



She stopped work on September 10, 2002. Appellant returned to limited-duty work four hours per day on October 8, 2002. By letter dated November 5, 2002, the Office accepted the claim for left shin sprain. Appellant returned to full-duty work without restrictions on January 1, 2004.

On June 28, 2006 appellant filed a claim alleging that she sustained a recurrence of disability on June 12, 2006. She stated that, while she was at home, her left leg and arm became swollen. On that day appellant went to a physician's office. She was out of work until June 28, 2006.

Appellant submitted records dated June 13 to 26, 2006 from Dr. Robert A. Marini, an attending Board-certified physiatrist, who released her to return to work on June 27, 2006 and recommended physical therapy. In disability certificates dated June 27, 2006, Dr. Marini stated that appellant could return to limited-duty work with restrictions on June 28, 2006. He again recommended physical therapy.

On appellant's recurrence of disability claim form, the employing establishment controverted the claim. It contended that her claimed recurrence of disability occurred at home and not at work.

The Office received a June 26, 2006 treatment note from appellant's physical therapist which addressed treatment of appellant's left lower leg. In a July 27, 2006 report, Dr. Marini provided a treatment plan for appellant's left leg condition which included physical therapy. Treatment notes from appellant's physical therapists indicated that the pain in appellant's left lower leg was treated on intermittent dates from July 10 through October 11, 2006.

By letter dated August 16, 2006, the Office advised appellant about the additional factual and medical evidence needed to establish her claim.

In an August 17, 2006 report, Dr. Marini stated that appellant suffered from continuing left lower extremity pain. He opined that she sustained a 10 percent impairment of the left lower extremity as a result of her accepted employment injury.<sup>1</sup> In an undated form report, Dr. Marini indicated with an affirmative mark that appellant's left leg derangement was caused or aggravated by her August 26, 2002 employment injury. He stated that she could resume light-duty work with restrictions on June 15, 2006. On September 25, 2006 Dr. Marini provided appellant's treatment plan which included physical therapy. On October 26, 2006 he ordered a left knee brace. In reports dated November 23, 2005 to March 30, 2006, Dr. Marini opined that appellant sustained left calf derangement.

By decision dated December 19, 2006, the Office denied appellant's recurrence of disability claim, finding that the medical evidence failed to establish that she sustained a recurrence of total disability on June 12, 2006 causally related to her August 26, 2002 employment injury.

---

<sup>1</sup> On November 10 and 20, 2006 appellant filed claims for a schedule award. The case record, however, does not contain a decision issued by the Office addressing her entitlement to a schedule award.

On January 2, 2007 the Office received duplicate copies of treatment notes dated March 15 to November 10, 2006. Appellant's physical therapist stated that on December 20, 2006 appellant tolerated the treatment of the pain in her left calf muscle.

On February 26, 2007 appellant requested reconsideration of the Office's December 19, 2006 decision. She submitted duplicate copies of Dr. Marini's June 12, July 17 and August 17, 2006 reports. In a January 18, 2007 report, Dr. Marini reiterated his prior diagnosis of left lower extremity derangement.

By decision dated March 21, 2007, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was either duplicative or immaterial and, thus, insufficient to warrant a merit review of its prior decision.<sup>2</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

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>3</sup> This term also means an inability to work that takes place 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>4</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.<sup>5</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.<sup>6</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally

---

<sup>2</sup> Following the issuance of the Office's March 21, 2007 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Id.*

<sup>5</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>6</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

related to the employment injury.<sup>7</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>8</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>9</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>10</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained a left shin sprain while in the performance of duty on August 26, 2002. She claimed a recurrence of disability commencing June 12, 2006. The Board finds that appellant has failed to submit rationalized medical evidence establishing that her claimed recurrence of left leg problems and disability were caused or aggravated by her accepted employment-related left shin sprain.

