United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 17-1587**
	)	**Issued: January 2, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Monroe Township, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 14, 2017 appellant, through counsel, timely appealed from a March 21, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that her claim should be expanded to include diastasis, cystic changes of the ankle, and/or intra-articular osseous body conditions as causally related to the accepted April 12, 2016 employment injury.

FACTUAL HISTORY

On April 12, 2016 appellant, then a 37-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained an injury to her right ankle when she tripped over a cord in the grass and rolled her right ankle while in the performance of duty. She stopped work on the date of injury.

An April 21, 2016 magnetic resonance imaging (MRI) scan read by Dr. Gustav Ibrani, Jr., a podiatrist, revealed a complete rupture of both the anterior talofibular ligament (ATFL) and calcaneofibular ligament (CFL), sprain of the posterior talofibular ligament, and possible mild sprain of the tibiotalar deltoid ligaments. In a separate report, Dr. Ibrani requested authorization to repair the right ankle.

By development letter dated May 13, 2016, OWCP explained that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. Therefore, a limited amount of medical expenses were administratively approved. OWCP explained that appellant's claim was now reopened because she had requested authorization for surgery. It advised her that the evidence of record was insufficient to establish her claim and it requested that she submit additional evidence, including a physician's opinion as to how her injury resulted in her diagnosed condition(s). OWCP afforded appellant 30 days to submit the necessary information.

In a May 18, 2016 report, Dr. Jacob Reinkraut, a podiatric surgeon, advised that appellant was injured while at work on April 16, 2016. Appellant had missed a step and sustained an inversion ankle injury. Dr. Reinkraut noted that she was seen in the emergency room with complaints of pain, swelling, ecchymosis, and an inability to bear weight on the injured limb. He advised that appellant was given crutches, a stirrup-type ankle air brace, and naproxen. Dr. Reinkraut indicated that she was then seen in the Podiatry Clinic on April 19, 2016 and diagnosed with a severe ankle sprain and avulsion fracture of the distil fibula, which was based on clinical testing and x-rays. He advised that appellant was placed in a Jones compression and posterior splint. Dr. Reinkraut noted that the MRI scan revealed a complete rupture of the ATFL and CFL, a partial tear of the "Tib-Fib" ligament (possible diastasis), avulsion fracture of the distal fibula, cystic changes to the ankle, and an intra-articular osseous body. He diagnosed severe ankle injury with avulsion fracture of the distal fibula; sprain with ruptured ligaments; possible diastasis; and arthritis and ossicle in the ankle joint. Dr. Reinkraut opined that "[t]his is an injury that occurred at work and if not treated properly [appellant] could have significant post[-]traumatic arthritis and instability."

On May 20, 2016 OWCP received a separate report from Dr. Reinkraut explaining that diastasis was from the injury and it would be assessed further intraoperatively. Dr. Reinkraut advised that it was seen on MRI scan and the ossicle "could have been old along with the cystic

changes in the ankle joint. It is very obvious that over 85 percent of the injury is acute and from the fall at work. Possibly 100 percent. The [procedures] necessary would be the same even if there was no previous cystic changes or ossicle in the joint."

In a Form CA-20, Dr. Reinkraut noted that appellant twisted her right ankle while walking at work. He examined her on April 19, 2016. Dr. Reinkraut provided findings which included that appellant had swelling of the right lateral ankle and ATFL and pain in the intra-articular ligament. He checked a box marked "yes" in response to whether he believed that the condition was caused or aggravated by an employment injury. Dr. Reinkraut filled in "twisted ankle at work." He advised that the injury would require surgery and placed appellant on total disability from April 19, 2016 and continuing until July 25, 2016.

In a May 27, 2016 report, Dr. Reinkraut reiterated the history of injury and subsequent treatments. He explained that the MRI scan revealed a complete rupture of the ATFL and CFL along with a partial tear of the Tib Fib Ligament with possible diastasis, avulsion fracture of the distal fibula, cystic changes to the ankle, and an intra-articular osseous body. Dr. Reinkraut explained that "the ossicle could have been old along with the cystic changes in the ankle joint. It is very obvious that over 85 percent of the injury is acute and from the fall at work. Possibly 100 percent. The procedures necessary would be the same even if there were no previous cystic changes or ossicle in the joint." Dr. Reinkraut opined "[t]his is an injury that occurred at work and if not treated properly [appellant] could have significant post[-]traumatic arthritis and instability."

