United States Department of Labor
Employees' Compensation Appeals Board

S.R., Appellant	)	
and	)	**Docket No. 06-2063**
	)	**Issued: January 26, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Youngstown, OH, Employer	)	

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 11, 2006 appellant filed a timely appeal from May 5 and August 3, 2006 merit decisions of the Office of Workers' Compensation Programs that denied his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decisions.

ISSUE

The issue is whether appellant met his burden of proof in establishing a recurrence of disability beginning January 30, 2006 causally related to his November 4, 2005 employment injury.

FACTUAL HISTORY

On November 4, 2005 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim alleging that he sustained an injury to his left great toe on that day due to uneven and broken sidewalks. He did not stop work. On November 15, 2005 appellant accepted the employing establishment's offer of a light-duty assignment. In support of his claim, appellant

submitted a November 28, 2005 note from Dr. Lawrence A. DiDomenico, his treating podiatrist, who stated that appellant must be assigned light duty. Appellant also submitted a November 14, 2005 emergency room report and an undated emergency room charge report diagnosing left great toe sprain. A November 4, 2005 physician's report diagnosed left great toe sprain.[1] It noted that appellant sprained his toe when he kicked an uneven sidewalk while at work.

Appellant stopped work on January 30, 2006. On March 22, 2006 he filed a notice of recurrence of disability commencing March 9, 2006. Appellant stated that he experienced persistent pain which "seemed to flare-up often." He noted that he had tried orthotic treatments but that the pain continued, although it improved after he had surgery. Appellant indicated that he returned to work on March 22, 2006. He subsequently filed a claim for compensation (Form CA-7) stating that he was on leave without pay until April 3, 2006.

On March 28, 2006 the Office informed appellant that it had treated his claim as a simple, unchallenged case which had resulted in minimal medical costs and no lost time for work. It noted that appellant's recurrence of disability claim indicated that the case warranted a formal adjudication on the merits. Accordingly, the Office accepted appellant's claim for left great toe sprain. It advised him to submit medical evidence to support any claimed period of disability.

On April 3, 2006 appellant submitted a claim for compensation accompanied by leave records from the employing establishment. He claimed compensation from February 25 through April 3, 2006.

By letter dated April 4, 2006, the Office requested additional information concerning appellant's claim for a recurrence of disability. It requested that he clarify the relationship between his light-duty assignment and his eventual work stoppage and provide medical evidence, in the form of a narrative medical report, explaining how the subsequent disability was causally related to his accepted left great toe sprain. Appellant was provided 30 days to submit the requested information.

On April 28, 2006 the Office again informed appellant that it needed additional factual and medical evidence explaining how his claimed disability from February 22 through April 3, 2006 was causally related to his accepted employment injury. He did not respond.

By decision dated May 5, 2006, the Office denied appellant's claim for a recurrence of disability. It found that he failed to meet his burden of proof in establishing that his recurrence of disability was causally related to his accepted employment injury.

On May 8, 2006 appellant requested reconsideration. He submitted an account of his injury and subsequent foot pain. In an undated medical report, Dr. DiDomenico stated that he had conservatively treated appellant for equinus deformity, hallus limitus rigidus and bursitis of the first metatarsophalangeal joint since November 14, 2005. On February 17, 2006 Dr. DiDomenico noted performing an endoscopic gastroc recession, chilectomy of the first metatarsophalangeal joint and lapidus bunionectomy with harvesting of the calcaneal graft of the

[1] The signature on the report is illegible.

left foot. He noted that the surgery improved appellant's condition and that he would be able to perform his full duties within six weeks.

By decision dated August 3, 2006, the Office denied modification of the May 5, 2006 decision. It found that Dr. DiDomenico's report was insufficient to establish causal relationship. The Office noted that the medical evidence of record did not support that appellant sustained a recurrence of disability or required surgery as a result of his accepted injury.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provides, in pertinent part:

> "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 (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."[2]

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a light-duty position, or the medical evidence establishes that appellant is capable of carrying out a light-duty assignment, appellant has the burden of establishing, by weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, appellant 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.[3]

ANALYSIS

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained a recurrence of disability. The Office accepted his claim for left great toe sprain. Appellant worked at light duty. He filed a claim for a recurrence of disability commencing January 30, 2006, noting that his pay stopped as of March 9, 2006. However, the only medical evidence appellant submitted in support of his recurrence of disability claim was an undated report from Dr. DiDomenico who did not address appellant's disability beginning January 30, 2006 was causally related to the accepted toe sprain. Dr. DiDomenico's report discussed the course of appellant's treatment and identified surgery on January 31, 2006 for the relief of pain. He provided no medical history and did not render any opinion on how appellant's left foot

[2] 20 C.F.R. § 10.5(x) (2002).

[3] *Terry R. Hedman*, 38 ECAB 222 (1986).

condition was related to the prior accepted injury.[4] Moreover, Dr. DiDomenico's November 28, 2005 report is insufficient to establish appellant's claim for a recurrence of disability because it predates the claimed period of disability.

Appellant did not allege that his claimed recurrence of disability was due to a change in the nature of his light-duty assignment. Rather, he contends that there was a change in his accepted condition. The Board finds that appellant did not establish his claim for a recurrence of disability beginning on or about January 30, 2006.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability causally related to his accepted left toe sprain.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 3 and May 5, 2006 is affirmed.

Issued: January 26, 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

[4] In order to be considered rationalized medical evidence, a physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *Steven S. Saleh*, 55 ECAB 169, 172 (2003). The Board has held that a medical opinion not fortified by medical rationale is of little probative value. *Caroline Thomas*, 51 ECAB 451, 456 n.10 (2000); *Brenda L. Dubuque*, 55 ECAB 212, 217 (2004).