

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

B.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pleasanton, CA, Employer**

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**Docket No. 14-690
Issued: August 27, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 6, 2014 appellant filed a timely appeal from an August 13, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met her burden of proof to establish entitlement to compensation for wage loss for various periods November 9 and 10, November 13 through 26, and November 27 through December 14, 2012 and December 17, 2012 through January 3, 2013.

¹ 5 U.S.C. §§ 8101-8193.

² Appellant also provided new evidence on appeal. The Board's jurisdiction, however, is limited to evidence that was before OWCP at the time it issued its August 13, 2013 decision. Because this evidence was not before OWCP at the time it issued its August 13, 2013 decision, the Board may not consider this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *Sandra D. Pruitt* 57 ECAB 126 (2005).

FACTUAL HISTORY

On August 30, 2010 appellant, then a 58-year-old city carrier, filed a traumatic injury claim alleging that on August 27, 2010 she got scared when a snake sitting in front of a box jumped on a curb landing on her heel. She alleged immediate pain in her left heel and ankle. Appellant stated that she sprained her left sole of foot/heel. OWCP initially accepted that she sustained left foot sprain. It subsequently accepted a left calcaneus fracture, peroneal tendinitis left foot, left plantar fasciitis, left tarsal tunnel syndrome and a consequential left ankle ulcer. On December 4, 2012 appellant underwent authorized tenosynovitis neuritis fasciitis joint derangement. On February 28, 2013 she underwent an authorized external neurolysis with tarsal tunnel, plantar fascial release of the left foot and a postoperative nerve block release of the left foot.

Appellant stopped work following the injury and returned to work on August 30, 2010. She stopped working again on May 7, 2011 and returned to work eight hours a day on November 3, 2011. On November 8, 2012 appellant stopped work due to chronic pain in her left heel. She returned to work six hours a day on November 12, 2012 and worked in this capacity until December 4, 2012, when she again stopped work. On or about January 15, 2013 appellant developed a full thickness ulcer on the left medial ankle, which resulted in a strep infection. She returned to full-time work on April 1, 2013. Appellant stopped working and OWCP determined that she was totally disabled on January 15, 2013 due to her consequential left ankle ulcer. OWCP paid disability compensation benefits for most of the periods claimed.

On November 29, 2012 appellant filed a Form CA-7 claim for compensation and Time Analysis Form CA-7a requesting total disability compensation benefits from November 9 and 10, 2012 for 16 hours of leave without pay (LWOP) and partial disability compensation benefits for the period November 13 through 26, 2012 for 20.25 hours of LWOP for working part time.

Evidence received in support of the claim included: two prescription pad notes, one dated November 8, 2012 stating that appellant was off work from November 8 to 12, 2012 due to foot injury and another one dated November 12, 2012 restricting her to six-hour shifts due to foot injury flare up from November 12 to December 12, 2012.

In a November 12, 2012 report, Dr. Lisa Breuner, DPM, a podiatrist, noted that appellant could not walk during her Maui trip. Left tarsal tunnel syndrome and left peroneal tendinitis were diagnosed.

In a December 3, 2012 report, Dr. Breuner noted the history of injury of appellant stepping out of her vehicle, when she saw a snake and, in an effort to avoid stepping on it, jumped out of the way, sustaining blunt trauma injury to her left heel. She noted appellant's treatment and that she was placed on temporary total disability effective May 9, 2011. Appellant returned to work but has not been able to reach preinjury capacity and was restricted to six-hour per day shifts. Dr. Breuner noted appellant's complaints of moderate to severe, sharp, aching pain, involving the plantar medial left heel was worst with walking, prolong periods of walking and standing and only partially relieved by rest. She opined that appellant's clinical presentation and complaints were consistent with a blunt trauma to the heel, which occurred when she landed hard on her left foot while jumping out of the way of a snake. Appellant's injury failed to

resolve and she requested surgical release of the tarsal tunnel and plantar fascial ligament. Dr. Breuner opined that appellant was able to work with the restriction of six-hour shifts per day. She further opined that appellant's symptoms were the result of the industrial incident and are 100 percent due to work-related exposure.

