

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

C.G., Appellant)

and)

DEPARTMENT OF AGRICULTURE, HELENA)
NATIONAL FOREST, Helena, MT, Employer)

**Docket No. 06-2176
Issued: February 23, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 21, 2006 appellant filed a timely appeal from the January 27, 2006 decision of the Office of Workers' Compensation Programs, which affirmed the denial of his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained a recurrence of disability causally related to his accepted May 12, 2001 employment injury.

FACTUAL HISTORY

On May 12, 2001 appellant, then a 52-year-old volunteer, filed a traumatic injury claim, Form CA-1, alleging that he broke his left leg when he slipped off of the bumper of a pick-up truck. Dr. Michael J. Hennessy, a Board-certified orthopedic surgeon, performed a closed reduction with intramedullary rod fixation that same day. The Office accepted his claim for

fracture of the left fibula and fracture of the left distal tibia on July 31, 2001. The rod was removed from appellant's leg on May 17, 2002.

On June 24, 2003 the employing establishment informed the Office that appellant had been released to return to full duty as a volunteer in January 2003. On July 8, 2003 Dr. Hennessy found that appellant's fracture had healed and released him to unrestricted activity. He noted that appellant walked without antalgia and had full movement in his knee and ankle. An x-ray of appellant's lower left leg showed that the distal tibia and the fibula were healed and in correct alignment. It also showed moderate bony callus formation on the fibula and some phleboliths (vein stones) in the soft tissue.

By decision dated April 13, 2004, the Office found that appellant was no longer disabled from work. The Office stated that, in order to receive continuing benefits under the Federal Employees' Compensation Act, he would need to provide medical evidence establishing that he was still disabled for work because of his accepted injury.

On April 23, 2004 appellant filed a request for an oral hearing to review the Office's decision. The issue to be determined at the hearing was whether appellant had any continuing residuals from the employment injury. A hearing was held on August 18, 2006. Appellant stated that the bones had healed, but that he was experiencing aftereffects of throbbing in his lower left leg. He claimed that he had pain upon standing and walking on a concrete floor at his nonfederal employment which interfered with his ability to work. Appellant stated that he kept waiting for the problem to resolve itself, but it had not done so.

Appellant submitted the August 24, 2004 treatment note of who reviewed the medical history. Dr. Hennessy noted full range of motion, without pain, in the knee, foot and ankle. He also noted enlargement of the anterior midportion of his lower leg caused by protrusion of the muscles through a defect in the surrounding fascia. Dr. Hennessy diagnosed a healed fracture with the cosmetic residual of chronic herniation of the anterior compartments of his lower leg due to the fasciotomy performed during surgery. He stated:

"The injury appears to have healed satisfactorily with no clear explanation for his continued complaints of lower extremity dysfunction. Unrestricted activity would be recommended. While there is some potential for chronic compartment syndrome in the lower extremity, the large compartment decompression would argue against this."

By decision dated December 7, 2004, the Office hearing representative affirmed the April 13, 2004 decision. He found appellant's statements at the hearing to constitute a claim for a recurrence of disability. On review of Dr. Hennessy's August 24, 2004 report, the Office hearing representative found that the medical evidence did not establish that appellant's condition was related to his accepted injury. Dr. Hennessy could not explain appellant's continued complaints, but did not think they were related to the accepted fractures. The hearing representative found that appellant had not established a recurrence of disability related to his accepted employment injury.

On November 2, 2005 appellant filed a request for reconsideration of the Office hearing representative's decision. He attached medical notes from Dr. Michael A. Dube, a Board-certified orthopedic surgeon, and Dr. James A. Hinde, a Board-certified physiatrist.

Dr. Dube's unsigned January 25, 2005 treatment note indicated that appellant's fractures had healed and that he was at maximum medical improvement. Examination revealed a well-aligned limb without deformity. Dr. Dube stated that, while appellant could perform all activities without limitation, his leg would never be normal and that he could obtain a disability rating to see if there was any partial disability. He opined that appellant could perform all activities without limitations.

