



*pes planus* with marked subtalar joint degenerative disease.<sup>1</sup> He began working limited duty and on January 3, 1991 and February 27, 1992 underwent corrective surgery on the right. Limited duty was withdrawn in January 1992 and appellant was placed on the periodic rolls. In February 1992 he was referred for vocational rehabilitation and returned to limited duty at a sedentary position at the employing establishment on May 24, 1993. On May 18, 1994 appellant was granted a schedule award for a 17 percent permanent impairment of the right lower extremity and on July 19, 1995 was granted an additional schedule award to total 42 percent on the right and 36 percent on the left.<sup>2</sup>

On August 9, 1999 appellant filed a Form CA-2a, recurrence of disability claim which was denied on May 19, 2000. On August 22, 2000 he underwent an operative repair of an ankle ligament on the left.<sup>3</sup> By letter dated November 6, 2000, the Office authorized an internal diagnostic arthroscopy and removal of hardware on his right ankle with reconstruction. Appellant filed Form CA-7, claims for compensation for the period February 24 through March 23, 2001, for which he received wage-loss compensation. He continued to work limited duty. By decision dated August 1, 2003, the Office denied appellant's claim for compensation for the period July 10 to September 15, 2000.

On March 20, 2006 appellant filed a Form CA-2a, recurrence claim, stating that he had a hard time working because his feet hurt and stopped work that day. He also alleged that he sustained a foot injury on February 21, 2006 when he fell on ice at work.<sup>4</sup> In support of his recurrence claim, appellant submitted a March 8, 2006 report which Dr. J. Chris Coetzee, Board-certified in orthopedic surgery, advised that appellant had a good result from his left ankle surgery. Dr. Coetzee noted in appellant's report that he found it difficult to do standing or walking activities at work. Findings on examination of the right ankle included very little ankle motion. X-ray confirmed advanced degenerative changes of the right ankle. Dr. Coetzee diagnosed right ankle degenerative joint disease and recommended surgical fusion. He advised that appellant could continue his mainly sedentary occupation with walking and standing limited to one hour a day and a lifting restriction of 30 pounds. By letter dated May 5, 2006, the employing establishment controverted the claim, noting that appellant's limited-duty position was a totally sitting, sedentary position with no standing required. In a May 11, 2006 decision, the Office denied appellant's recurrence claim. The Office noted that the only accepted condition was bilateral flat feet and the medical evidence of record did not establish that appellant's recurrence of disability beginning March 20, 2006 was caused by this condition.

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<sup>1</sup> *Pes planus* is defined as flat foot. *Dorland's Illustrated Medical Dictionary* (29<sup>th</sup> edition, 2000).

<sup>2</sup> Appellant had requested a hearing from the August 12, 1994 schedule award and by decision finalized on May 13, 1995, an Office hearing representative found that a conflict had been created regarding appellant's degree of impairment and remanded the case to the Office. Upon remand, appellant was referred to Dr. Robert A. Wengler, a Board-certified orthopedic surgeon, for an impartial evaluation. By decision dated January 28, 1996, the Office found that appellant was at fault in the creation of an overpayment in compensation in the amount of \$375.50, which was collected with a one-time deduction from his continuing compensation. An overpayment in compensation in the amount of \$3.26 was written off on August 7, 2001.

<sup>3</sup> The record does not indicate that this procedure was authorized.

<sup>4</sup> The record does not show that the Office adjudicated this claim, which would be a new traumatic injury. 20 C.F.R. § 10.5(ee).

## LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>5</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>6</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>7</sup>

Disability under the Federal Employees' Compensation Act<sup>8</sup> means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>9</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>10</sup> The test of disability under the Act is whether an employment-related impairment prevents the employee from earning the wages he earned when injured.<sup>11</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.<sup>12</sup> Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>13</sup>

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<sup>5</sup> 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>6</sup> *Id.*

<sup>7</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>8</sup> 5 U.S.C. §§ 8101-8193.

<sup>9</sup> *John M. Richmond*, 53 ECAB 702 (2002).

<sup>10</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>11</sup> *See Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>12</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>13</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

## ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that his recurrence of disability beginning March 20, 2006 was employment related. The Board initially notes that the accepted condition in this case is bilateral aggravation of *pes planus* with marked subtalar joint degenerative disease, not merely bilateral flat feet (*pes planus*) as the Office stated in its May 11, 2006 decision. There is, however, no medical evidence to support a recurrence of disability on March 20, 2006. The only medical evidence submitted with appellant's recurrence claim is Dr. Coetzee's March 8, 2006 report in which he advised that appellant could return to his sedentary position with limited standing. The employing establishment advised that appellant's sedentary limited duty was an entirely sitting position. A claimant has the burden to establish, by the weight of reliable, probative and substantial evidence a recurrence of total disability<sup>14</sup> and whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>15</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>16</sup> In this case, the record does not contain a medical opinion that appellant's disability from work beginning March 20, 2006 was due to his accepted condition.

The Board, however, notes that on November 6, 2000 the Office authorized additional surgery on appellant's right ankle. Thus, he would be entitled to wage-loss compensation for this recommended and authorized surgical procedure and a recovery period authorized by his physician.<sup>17</sup>

## CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a recurrence of disability on March 20, 2006 causally related to his accepted *pes planus* with marked subtalar joint degenerative disease.

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<sup>14</sup> *Supra* note 7.

<sup>15</sup> *Fereidoon Kharabi, supra* note 13.

<sup>16</sup> *Id.*

<sup>17</sup> 5 U.S.C. § 8102(a). There is no evidence of record to show that this procedure has been done.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 11, 2006 be affirmed.

Issued: March 6, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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