Dr. Ghanma stated findings on examination, reviewed the medical history and the statement of accepted facts. He found that appellant did not sustain a left ankle injury in the performance of her duties as a transportation security screener. Dr. Ghanma obtained a history that appellant also slammed her left ankle on the floor at the time of the right ankle injury. He noted that appellant's left ankle worsened over time and she complained that she was putting most of her weight on her left foot. Dr. Ghanma stated that in August 2007 appellant noticed a bump on her left ankle which was quite painful. The bump dissipated after she wore a protective boot for eight months. Appellant stated that she underwent a magnetic resonance imaging (MRI) scan and was advised by her physician that she had a split tendon, which had since resolved. Dr. Ghanma advised that she returned to light duty for about eight months, then returned to full duty in July 2008.

Dr. Ghanma stated that appellant underwent an x-ray of her left ankle on August 9, 2007 which showed mild generalized soft tissue swelling but was essentially normal. An October 26, 2007 left ankle MRI scan report thickening and signal abnormality in the posterior tibial tendon, with a longitudinal split in the tendon at the distal tibial level that extended below the medial malleolus. The MRI scan also showed evidence of a mild chronic sprain and fibrotic thickening of the anterior talofibular ligament with no acute findings. Dr. Ghanma stated that there was also evidence of a plantar heel spur without evidence of plantar fasciitis, minimal nonspecific marrow edema/contusion present within the distal body of the calcaneus, a mild chronic sprain and fibrosis of the anterior talofibular ligament of the left ankle. He found that these mild symptoms had long since resolved and were not attributable to the January 26, 2007 right ankle injury. Dr. Ghanma advised that there was insufficient evidence to support that employment factors caused, aggravated, precipitated or accelerated appellant's left ankle injury. He asserted that a minor right ankle strain such as that sustained by appellant would not be sufficient to alter her gait to the point where she would develop a bump in her left ankle within six months. Dr. Ghanma stated that her right ankle injury did not cause the left ankle condition.

By decision dated January 25, 2010, the Office denied the claim, finding that appellant failed to establish that her left ankle injury was a consequence of her January 26, 2007 right ankle injury. It found that Dr. Ghanma's referral opinion represented the weight of the medical evidence.

On January 27, 2010 appellant requested a hearing before an Office hearing representative. The hearing was held on April 19, 2010 but no new evidence was presented.

By decision dated June 29, 2010, the Office hearing representative affirmed the January 25, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Act³ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the

³ 5 U.S.C. §§ 8101-8193.

United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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.⁶

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause.⁷ The subsequent injury is compensable if it is the direct and natural result of the compensable primary injury. With respect to consequential injuries, the Board has noted that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even if nonemployment related, is deemed because of the chain of causation to arise out of and in the course of employment and is compensable.⁸

ANALYSIS

The Board finds that appellant failed to submit sufficient medical evidence to establish that she sustained a left ankle condition as a consequence of her accepted January 26, 2007 right

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Id.*

⁷ *See Debra L. Dillworth*, 57 ECAB 516 (2006).

⁸ *L.S.*, Docket No. 08-1270 (issued July 2009).

ankle injury. For this reason, appellant has not met her burden of proof to establish her claim that this condition was sustained in the performance of duty.

The only medical report submitted in support of appellant's claim for a consequential left ankle condition was the August 22, 2009 report of Dr. Frederick, who diagnosed a left ankle strain, secondary to favoring the right ankle, which had been previously injured. Dr. Frederick initially treated appellant on February 1, 2007 for her January 26, 2007 right ankle injury. This injury eventually resolved but appellant returned to Dr. Frederick on August 9, 2007 because she experienced left ankle pain. Appellant related that she favored her right ankle since the January 26, 2007 work injury, using her left ankle to bear more of her weight. Dr. Frederick noted some tenderness on examination and stated that x-ray testing showed some arthritis in the left heel. This report did not contain a probative medical opinion addressing how appellant's left ankle condition arose as a consequence of the right ankle injury. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁹ The report of Dr. Frederick noted appellant's belief and attribution of her left ankle symptoms to the prior right ankle injury. Dr. Frederick did not explain why the nature and severity of appellant's right ankle injury, which was a minor injury causing little medical expense and time off from work, caused a left ankle injury some six months later. Her opinion is of limited probative value because it is conclusory and does not provide adequate medical rationale to establish that appellant's claimed left ankle condition arose from the previous right ankle injury.¹⁰

The Office referred appellant to Dr. Ghanma. In a January 4, 2010 report, Dr. Ghanma found that appellant's right ankle injury did not cause, aggravate, precipitate or accelerate the left ankle condition. He noted that August 2007 x-rays of her left ankle were essentially normal and that an October 2007 MRI scan showed abnormalities in the left posterior tibial tendon, a mild chronic sprain, thickening of the anterior talofibular ligament, and a plantar heel spur. Dr. Ghanma stated, however, that these mild symptoms had long resolved and were not attributable to the January 26, 2007 right ankle injury. He advised that appellant sustained a minor right ankle strain that was not sufficient to alter her gait to the point where she would develop a bump in her left ankle within six months. Dr. Ghanma found that there was insufficient evidence to support that employment factors caused, aggravated, precipitated or accelerated her left ankle injury. His opinion that appellant's claimed left ankle condition did not arise as a consequence of her January 26, 2007 right ankle injury is thorough, probative, well rationalized, and based on his examination of appellant and her medical history. The Office properly found that Dr. Ghanma's referral opinion represented the weight of the medical evidence.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is

⁹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹⁰ *William C. Thomas*, 45 ECAB 591 (1994).

sufficient to establish causal relationship.¹¹ Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that she sustained a left ankle condition as a consequence of her accepted right ankle condition.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a consequential left ankle condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

¹¹ *Id.*