On August 1, 2005 Dr. Hinde examined appellant to provide an assessment of his persistent left leg symptoms and residual functional capacities. In an unsigned report of the same date, he stated that the pain and fatigue in appellant's left leg, which increased with weight bearing and standing on concrete, were work related.¹ Dr. Hinde diagnosed edema in the lower left leg with soft-tissue swelling. Based on his observation, he believed that the soft tissue protrusion on the front of appellant's leg was a reactive vasogenic type of swelling rather than a muscle herniation, as proposed by Dr. Hennessy. Dr. Hinde diagnosed appellant with depression and anxiety related to his concern over the ongoing issues with his leg. He stated that postplebetic syndrome and compartment syndrome were possible contributing factors for appellant's condition, but that more diagnostic tests and medical history would be needed to verify either. Dr. Hinde indicated that appellant's perceived inability to withstand prolonged walking or standing on hard surfaces had to be respected as "there is no objective manner in which one can fully assess a person's tolerance for this." He recommended work modifications such as sitting and periodic elevation of the swollen leg or, alternately, a new job that would allow for more sitting.

On September 27, 2005 Dr. Hinde stated that "standing for prolonged periods of time on a cement or hard surface without periodic breaks to rest or off-load his left lower extremity are perceived to be and likely are a continued perpetuator of this chronic pain syndrome." He provided the diagnoses of persistent left lower extremity pain "status post remote comminuted tibial fibular fracture," vocational dysfunction and emotional liability related thereto.

By decision dated January 27, 2006, the Office denied modification of the December 7, 2004 decision on the grounds that the weight of the medical opinion evidence was with Dr. Hennessy, who found no residuals from the employment injury. This determination was based on the fact that Dr. Hennessy was an approved workers' compensation physician in a relevant field of medicine who based his opinion on a full medical history and all the medical records. The Office stated that Dr. Hinde's report did not provide credible and objective medical evidence to support his contention that appellant's complaints were caused by the approved work injury of fractured tibia and fibula. The Office also stated that Dr. Dube did not find any current disability caused by the approved work injury.

¹ It is unclear from his statement whether he meant it was related to the accepted employment injury or related to the physical demands of his nonfederal employment.

LEGAL PRECEDENT

To establish a claim for recurrence of disability, a claimant must establish that he experienced a spontaneous material change in the employment-related condition without an intervening injury or new exposure to the work environment that caused the illness.² A claimant's burden of proof includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports the conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.³

ANALYSIS

Appellant alleged a recurrence of disability to his lower left leg causally related to the fractures he sustained on May 12, 2001. The issue to be resolved is whether appellant has any residuals from these accepted employment injuries that disable him from work.

The medical reports of Dr. Hennessy stated that appellant had no residuals from the fractured bones. In an August 24, 2004 examination, Dr. Hennessy reviewed the medical history of treatment and noted healed fractures of the left leg. He reported an essentially normal examination, stating that the left lower extremity is a residual herniation of tissue due to surgery. However, Dr. Hennessy did not attribute appellant's description of continuing lower extremity pain to this cosmetic residual. He indicated that there was "no clear explanation" for appellant's complaints of continued pain because the most plausible cause, chronic compartment syndrome, was unlikely due to large compartment decompression.

Appellant submitted medical opinion reports from Dr. Dube, a Board-certified orthopedic surgeon, and Dr. Hinde, a Board-certified physiatrist. The Office found that the physicians did not provide rationalized medical opinions of a causal relationship between appellant's current left leg condition and the accepted employment injury. In addition, the Board notes that the reports of Drs. Dube and Hinde were unsigned. The Board has held that unsigned medical reports are of no probative value as the author cannot be readily identified as a physician.⁴ The Board finds that the unsigned reports of Drs. Dube and Hinde are insufficient to establish appellant's claim.

The medical reports of Dr. Hennessy are the only ones in the record that have probative value they constitute the weight of the medical opinion. Because Dr. Hennessy's reports indicate that appellant has no residuals from the accepted employment injuries, appellant has failed to meet his burden of proof that he has sustained a recurrence of disability.

² *Philip L. Barnes*, 55 ECAB 426 (2004); *Carlos A. Marrero*, 50 ECAB 117 (1998); 20 C.F.R. § 10.5(x).

³ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁴ *See Merton J. Sills*, 39 ECAB 572 (1988).

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability causally related to his accepted May 12, 2001 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 27, 2006 is affirmed.

Issued: February 23, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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