By decision dated June 1, 2016, OWCP accepted appellant's claim for an avulsion fracture of the right distal fibula, right ankle sprain of tibiofibular ligament, and right ankle sprain of the calcaneofibular ligament. It noted that the medical evidence of record also provided diagnoses of diastasis, cystic changes of the ankle, and intra-articular osseous body. However, OWCP explained that these conditions were not currently accepted and were still under development. It explained that a decision would be made on the additional conditions after further development of the claim.

OWCP authorized right ankle arthroscopy which was performed on June 22, 2016. It denied authorization for part removal of the ankle and heel on June 7, 2016. Appellant was placed on the periodic rolls on June 20, 2016. OWCP also denied authorization for bone marrow aspiration.

By decision dated July 18, 2016, OWCP denied expansion of appellant's claim for the additional conditions of diastasis, cystic changes of the ankle, and intra-articular osseous body. It found that she had not established that these additional conditions were causally related to her accepted April 12, 2016 employment injury. OWCP explained that the diagnosed conditions of avulsion fracture of right distal fibula, sprain of right tibiofibular ligament, and sprain of right calcaneofibular ligament had been accepted because the medical evidence from appellant's physician in connection with the nature of the incident supported these conditions as causally related. It explained, however, that, after a thorough review of all of the medical evidence of file, the additional conditions of diastasis, cystic changes of the ankle, and intra-articular osseous body were denied because appellant's physician did not provide a well-reasoned medical opinion regarding causal relationship.

In a July 19, 2016 disability certificate, Dr. Reinkraut advised that appellant had been disabled from work since her June 22, 2016 surgery.

In a July 20, 2016 attending physician's report, Dr. Reinkraut placed appellant on desk work and limited her walking from August 15 to September 15, 2016.

On August 2, 2016 counsel requested a hearing, which was held on October 13, 2016. He indicated that he had requested further explanation from Dr. Reinkraut. Counsel also argued that the evidence was sufficient to establish causal relationship between the denied conditions and the accepted employment injury. The record was held open for an additional 30 days to allow appellant to submit additional medical evidence.

On October 7, 2016 OWCP referred appellant for a second opinion examination with Dr. Timothy Henderson, a Board-certified orthopedic foot and ankle surgeon, to determine the nature and extent of her injury-related medical residuals and disability and to determine whether any additional conditions were causally related to the accepted work incident.

In a letter dated October 21, 2016, counsel provided an October 13, 2016 report from Dr. Reinkraut.

In the October 13, 2016 report, Dr. Reinkraut explained that he was asked to be more specific concerning appellant's right ankle injury. He opined that to "the best of my medical knowledge the rupture, severe sprain/strain, joint effusion and small avulsion fracture are directly related to the fall on [April 12, 2016]." Dr. Reinkraut indicated that there were cystic changes, intra-articular ossicles, and mild osteoarthritis found on MRI scan. He explained that these changes could not be directly attributed to the traumatic fall. However, Dr. Reinkraut opined that these chronic changes were exacerbated by this trauma. He explained that the small cystic, osseous, and cartilaginous defects seen in mild osteoarthritis became bigger, inflamed, and painful as a result of her trauma and this led to more severe arthritic changes including joint space narrowing, bone on bone rubbing, instability, and painful ambulation.

In a second opinion medical report dated November 8, 2016, Dr. Henderson noted that he examined appellant based on injuries she sustained on April 12, 2016 when she tripped over a cord on the grass and twisted her right ankle. On physical examination he noted that she had symptoms with movement and at rest. Dr. Henderson noted that on June 22, 2016 appellant had a right ankle arthroscopy, synovectomy, and assessment of syndesmotic ligament and burring down of exostosis in the ankle, open repair of the anterior talofibular ligament and calcaneofibular ligament, Brostrom Gould procedure, along with treatment of a fracture with excision of ossicles in the lateral ankle gutter and disable fibula. He further noted that the conditions accepted by OWCP had not resolved as she continued to have weakness and restricted range of motion, but he anticipated maximum medical improvement would be attained in December 2016 or six months postsurgery. Dr. Henderson opined that appellant's claim should not be expanded to include additional conditions and concluded that she does not have nonwork-related disability. He proposed further physical therapy three times each week for two months followed by a work capacity evaluation and work hardening. Dr. Henderson advised that appellant could work a sedentary position as long as it did not require standing, walking, climbing, or driving.