By letter dated December 13, 2012, OWCP advised appellant that she was paid nine hours LWOP for the period September 7 to November 8, 2012. However, the medical evidence of record was insufficient to support her claim for compensation for the periods November 9 and 10, 2012 and for November 13 to 26, 2012 for 20.25 hours. Appellant was accorded 30 days to submit additional medical information with a narrative, which explained how her accepted work-related condition worsened such that she could no longer perform the duties of her position when she stopped work on November 9, 2012.

On December 15, 2012 appellant filed a CA-7 claim form for compensation and CA-7a time analysis form requesting total disability benefits and partial disability benefits for the period November 27 through December 14, 2012. On January 7, 2013 she filed a CA-7 claim form for compensation and CA-7a time analysis form requesting total disability and partial disability compensation benefits for the period December 17 to 31, 2012.

In a January 15, 2013 report, Dr. Breuner noted the history of injury and appellant's treatment and that she was temporarily totally disabled effective May 9, 2011. She indicated that appellant returned to work but has not been able to reach preinjury capacity and was restricted to six-hour per day shifts. Due to a flare-up on November 8, 2012, appellant was again placed on temporary total disability from November 9 to 12, 2012. Reevaluation on November 12, 2012 demonstrated a continued flare-up and she was restricted to six-hour shifts until December 12, 2012. Appellant was seen for further evaluation on December 4, 2012, at which time, it was determined that she was unable to return to work and she was placed on total temporary disability. Dr. Breuner noted that appellant was scheduled to undergo a surgical release of the plantar fascial and tarsal tunnel on January 17, 2013, but developed a strep infection. As a result appellant's surgery has been postponed to January 24, 2013. She was expected to require eight weeks of additional temporary total disability from that date for postoperative healing. Dr. Breuner presented examination findings and opined that appellant's symptoms were consistent with a blunt trauma to the heel, which occurred when she landed hard on her left foot while jumping out of the way of a snake. She noted that appellant's symptoms are worst with walking and are also stimulated by prolonged periods of standing or walking and only partially relieved by rest. Dr. Breuner opined that appellant was not able to perform her job-related duties and was precluded from walking or standing for more than six hours per shift. She further opined that appellant's symptoms and complaints were the result of the industrial incident and were 100 percent due to the work-related exposure.

By letter dated January 24, 2013, OWCP advised appellant that the medical evidence did not support her claims for compensation for the periods November 27 through December 14, 2012 and December 17 through 31, 2012. Appellant was accorded 30 days to submit medical evidence to establish her claims for disability compensation benefits.

On January 24, 2013 appellant filed a CA-7 claim form for compensation and CA-7a time analysis form requesting total disability compensation benefits for the period January 1 through 14, 2013.

In a January 23, 2013 report, Dr. Breuner stated that appellant had an injury, which was aggravated by cumulative repetitive stress, which occurs in the course of performing her regular work-related duties. At the time of her flare up, appellant had returned to work but has not been able to reach preinjury capacity and was restricted to six hours per day shifts. She continued to experience worsening pain, despite this restriction and on her November 2012 evaluation, she was placed on temporary total disability due to the fact that no modified duty was available. Dr. Breuner stated that appellant can perform semi-sedentary duty if such work is available. She listed appellant's objective physical findings and discussed why surgical release of the tarsal tunnel and plantar fascial ligament was necessary. Dr. Breuner also opined that the ulceration occurred most likely due to weakening of the skin from the use of topical medications, ankle wraps and braces and cortisone injection and was the result of the treatment for tarsal tunnel syndrome and plantar fasciitis and was a work-related injury. She stated that appellant could not undergo surgical release at this time as she has an ongoing infection.

By decision dated February 5, 2013, OWCP denied appellant's claim for disability compensation for the period November 9 and 10, 2012 for 16 hours and for the period November 13 to 26, 2012 for 20.25 hours. It found that none of Dr. Breuner's medical reports discussed how appellant's total/partial disability which began on November 9, 2012 was related to the August 27, 2010 work injury.

