

The issues are: (1) whether appellant has established that she sustained a recurrence of disability beginning September 12, 2003 causally related to her accepted employment injury; and (2) whether the Office properly denied appellant's request for reconsideration under section 8128.

### **FACTUAL HISTORY**

On August 17, 1992 appellant, then a 30-year-old letter carrier, filed an occupational disease claim alleging that she sustained Achilles tendinitis due to factors of her federal employment. The Office accepted her claim for right Achilles tendinitis and bilateral sinus tarsi syndrome and paid her compensation beginning January 12, 1993.

Appellant accepted a permanent limited-duty job offer as a carrier on January 18, 1994. She subsequently accepted a permanent limited-duty job offer as a carrier technician on February 18, 1997.

On September 12, 2003 appellant filed a recurrence of disability claim (Form CA-2a) of her accepted employment injury. She noted that she worked limited-duty employment. Appellant did not stop work following the alleged recurrence of disability but instead indicated that she filed the Form CA-2a to reopen her claim and obtain medical treatment. She related that her attending physician had relocated and referred her to a physician who did not take workers' compensation patients.

The Office, by letter dated September 25, 2003, informed appellant that she should submit medical evidence supporting her need for continuing medical treatment due to her employment injury.

In a decision dated November 19, 2003, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained a recurrence of disability. The Office noted that she had not submitted any medical evidence in support of her claim.

Appellant submitted a form report and accompanying chart note dated June 14, 2004 from Dr. Cesar S. Ortiz, a general practitioner, who diagnosed chronic persistent Achilles tendinitis and found that she could work with restrictions.<sup>1</sup>

By decision dated July 12, 2004, the Office denied modification of its November 19, 2003 decision.

In a letter dated August 5, 2004, appellant informed the Office that the employing establishment had removed her from limited-duty employment. In a letter dated August 10, 2004, she requested reconsideration of her claim. Appellant submitted a duty status report dated August 3, 2004 from Dr. Ortiz, who diagnosed tenosynovitis and opined that she could work eight hours per day at a desk job.

In a report dated August 10, 2004, Dr. Ortiz discussed appellant's history of a 1992 employment injury. He related:

“Since her injury she has been having pain in the right foot intermittently. During the last 2 [to] 3 week[s] prior to medical consultation the pain is getting bad

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<sup>1</sup> The name of the physician is not legible.

especially when she walks. She came to see me because she wants to reopen her case as a work[-]related problem.”

Dr. Ortiz related that a magnetic resonance imaging (MRI) scan study obtained on July 20, 2004 showed “[c]hronic changes of splitting of [the] peroneous brevis as well as severe tendinosis.”<sup>2</sup>

In a duty status report dated August 14, 2004, Dr. Ortiz checked “yes” that the history provided by appellant corresponded to that on the form of the condition developing due to “extensive walking as a carrier.” He diagnosed as due to the injury chronic persistent Achilles tendinitis and opined that she could work modified duty at a “sit down job only.”

The record contains a report of an August 30, 2004 telephone call between the Office and the employing establishment. The claims examiner noted that an official with the employing establishment indicated that appellant’s limited-duty clerical position was removed prior to 1997 and that she “was placed in modified letter carrier duties and continued to work these until the filing of this recurrence claim in 2003....”

In a decision dated October 7, 2004, the Office denied modification of its prior merit decision. The Office noted that appellant’s job changed from a clerical position to that of a modified carrier but that she worked in the position for six years prior to claiming her recurrence of disability and thus had not established a recurrence of disability due to a change in the nature and extent of her job requirements.

By letter dated October 15, 2004, appellant requested reconsideration of her claim. She indicated that, following her July 1992 injury, she worked in a position which allowed her to sit down most of the time. Appellant related that, from June 10, 1997 to June 19, 2004, she worked in a modified position on a computer most of the day. She stated that, on June 10, 2004, the employing establishment told her to return to work as a letter carrier. Appellant noted that the employing establishment denied her a limited-duty position as the Office had closed her case. She stated that she was sent home from work on June 25, 2004 because they could not accommodate her limitations.

In a letter dated December 21, 2004, appellant requested that the Office reopen her original claim based on Dr. Ortiz’ August 3, 2004 duty status report.