By decision dated December 14, 2016, OWCP's hearing representative affirmed the July 18, 2016 decision. She accepted that appellant sustained right distal fibula avulsion fracture, right tibiofibular ligament sprain, and right calcaneofibular ligament sprain causally related to the April 12, 2016, work incident. The hearing representative noted that Dr. Henderson had provided an unrationalized opinion that appellant had not suffered additional conditions causally related to the employment injury, but further found that the record did not contain a rationalized physician opinion explaining how the conditions of diastasis, cystic changes of the ankle, or intra-articular osseous body were caused or contributed to by the accepted employment injury. She noted that Dr. Reinkraut specifically indicated in his report that the ossicle and cystic changes could have been preexisting.

On December 21, 2016 counsel requested reconsideration and submitted additional medical evidence. He argued that Dr. Reinkraut's October 13, 2016 report had not been considered by OWCP's hearing representative. Furthermore, counsel argued that Dr. Reinkraut's addendum provided abundant medical rationale with regard to causal connection. He argued that the expanded conditions should be accepted or, that in the alternative, the medical evidence of record constituted *prima facie* evidence of causal relationship requiring further development of the claim.

By decision dated March 21, 2017, OWCP denied modification of its December 14, 2016 decision. It found that the evidence of record was insufficient to establish that additional conditions should be accepted. The decision noted that appellant had not submitted a medical report from a qualified treating physician that established causal relationship for the additional conditions of diastasis, cystic changes of the ankle, intra-articular ossicles, and mild osteoarthritis. OWCP explained that even though the treating physician opined that the traumatic injury of April 12, 2016 exacerbated the "chronic conditions," he failed to explain how the incident exacerbated these diagnosed conditions. It further explained that the diagnosis of "osteoarthritis" was preexisting and, therefore, it was imperative for appellant's physician to differentiate between the effects of this condition and the incident of April 12, 2016.

LEGAL PRECEDENT

Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[3] To establish causal relationship between the condition claimed, as well as any attendant disability, and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship.[4]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is evidence which

[3] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[4] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[5] *A.S.*, Docket No. 08-0131 (issued June 16, 2008).

includes a physician's rationalized medical opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the employment injury. 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 which explains the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by the employment injury, is sufficient to establish causal relationship.[7]

ANALYSIS

The Board finds that this case is not in posture for a decision.

On October 7, 2016 OWCP referred appellant for a second opinion examination to determine the nature and extent of her injury-related residuals and disability as well was whether additional conditions were causally related to the accepted work incident. Dr. Henderson, selected to perform the second opinion examination, completed a physical examination and provided responses to a series of questions posed to him by OWCP. OWCP specifically requested that Dr. Henderson provide his medical opinion as to whether the case should be expanded to include additional medical conditions, and if so, to provide a detailed medical opinion as to how the accepted employment injury had caused or aggravated the additional conditions. It did not ask him to respond with medical reasoning in response to the attending physician's opinion that the additional conditions should be accepted as employment related. As such, Dr. Henderson did not explain why he concluded that the additional conditions should not be accepted.

When OWCP undertakes to develop the evidence by referring the case to a second opinion physician, it has an obligation to seek clarification from its physician upon receiving a report that did not adequately address the issues that OWCP sought to develop.[8] As such, the claims examiner should seek clarification from the referral physician and request a supplemental report to obtain a rationalized opinion from Dr. Henderson with regard to the request for expansion of the claim.

The Board will remand the case to OWCP for further development of the claim pursuant to its procedures to determine whether the claim should be expanded to include additional conditions. Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[6] *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

[7] *Ernest St. Pierre*, 51 ECAB 623, 626 (2000).

[8] *E.B.*, Docket No. 17-0795 (issued January 18, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: January 2, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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