

medical evidence from a physician as defined by the Federal Employees' Compensation Act¹ and the Office denied her claim by decision dated March 21, 2002 on this ground.

In a report dated February 27, 2002, Dr. Ishrat Osman, an internist, provided a history of injury and diagnosed contusion and sprain of the right foot. The Office accepted appellant's claim for right foot sprain on April 4, 2002. She returned to duty on July 5, 2002.²

Appellant filed a notice of recurrence of disability on February 7, 2003 alleging that on January 23, 2003 she sustained a recurrence of her January 7, 2002 employment injury. She stated that the swelling in her right foot never completely subsided. Appellant asserted that her right foot pain was variable. She alleged that on January 23, 2003 the swelling in her right foot increased. In a letter dated March 25, 2003, the Office requested additional factual and medical evidence. Appellant failed to submit a medical report addressing the causal relationship between her current condition and her accepted employment injury. By decision dated June 17, 2003, the Office denied appellant's claim finding that the medical evidence was not sufficient to establish a recurrence of disability.

Appellant requested reconsideration on June 25, 2003 and submitted additional medical and factual evidence. Dr. Eric Griffin,³ appellant's attending physician, indicated that she was totally disabled from January 23 to February 20, 2003, due to pain in her right foot. On March 13, 2003 he released her to return to light-duty work with limited standing and walking. Dr. Griffin submitted a report on June 23, 2003 noting appellant's history of injury. He reported that she had pain with significant and persistent swelling in her right foot since her January 7, 2002 employment injury. Dr. Griffin stated that appellant's final diagnosis was post-traumatic lymphedema and stated that her soft tissue swelling might be permanent. He stated that appellant's pain had subsided and that she had no ongoing disability from this injury.

By decision dated July 29, 2003, the Office denied modification of its June 17, 2003 decision. Appellant again requested reconsideration on August 1, 2003. She asserted that she returned to limited-duty work in July 2002 and that her restrictions were, no standing for over one hour and that she must sit to do her work as well as to elevate her right foot for 10 to 15 minutes every two hours. On July 22, 2003 Dr. Griffin repeated his diagnosis of post-traumatic lymphedema of the right foot and stated that prolonged standing caused increased swelling and pain. He recommended that appellant be allowed to elevate her right foot for 15 to 20 minutes every 2 to 3 hours. By decision dated November 4, 2003, the Office expanded appellant's claim to include contusion of the right foot resulting from the January 7, 2002 employment injury. The Office also found that she returned to light duty following her January 7, 2002 employment injury, but that the medical evidence did not establish a change in the nature and extent of her injury-related condition nor a change in the nature and extent of her light-duty job requirements,

¹ 5 U.S.C. §§ 8101-8193.

² Appellant's physician released her to return to full-duty work on July 1, 2002. However, she used leave until July 5, 2002.

³ Dr. Griffin does not specialize.

such that she sustained a recurrence of total disability. The Office stated that appellant was entitled to receive medical treatment for her accepted work-related injury of January 7, 2002.⁴

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that 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 she cannot perform such light duty. As part of this burden, the employee must show 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.⁵

ANALYSIS

In this case, the Office has accepted that appellant sustained a right foot strain and contusion as a result of her employment injury of January 7, 2002. The Office also accepted that, although appellant returned to work in July 2002, she did not return to regular duty following her employment injury. However, the Office found that appellant had not established a change in the nature and extent of her employment injury or in her employment duties rendering her totally disabled on or after January 23, 2003.

On the notice of recurrence of disability dated February 7, 2003, appellant stated that the swelling in her right foot never completely subsided and that it had increased in January 2003. Her limited-duty work restrictions were no standing for over 1 hour and that she must sit to do her work as well as elevate her right foot for 10 to 15 minutes every 2 hours. Dr. Griffin,⁶ appellant's attending physician, indicated that she was totally disabled from January 23 to February 20, 2003, due to pain in her right foot. On March 13, 2003 Dr. Griffin released appellant to return to light-duty work with limited standing and walking. On July 22, 2003 Dr. Griffin repeated an early diagnosis of post-traumatic lymphedema and stated that prolonged standing caused increased swelling and pain. He recommended that appellant be allowed to elevate her right foot for 15 to 20 minutes every 2 to 3 hours.

There is no evidence in the record to support that the nature and extent of appellant's light-duty assignment changed. The work release notes from Dr. Griffin continue to support limited standing with breaks for elevation of her right foot. Appellant has not submitted copies of limited-duty job offers establishing that her work requirements exceeded these restrictions or that the nature of her work duties changed in any way.

⁴ On appeal to the Board appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

⁵ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ Dr. Griffin does not specialize.

Dr. Griffin submitted a report on June 23, 2003 noting appellant's history of injury and listing his findings of pain with significant and persistent swelling in her right foot since her January 7, 2002 employment injury. He stated that appellant's final diagnosis was post-traumatic lymphedema and that her soft tissue swelling might be permanent. Dr. Griffin stated at that time that appellant's pain had subsided and that she had no ongoing disability from this injury. In his subsequent report dated July 22, 2003, he repeated his diagnosis of post-traumatic lymphedema of the right foot and again noted that appellant should limit her standing and elevate her right foot as he had required since July 2002. These reports do not establish a change in the nature and extent of appellant's accepted employment-related condition. While Dr. Griffin provided a "final" diagnosis of appellant's condition, referring to her swelling and pain in the right foot as post-traumatic lymphedema rather than a strain and contusion, as well as noting that her soft tissue swelling could be permanent, he did not indicate that this diagnosis represented a change in the nature and extent of appellant's injury-related condition. Dr. Griffin had noted the same findings of pain and swelling since appellant's initial employment injury in January 2002. He did not indicate that the additional diagnosis represented a change or worsening of her, employment-related right foot condition. Instead it appears from Dr. Griffin's reports that his initial diagnoses of sprain and contusion were based on the assumption that the underlying symptoms were transitory. Due to the continuation of the same symptoms and the need for the same work restrictions, Dr. Griffin altered these diagnoses to the final diagnosis of post-traumatic lymphedema. This does not appear to represent a change in appellant's employment-related condition but instead only recognition that her symptoms could become chronic.

As Dr. Griffin did not state that appellant's employment-related condition had changed and as his work limitations did not become more restrictive there is no evidence that either appellant's work duties or her injury-related condition changed and appellant has failed to meet her burden of proof in establishing a recurrence of total disability.

CONCLUSION

The Board finds that appellant has failed to establish either a change in the nature and extent of her light-duty job requirements or a change in the nature and extent of her injury-related condition. As she failed to meet her burden of proof, the Office properly denied her claim for a recurrence of disability.

ORDER

IT IS HEREBY ORDERED THAT the November 4, July 29 and June 17, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 20, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member