File Number:
HR10-D-H

RECEIVED SEP 25 2017

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,

Electronically Signed

Hearing Representative

PAUL FELSER
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31405

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

Washington DC, September 18, 2017

U. S. Department of Labor
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U. S. Code 8101 et. seq. of
claimant, employed by the
case file number A hearing was held on

The issue is whether the office properly denied the claim for a traumatic left ankle condition in their decision of

was employed as a with the in
On the employee filed a Notice of Traumatic Injury, claiming a left ankle pain after participating in a physical fitness test on . She reported bilateral ankle pain followed by a pop in the left ankle while running; the injury was reported to the test administrator. A torn left anterior tibiofibular ligament was noted, as well as fluid in the ankle. She also reported a breakdown of her right subtalar fusion. The employer indicated that the injury occurred during the performance of her duties, and that they agreed with the limited facts as presented; continuation of pay was challenged due to late filing of the injury claim.

A witness statement dated indicated that during the run the claimant stopped running, complaining of pain, and repeatedly attempted to run again for brief periods, but instead walked the majority of the 1.5 mile distance. A second statement dated offered a similar history of injury.

An office note from , DPM dated noted a previous left subtalar injection on . A recent MRI study recorded a tear of the anterior tibiofibular ligament, with fluid accumulation. An unstable ankle was diagnosed. No discussion of any running injury was found. On Dr. wrote that the tear stemmed from a fitness test in A second fitness test was performed in August, exacerbating the July tear. Dr. also noted that a right subtalar fusion, performed on , was painful.

By letter dated :he district office developed the factual and medical aspects of the claim, and afforded thirty days for a response. Ms. was to provide medical evidence documenting an exam and making a diagnosis. Confusion surrounding the exact date of injury was to be resolved. The physician was to discuss the history of injury and offer reasoned opinion regarding causation. Ms. was also to address some factual

Washington DC, September 18, 2017

questions, including any history of prior foot or ankle pathology. Thirty days were afforded for a response.

noted that she verbally reported her injury, but had failed to provide written notice within thirty days. She was seen on for the injury, but denied any intervening injury other than participation in a second fitness test. She admitted to a history of subtalar synovitis in the left ankle, with some instability and injections for pain.

On Dr. wrote that he was treating the claimant for a left anterior tibiofibular ligament tear, stemming from a PT test that was performed in . The claimant participated in a second PT test in August, exacerbating her tear. A right ankle fusion was mentioned, but not attributed to the work activity. An MRI confirmed the diagnosis.

Chart notes from Dr. dated recorded a history of bilateral ankle pain and swelling. Left ankle pain dated back approximately a year. Diagnoses included foot pain, synovitis, tenosynovitis, and hallux valgus of both feet. A left subtalar injection was administered. Dr. saw the claimant again on , noting no improvement in her severe left ankle pain in spite of the injection.

A 1 chart note authored by foot and ankle specialist , MD noted a referral from Dr. following onset of left ankle pain in . worsened with activity. No improvement had been documented since the injury, which occurred during a physical fitness test. Dr. diagnosed left ankle chronic pain, with left ankle sprain. An MRI was ordered.[1]

By decision dated the district office denied the claim for benefits. The Office found that the injury was factually supported and did occur during the performance of duties, but cited a failure to establish a relationship between the diagnosed condition and the work factor. Attorney Paul Felser disagreed with the decision of and requested a hearing.

Submitted following the denial were chart notes from the Veterans Administration (VA) hospital. On the claimant was seen regarding her ability to pass the fitness test secondary to bilateral ankle problems. The claimant planned to have bilateral ankle subtalar fusions, but wanted to complete the fitness test first. Additional notes recorded efforts by the claimant on to have a left ankle MRI scheduled. Numerous contacts with the VA in and were recorded, all focused on scheduling an MRI requested by Dr.

Dr. provided a narrative report dated noting an injury on tearing the left anterior tibiofibular ligament after an ankle inversion while running early in a timed 1.5 mile fitness run. The claimant limped and walked to complete the distance. A second fitness test was conducted on exacerbating the earlier tear. Dr. denied any pre-existing ankle condition, opining that the tear was a direct result of the fitness test. Dr

[1] Dr. report was received in the office on the same day the denial letter was issued. It does not appear that the report was available to the claims examiner at the time of adjudication.

referenced an undated left ankle surgery of a "chronically disrupted syndesmotic disruption", with possible hardware removal needed in the future.

A hearing was held on . The claimant was represented by attorney Felser at the proceeding. Mr. Felser noted the recent submission of Dr. report, reading the entire report into the record. He acknowledged a prior right ankle fusion, as well as left ankle injections earlier in , but nothing that was preventing the claimant from performing full duty. The claimant had subsequently been terminated for inability to perform the work. He clarified that the right ankle condition predated the running incident, and was not a part of the instant claim.

Mr. Felser offered legal argument that the ligament tear should be accepted based on Dr. reports. The record was kept open for thirty days to afford the claimant opportunity to submit additional medical evidence or legal argument. As required by Office procedures, a copy of the hearing transcript was forwarded to the claimant and employing agency to afford them the opportunity to comment on the testimony. No comments from the employer have been received, and the period afforded for a response from the claimant had passed.

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[2]

Dr. offered clear medical opinion linking the ligament tear to the running incident of He did not acknowledge the underlying pathology or treatment in his chart note or his narrative report. This failure to demonstrate a complete understanding of the medical history weakens his opinion. Dr. did acknowledge his treatment of the left ankle in the months preceding the injury, and also diagnosed a ligament tear due to the running on There is substantial evidence of some underlying left ankle pathology, complicating the establishment of the relationship between the work activity of and the tear diagnosis. The VA chart notes do not indicate that Ms. Williams reported a running injury or sought any urgent medical care immediately after her injury in July. While she sought to restart left ankle treatment with the VA in August, there is no mention of a running incident.

Drs. and clearly support a relationship, but they have not addressed any underlying pathology in sufficient detail to establish a causal connection – either directly or by aggravation. When the medical report is *prima facie* sufficient but the opinion provided is un-rationalized or speculative, the Office may find that causal relationship cannot be properly determined on the basis of the medical evidence of record. When this happens, the Office must obtain additional medical evidence.[3] It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[4] While the medical evidence in file at the time of the decision was insufficient to establish causation, new evidence has been received

[2] Lourdes Harris, 45 ECAB 545 (1994); Walter D. Morehead, 31 ECAB 188 (1979).
[3] FECA Procedure Manual 2-805-5.
[4] *Udella Billups*, 41 ECAB 260 (1989).

subsequent to the denial. The medical evidence is insufficient to establish a causal relationship between a right knee condition and the work factors. However, the evidence is now sufficient to warrant further medical development.

Accordingly, the decision dated is hereby vacated, and the case remanded to the district office for further development. Upon receipt of the file, the Office shall prepare a Statement of Accepted Facts, which clearly outlines the work incident identified by the claimant, as well as the underlying ankle pathology and treatment. The claimant should then be referred to a board certified orthopedic surgeon for evaluation and review of records. The physician should provide an opinion on whether the work factors experienced by the patient during training on caused or aggravated a left ankle or foot condition. The response should contain medical reasoning to support all opinions therein. Upon review of the response, the office should undertake any further development warranted and issue a de novo decision. The case file is returned to the district office for actions consistent with the above guidance.

Issued:

WASHINGTON, D.C.

Electronically Signed

Hearing Representative
For
Director, Office of Workers'
Compensation Programs

Washington DC, September 18, 2017