

On August 13, 2006 appellant, then a 50-year-old supervisory transportation security screener, sustained an injury when, while walking to report to “A35” exit, a “prospect girl”

pushing a passenger in a wheelchair hit the heel of her right foot. By letter dated October 17, 2006, the Office accepted appellant's claim for contusions of the right foot and ankle and right Achilles tendinitis. On August 26, 2006 appellant returned to limited-duty work. On January 30, 2007 Dr. Dan Bhakta, appellant's treating podiatrist, released her to return to full-duty work with no restrictions. He treated appellant for chronic posterior heel pain and tendinitis of the Achilles tendon. Dr. Bhakta noted that appellant's condition was markedly improved and appeared to be resolved.

On July 4, 2007 appellant filed a claim alleging a recurrence of disability due to the August 13, 2006 employment injury. She stated, "With walking I experienced pain in the right ankle area with swelling." Appellant noted that the swelling would go down with elevation and ice, but returned every day. She submitted a physician's assessment by Dr. Bhakta noting that appellant had "pain, post-op, status post right foot and ankle trauma with Achilles tendinosis." A Blue Cross Blue Shield form listed charges for surgery that took place on July 19, 2007 and for office visits on June 11 and August 1, 2007. Appellant also submitted a physical therapy authorization request.

By decision dated November 13, 2007, the Office denied appellant's recurrence claim as the evidence was not sufficient to establish that her disability or need for treatment was due to the accepted right ankle injury.

In an October 10, 2007 note, Dr. Bhakta diagnosed chronic posterior heel pain post work-related injury. He noted tendinitis and Achilles tendon. Dr. Bhakta advised that appellant's condition was markedly improved and appeared to be resolved.

On November 29, 2007 appellant requested reconsideration, asking the Office to pay for surgery on her right heel. In a November 21, 2007 report, Dr. Bhakta stated:

"[Appellant] presented to me initially with an acute injury to her posterior heel and Achilles tendon on August 13, 2006. She was treated conservatively initially with off-loading in pneumatic walker, crutches, casting, time off work, light duty at work, pain medications, oral steroids, injectable steroids, etc. After complete failure of all her conservative efforts we performed surgery to help resolve pain ... under my care for the treatment of her right foot injury and chronic pain. Treatment to date has consisted of one or more of the following: oral NSAIDS, Pain Meds, [o]ff-loading of foot by several different modalities, and time off from work. This has failed to eliminate [appellant's] symptoms and from her previous subtalar fusion she [sic] metal hardware in her heel and talus bone, which are causing her pain and constant discomfort. I am now recommending a surgical treatment for [appellant] to help relieve her pain and chronic stress on her midfoot so she can return to work sooner and start with [her] daily life without further problems and complications.

By decision dated January 30, 2008, the Office denied modification of the November 13, 2007 decision.

On February 29, 2008 appellant again requested reconsideration and submitted progress notes from Dr. Bhakta's dated from January 2, 2007 through January 21, 2008. On June 11, 2007 Dr. Bhakta indicated that appellant had recurrent right posterior heel pain and plantar

fasciitis. He noted Achilles tendinitis. The progress notes indicate that appellant had surgery on her right foot. On August 29, 2007 Dr. Bhakta expected appellant would return to full duty within two weeks. However, on September 12, 2007 he advised that appellant was to remain on light duty. Dr. Bhakta continued to monitor appellant's progress and on January 21, 2008 advised appellant to return to see him in three months.

By decision dated May 5, 2008, the Office denied modification of the previous decision.

On May 13, 2008 appellant requested reconsideration. In an April 21, 2008 report, Dr. Bhakta addressed treating appellant for chronic posterior right heel pain post work-related injury. He noted insertional tendinitis and Achilles tendon due to acquired gastrocnemius equinus right ankle. On April 21, 2008 Dr. Bhakta stated that appellant's recent Achilles tendinitis and acquired gastrocnemius equinus condition was directly related to her August 2006 injury. He advised that appellant might require surgical gastrocnemius recession of her right ankle to help relieve the pain and chronic stress on her midfoot.

By decision dated May 30, 2008, the Office denied further review of the merits of the case.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."¹ A person who claims a recurrence of disability due to an accepted employment-related injury 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 injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.² Where no such rationale is present, medical evidence is of diminished probative value.³

In order to establish that her claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between her present condition and the accepted injury must support the physician's conclusion of a causal relationship.⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability due to her August 13, 2006 injury. The Office accepted that appellant sustained a contusion of the right foot and ankle and right Achilles tendinitis as a result

¹ R.S., 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

² I.J., 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ See *Ricky S. Storms*, 52 ECAB 349 (2001).

of the August 13, 2006 work injury. In a medical report dated January 30, 2007, Dr. Bhakta, appellant's treating podiatrist, released her to return to work with no restrictions. He noted that her condition was markedly improved and appeared to be resolved.

Appellant alleged a recurrence of disability as of May 25, 2007. No medical evidence notes a recurrence on that date. On June 11, 2007 Dr. Bhakta noted that appellant was being treated for recurrent right posterior heel pain and plantar fasciitis. Thereafter, surgery was performed on appellant's right foot. However, the treatment works do not provide any opinion addressing how appellant's disability or need for treatment related to the accepted work-related injury. Dr. Bhakta's November 21, 2007 note indicated that she had an acute injury to her posterior heel and Achilles tendon on August 13, 2006. However, he did not adequately address how appellant's current symptoms constituted a recurrence of her August 13, 2006 employment injury, which he previously indicated had resolved. Accordingly, the Board finds that appellant failed to provide sufficient medical evidence to establish a recurrence of her accepted injury and the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁵ the Office regulations provide that the evidence or argument submitted by 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.⁶ 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.⁷ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS -- ISSUE 2

On May 13, 2008 appellant filed a timely request for reconsideration. She submitted numerous documents that were previously considered by the Office. Evidence or argument which is duplicative or cumulative is insufficient to warrant reopening a claim for merit review.⁹ Furthermore, the April 21, 2008 report of Dr. Bhakta is largely repetitious of his prior reports. While Dr. Bhakta noted that appellant's recent Achilles tendinitis and acquired gastrocnemius equinus condition was related to her August 2006 injury, these conditions were never accepted by the Office. This evidence does not constitute a basis for reopening the claim for further merit review.

⁵ 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).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b).

⁹ *Denis M. Dupor*, 51 ECAB 482 (2000).

Appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Act. She 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 submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant failed to establish a recurrence of disability on May 25, 2007 causally related to her accepted injury of August 13, 2006. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 30, May 5 and February 30, 2008 and November 13, 2007 are affirmed.

Issued: April 9, 2009
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