By decision dated January 5, 2005, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted was insufficient to warrant review of the October 7, 2004 decision. The Office indicated in a footnote that, if appellant believed that she had sustained a recurrence of disability due to the withdrawal of her light-duty position on June 10, 2004 she should file another recurrence of disability claim.

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<sup>2</sup> The record contains the July 20, 2004 MRI scan study which revealed extensor digitorum tenosynovitis and splitting of the peroneous brevis tendon with severe tendinosis.

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

The Office's regulation defines the term recurrence of disability as follows:

"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. 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."<sup>3</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 of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, 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>4</sup>

The Office's procedure manual defines a recurrence of medical condition as follows:

"This term is defined as the documented need for further medical treatment after release from treatment for the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment."<sup>5</sup>

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

In this case, appellant filed a notice of recurrence of disability on September 12, 2003 requesting that the Office reopen her case and alleging that she required further medical treatment for her accepted employment injury of right Achilles tendinitis and bilateral sinus tarsi syndrome. While appellant contended that her modified employment duties changed, the issue in her September 12, 2003 recurrence of disability claim is whether she needs continuing medical treatment due to her employment injury. Further, at the time appellant filed her September 12, 2003 recurrence of disability claim, she had worked in a revised modified duty position since 1997.

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<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

Appellant submitted a form report dated June 14, 2004 from Dr. Ortiz who diagnosed Achilles tendinitis and found that she could work with restrictions. In a form report dated August 3, 2004, Dr. Ortiz diagnosed tenosynovitis and opined that appellant could work in a full-time limited-duty capacity. Dr. Ortiz, however, did not address the cause of the diagnosed conditions in either his June 14 or August 3, 2004 form reports. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>6</sup>

In a report dated August 10, 2004, Dr. Ortiz discussed appellant's employment injury and complaints of continuing right foot pain. He obtained an MRI scan on June 20, 2004 which he interpreted as showing splitting of the peroneous brevis and severe tendinosis. Dr. Ortiz diagnosed extension digitorintenosynovitis and severe tendinosis of the peroneous brevis tendon. He did not, however, specifically relate the diagnosed conditions to appellant's accepted employment injury and thus his opinion is insufficient to meet her burden of proof.<sup>7</sup>

Dr. Ortiz completed a duty status report on August 14, 2004. He checked "yes" that the history provided by appellant corresponded to that on the form of the condition developing due to "extensive walking as a carrier." Dr. Ortiz provided as the diagnosis due to the injury chronic persistent Achilles tendinitis and opined that she could work modified duty at a "sit down job only." The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a claim.<sup>8</sup>

As appellant has not submitted rationalized medical opinion evidence supporting her need for continued medical treatment due to her accepted employment injury, she has failed to meet her burden of proof.

### **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,<sup>9</sup> the Office's regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal arguments not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>10</sup> Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section

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<sup>6</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>7</sup> *Id.*

<sup>8</sup> *Calvin E. King*, 51 ECAB 394 (2000).

<sup>9</sup> 5 U.S.C. § 8128(a).

<sup>10</sup> 20 C.F.R. § 10.606(b)(2).

10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>11</sup>

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

Appellant, in her October 15, 2004 request for reconsideration, argued that the employing establishment withdrew her limited-duty employment on June 10, 2004 and told her to return to work as a letter carrier. She stated that the employing establishment sent her home from work on June 25, 2004 because there was no light-duty work available. Appellant's argument, however, is not relevant to the issue at hand, which is whether she sustained a recurrence of her need for medical treatment in September 2003, due to her accepted employment injury. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>12</sup>

As appellant has not shown that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered or submitted relevant and pertinent new evidence, the Office, in its January 5, 2005 decision, properly refused to reopen appellant's claim for a review on the merits.

On appeal, appellant contends that the Office closed her case due to inactivity but that she continues to have residuals of her employment injury. As discussed above, appellant should submit rationalized medical evidence from her attending physician addressing her current medical condition and its relationship to her employment injury. Additionally, as noted by the Office, if appellant believes that she sustained a recurrence of disability due to the employing establishment's removal of her limited-duty position in June 2004, she should file a recurrence of disability claim on that issue.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability beginning September 12, 2003 causally related to her accepted employment injury. The Board further finds that the Office properly refused to reopen her case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>11</sup> 20 C.F.R. § 10.608(b).

<sup>12</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 5, 2005, October 7 and July 12, 2004 are affirmed.

Issued: August 9, 2005  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board