Also by letter dated February 5, 2013, OWCP referenced appellant's claim for compensation for the period January 1 to 19, 2013. It noted that Dr. Breuner made several general statements about appellant's injury being aggravated by cumulative repetitive stress from the performance of her regular work duties, but the physician did not cite any specific work duties and which occurred on or about November 9, 2012, which worsened her condition to the point that she was totally/partially disabled from work. OWCP also noted that appellant was on annual leave from October 8 to 31, 2012 and that Dr. Breuner noted in her November 12, 2012 report that appellant was unable to walk during her Maui trip, which indicated that her condition worsened prior to November 9, 2012. It advised appellant that it was unclear what occurred between November 7 and 9, 2012, which worsened her condition and whether her current condition was related to the accepted work-related injury or whether it was nonindustrial.

In her February 11, 2013 report, Dr. Breuner stated in relevant part: that appellant had an injury which was aggravated by cumulative repetitive stress, which occurred in the course of performing her regular work-related duties. These duties are specifically standing and walking while delivering mail, which creates increased blood flow to the arteries of the lower extremities, thereby increasing pressure within the tarsal tunnel and impinging on the posterior tibial nerve. The treatment to address the above symptoms, specifically cortisone injection and use of topical elector and liboderm patches most likely created sufficient weakening of the skin making her more likely to develop ulceration. The ulceration is a result of the treatment for the work-related diagnosis and is therefore related to the industrial exposure.

By decision dated April 8, 2013, OWCP denied appellant's claim for disability compensation benefits for the period November 27 through December 14, 2012 and December 17, 2012 through January 14, 2013.

Appellant disagreed with the February 5 and April 8, 2013 decisions and requested an oral hearing, which was held June 19, 2013. Several reports were received from Dr. Breuner.

In an April 19, 2013 report, Dr. Breuner noted that the date of injury regarding the ulcer was January 4, 2013 and that disability would commence on that date. She indicated that appellant was undergoing treatment for a postoperative wound infection and that, once she has recovered from that infection and completed physical therapy, she would be released to work at four-hour shifts for two weeks, extending to six-hour shifts for the subsequent two weeks and then resuming full duties in the subsequent two weeks after that.

In her July 5, 2013 report, Dr. Breuner related the following: In June 2012, appellant received a series of cortisone injections to alleviate pain related to plantar fasciitis and tarsal tunnel syndrome, which were directly related to the calcaneal fracture, which she sustained in the course of performing her job-related duties on the date of injury. Appellant was informed that, if the injections did not alleviate her symptoms, she would require surgery and that it may take several months after the series of injections to make that determination. Dr. Breuner stated that, when appellant was evaluated on November 8, 2012, she was still experiencing pain, which precluded her ability to resume her work-related duties and that surgery was indicated. On November 12, 2012 appellant was placed on temporary total disability pending her surgery to avoid sustaining further injury from her altered gait pattern and further damage to the nerve or ligament. She felt, however, that she could work six-hour shifts. However, due to the fact that appellant's job required that she walk several hours per day, carrying 15 to 20 pounds and repeatedly step up and down curbs, she experienced a flare-up and was placed on temporary disability on December 4, 2012. She was scheduled to undergo surgery in January 2013, but due to a skin ulceration at the surgical site, her procedure had to be delayed resulting in her temporarily total disability to be extended to March 13, 2013. Due to the delayed healing and a postoperative infection, appellant's disability has been extended. She is currently undergoing physical therapy with an anticipated return to work date of August 2013.

