

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**J.B., Appellant**

**and**

**U.S. POSTAL SERVICE, GENERAL MAIL  
FACILITY, Brooklyn, NY, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-1822  
Issued: October 24, 2007**

*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 June 28, 2007 appellant filed a timely appeal from a June 19, 2007 Office of Workers' Compensation Programs' decision, denying his claim for a recurrence of total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of total disability on April 18, 2007 causally related to his February 3, 2007 employment injury.

**FACTUAL HISTORY**

On February 3, 2007 appellant, then a 56-year-old letter carrier, filed a claim for a traumatic injury alleging that he caught his right foot on steps and lost his balance, injuring his left leg. The Office accepted his claim for a left calf sprain and contusion of the lower left leg. On May 2, 2007 appellant filed a claim for a recurrence of total disability as of April 18, 2007. He indicated that he worked for four hours a day from February 3 to April 17, 2007. The job

was sedentary with no lifting over five pounds and no standing, walking, climbing or bending. Appellant indicated that he stopped work on April 19, 2007. He stated:

“Moved from general practitioner to specialist. Visit to specialist on [April 19, 2007]. MRI [magnetic resonance imaging] [scan] on [April 20, 2007]. Original injury was never resolved....”

On May 22, 2007 the employing establishment stated that appellant used sick leave on April 16, 2007 and worked four hours on April 17, 2007. Appellant was not scheduled to work on April 18, 2007 and used sick leave from April 19 to 30, 2007.

In an April 17, 2007 report, a physician at Immediate Medical Care, a clinic, indicated that appellant could perform regular work for eight hours a day.

On April 30, 2007 Dr. Apostolos P. Tambakis, appellant’s attending Board-certified orthopedic surgeon, diagnosed a ruptured gastrocnemius muscle of his left leg.<sup>1</sup> He indicated that appellant was performing limited-duty work and could continue doing so. However, in an April 30, 2007 disability certificate, Dr. Tambakis indicated that appellant was unable to work for the next four weeks due to a ruptured gastrocnemius muscle. In a May 21, 2007 report and clinical notes, he indicated that appellant was totally disabled from April 30, 2007 to “unknown.”

On May 14, 2007 the Office asked appellant to provide evidence establishing that he was unable to perform his light-duty job due to a change in the nature and extent of his accepted medical conditions or a change in the nature and extent of his light-duty physical requirements.

By decision dated June 19, 2007, the Office denied appellant’s claim on the grounds that the evidence did not establish that he sustained a recurrence of total disability on April 18, 2007 was causally related to his February 3, 2007 employment injury.<sup>2</sup>

### **LEGAL PRECEDENT**

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 of record establishes that he 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 that he cannot perform the light-duty position. 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 job requirements.<sup>3</sup>

---

<sup>1</sup> Dr. Tambakis first examined appellant on April 19, 2007.

<sup>2</sup> Subsequent to the June 19, 2007 Office decision, appellant submitted additional evidence. The Board’s jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> *Bryant F. Blackmon*, 57 ECAB \_\_\_\_ (Docket No. 04-564, issued September 23, 2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

### **ANALYSIS**

Appellant has the burden to provide medical evidence establishing that he was totally disabled on April 18, 2007 due to a worsening of his accepted work-related conditions, a left calf sprain and a contusion of the lower left leg or a change in his job duties such that he was unable to perform his light-duty work.

Appellant stated that he performed light duty for four hours a day from February 3 to April 17, 2007. The job was sedentary with no lifting over five pounds and no standing, walking, climbing or bending. The record shows that appellant was not scheduled to work on April 18, 2007 and used sick leave from April 19 to 30, 2007.

In an April 30, 2007 attending physician's report, Dr. Tambakis diagnosed a ruptured gastrocnemius muscle. However, this condition is not an accepted condition in this case. He did not explain how the condition was causally related to appellant's accepted left calf sprain and left lower leg contusion. Dr. Tambakis indicated that appellant was performing limited-duty work and could continue doing so. However, as noted, appellant stopped work on April 19, 2007. Therefore, his report is not based on an accurate factual background regarding the circumstances of appellant's claimed recurrence of disability. In an April 30, 2007 disability certificate, Dr. Tambakis contradicted his attending physician's report of that date by stating that appellant was unable to work for the next four weeks. Additionally, the disability certificate further demonstrates that he is unaware that appellant stopped work on April 19, 2007. Although Dr. Tambakis first examined appellant on April 19, 2007, the day following appellant's claimed recurrence of disability, he did not provide a report of this evaluation. A physician at a clinic examined appellant on April 17, 2007, the day before the claimed recurrence of disability and indicated that appellant could perform regular work for eight hours a day. In a May 21, 2007 report and clinical notes, Dr. Tambakis indicated that appellant was totally disabled beginning April 30, 2007. He did not explain the discrepancy between this report and his April 30, 2007 attending physician's report in which he stated that appellant could perform his limited-duty work. Dr. Tambakis did not indicate in his medical reports that appellant had a change in the nature and extent of his accepted left calf sprain and a contusion of the lower left leg or a change in the nature or extent of his light-duty job requirements, such that he was totally disabled beginning April 18, 2007.

The Board finds that appellant failed to establish that he was totally disabled on April 18, 2007 due to a change in the nature and extent of his employment related left calf sprain and contusion of the lower left leg or a change in the nature and extent of his light-duty job requirements. Therefore, the Office properly denied his claim for a recurrence of total disability.

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained a recurrence of total disability on April 18, 2007 causally related to his February 3, 2007 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 19, 2007 is affirmed.

Issued: October 24, 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