Dr. Marini's disability certificates released appellant to return to work subject to restrictions on June 27 and 28, 2006, and recommended physical therapy. This evidence is insufficient to establish appellant's claim because Dr. Marini failed to provide a diagnosis or to discuss how the diagnosed condition and any disability for work beginning on June 12, 2006 were caused or aggravated by the August 26, 2002 employment-related injury.<sup>12</sup> Similarly, Dr. Marini's reports which recommended physical therapy for appellant's leg and arm pain and his prescription for a left knee brace are insufficient to establish appellant's claim. He did not provide a diagnosis or discuss how the diagnosed condition and appellant's disability related to the accepted employment injury.

In reports dated November 23, 2005 to July 17, 2006, Dr. Marini reiterated that appellant sustained left calf and leg derangement. His November 23, 2005 and January 18 and March 30, 2006 reports predate the alleged recurrence of disability on June 12, 2006 and thus are not probative as to the claimed period of disability. The July 17, 2006 report similarly failed to address the issue of causal relationship.

---

<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

<sup>8</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>9</sup> *See Ricky S. Storms*, *supra* note 7; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>10</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

<sup>11</sup> *See Ricky S. Storms*, *supra* note 7; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>12</sup> *Daniel Deparini*, 44 ECAB 657, 659 (1993).

In an August 17, 2006 report, Dr. Marini opined that appellant sustained a 10 percent impairment of the left lower extremity as a result of her accepted employment injury. He did not provide a diagnosed condition or explain how or why appellant's left leg impairment was caused or aggravated by the accepted employment injury and resulted in her disability on June 12, 2006. The Board has held that medical reports not supported by medical rationale are of limited probative value.<sup>13</sup>

Similarly, Dr. Marini's undated report is of limited probative value. He indicated with an affirmative mark that appellant's left leg derangement was caused or aggravated by her August 26, 2002 employment injury. Dr. Marini stated that appellant could resume light-duty work with restrictions on June 15, 2006. It is well established that a report which only addresses causal relationship with a checkmark without more by way of medical rationale explaining how the current condition is related to the accepted employment injury, is insufficient to establish causal relationship and is of diminished probative value.<sup>14</sup> Dr. Marini has not adequately addressed how appellant's left leg condition was caused or aggravated by the accepted employment injury. Moreover, he did not opine that she was disabled on June 12, 2006 due to the accepted employment injury.

The treatment notes from appellant's physical therapists do not constitute probative medical evidence. A physical therapist is not defined as a physician under the Federal Employees' Compensation Act.<sup>15</sup> Therefore, the physical therapists' treatment records do not constitute competent medical evidence to support appellant's claim.

Appellant failed to submit rationalized medical evidence establishing that her disability on June 12, 2006 resulted from the effects of her employment-related left shin sprain. The Board finds that she has not met her burden of proof.

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128 of the Act,<sup>16</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>17</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>18</sup> When a claimant fails to meet one of the above

---

<sup>13</sup> See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>14</sup> *Id.*

<sup>15</sup> See *David P. Sawchuk*, 57 ECAB 316 (2006).

<sup>16</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>17</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>18</sup> *Id.* at § 10.607(a).

standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

### **ANALYSIS -- ISSUE 2**

On February 26, 2007 appellant disagreed with the Office's finding that she did not sustain a recurrence of disability on June 12, 2006 causally related to her August 26, 2002 employment-related left shin sprain. The relevant issue in this case is whether appellant sustained a recurrence of disability on June 12, 2006 due to her accepted employment injury.

Appellant submitted duplicate copies of her physical therapy notes and duplicate copies of Dr. Marini's July 17 and August 17, 2006 reports. Dr. Marini's January 18, 2007 report merely repeated his prior diagnosis of left lower extremity derangement. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>19</sup> The Board finds that the treatment notes from appellant's physical therapists and reports from Dr. Marini are insufficient to warrant reopening appellant's claim for further merit review.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute pertinent new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a recurrence of total disability on June 12, 2006 causally related to her August 26, 2002 employment injury. The Board also finds that the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>19</sup> See *Patricia G. Aiken*, 57 ECAB 441 (2006).

<sup>20</sup> See 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 21, 2007 and December 19, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 21, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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