By decision dated August 13, 2013, OWCP's hearing representative affirmed OWCP's February 5, 2013 decision, which found that appellant did not meet her burden to establish a temporary total disability for the period November 9 and 10, 2012 and for partial disability for the period November 13 to 26, 2012. The hearing representative also affirmed in part OWCP's April 8, 2013 decision, which denied her claim for compensation for the period November 27 to December 14 and December 17 to 31, 2012 and January 1 to 3, 2013, but reversed in part OWCP's April 8, 2013 decision, which denied her claim for compensation for the period January 4 to 14, 2013 as her disability was caused by her accepted consequential injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that he or she was disabled for work as a result of the

accepted employment injury. Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative and substantial medical opinion evidence.³ Such medical evidence must include findings on examination and the physician's opinion, supported by medical rationale, showing how the injury caused the employee disability for his or her particular work.⁴

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 resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁵ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force.⁶

OWCP's procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁷

An employee 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 a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.¹⁰ The Board will not

³ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

⁴ *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁵ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁸ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁹ *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

¹⁰ *Laurie S. Swanson*, 53 ECAB 517, 520 (2002). *See also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹¹

ANALYSIS

OWCP accepted appellant's claim for left foot sprain, a left calcaneus fracture, peroneal tendonitis left foot, left plantar fasciitis, left tarsal tunnel syndrome and a consequential left ankle ulcer. Appellant filed several claims for wage-loss compensation for the period November 9, 2012 through January 3, 2013, which OWCP denied. She has the burden to provide medical evidence establishing that she was partially or totally disabled on and after November 9, 2012 through January 3, 2013 due to a worsening of her accepted work-related conditions or a change in her job duties such that she was unable to perform her modified work.

The Board finds that appellant has not submitted medical evidence in support of a change in her injury-related condition for the period November 9, 2012 through January 3, 2013. The record indicates that appellant returned to work but had not been able to reach preinjury capacity and was restricted to six hours per day shifts. Several reports were received from Dr. Bruner. Of relevance to this claim are February 11 and July 5, 2013 reports whereby she addresses the cause or aggravation of appellant's accepted medical conditions. Dr. Bruner's earlier reports provided only general statements that appellant experienced flare-ups of left heel pain and her injury was aggravated by cumulative repetitive stress over the course of performing her work duties, but failed to cite any specific work duties occurring on or about November 9, 2012, which worsened her condition to the point that she was totally or partially disabled from work. Thus, those reports are insufficient to establish appellant's claim.

In her February 11, 2013 report, Dr. Bruner stated that appellant's injury was aggravated by cumulative repetitive stress, which occurred in the course of performing her regular work-related duties of standing and walking while delivering the mail. She further indicated in her July 5, 2013 report that appellant was placed on total temporary disability on November 12, 2012 pending her surgery to avoid sustaining further injury from her altered gait pattern and further damage to the nerve or ligament. However, appellant felt that she could work six-hour shifts but, due to the fact her job requires that she walk several hours a day, carrying 15 to 20 pounds and repeatedly stepping up and down curbs, she experienced a flare-up and was placed on total temporary disability on December 4, 2012. Dr. Bruner does not relate the worsening of appellant's condition and resulting disability during the claimed period directly to the August 27, 2010 injury. Rather, she relates the worsening of appellant's condition and the cause of disability to a work-related aggravation of her accepted work-related injuries. The Board notes 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 resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.¹² OWCP's procedures state that a recurrence of disability includes a work

¹¹ *Amelia S. Jefferson, supra* note 3.

¹² 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525, 531 (2008).

stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.¹³ As the evidence supports that appellant had new exposure in the work environment following her return to work, this does not support her claim of total disability for the claimed period of November 9, 2012 through January 3, 2013.

Appellant failed to submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she sustained a recurrence of disability for the period claimed November 9, 2012 through January 3, 2013 due to residuals of her accepted injury. Accordingly, she has not met her burden of proof to establish that she sustained a recurrence of her employment-related disability and is entitled to wage-loss compensation for the claimed period.

On appeal, appellant argues that the medical evidence supports that she was partially or totally disabled as a result of the work injury during the relevant period. However, for the reasons given, the medical evidence is insufficient to support her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits for periods of disability claimed from November 9, 2012 through January 3, 2013.

¹³ See *supra* note 7 at Chapter 2.1500.3(c)(5) (October 2009).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board