

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

EDNA M. BOYD, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 04-943
Issued: September 1, 2004**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 26, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated November 19, 2003 denying a recurrence of disability claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the recurrence claim.

ISSUE

The issue is whether appellant sustained a recurrence of disability on or about October 29, 1980 causally related to her May 12, 1970 employment-related injury.

FACTUAL HISTORY

On July 28, 1970 appellant, then a 37-year-old postal carrier, filed a claim alleging that walking her route caused injury to her feet. Appellant advised that she first realized factors of her employment caused or contributed to her condition on May 12, 1970. She stopped work on July 22, 1979 and has not returned. The Office accepted appellant's claim for metatarsalgia and

blisters of both feet with interdigital neuroma and paid her compensation benefits for all appropriate periods of disability.

By decision dated September 7, 1979, the Office terminated appellant's compensation benefits effective October 10, 1979 as the weight of the medical evidence, in the form of an impartial medical examination, established that there was no causal relationship between the disability after May 18, 1979 and the injury of May 12, 1970. Appellant appealed the termination decision, which the Board affirmed.¹

In a January 21, 1993 decision, the Office granted appellant a 19 percent schedule award for her lower extremities. The period of the award ran from October 11, 1979 to October 28, 1980.

On March 26, 2001 appellant filed a claim for a recurrence of disability, alleging that her condition had been continuous since the original injury of May 12, 1970. In a letter dated May 1, 2001, the Office advised appellant that a specific date was needed for the alleged recurrence of disability. The Office further advised appellant of the factual and medical evidence needed to perfect her claim for recurrence.

On July 21, 2001 appellant advised that October 29, 1980 was the effective date of the recurrence of total disability.²

In a March 17, 1981 report, Dr. Benjamin I. Smolenski, a Board-certified orthopedic surgeon, noted that he had prescribed an orthopedic oxford. In a January 17, 1985 medical report, he noted appellant's chronic back symptom complaints.

In a September 27, 1981 report, Dr. Herbert Stein, an internist, noted that an x-ray revealed degenerative changes at the talonavicular and navicular cuneiform joint, dorsally, with some mild spurring, which was consistent with flat feet. Evidence of a displaced fracture at the base of the fifth metatarsal was noted, which Dr. Stein stated appeared to be united to the fifth metatarsal. He noted appellant's complaints of chronic back pain since being out of the corrective shoes. In an August 14, 1984 report, Dr. Stein stated that, based on appellant's work history, which required her to be walking and standing on hard surfaces for long periods of time, he related her symptoms to her work. In a January 27, 1986 medical report, Dr. Stein stated that appellant's symptoms began in her feet while working for the employing establishment which required her to do a lot of walking. He stated that all of appellant's symptoms in her feet were

¹ The last appeal of the termination decision is contained in the Board's decision, *Edna M. Boyd*, Docket No. 98-2147 (issued November 7, 2000). The law and the facts of the prior Board decisions are hereby incorporated by reference.

² Evidence was submitted which included copies of x-rays dated November 13, 1973 and August 30, 1974, a July 11, 1986 physical therapy note outlining appellant's treatment, copies of notes from Pennsylvania Hospital dated September 24, 1981, a note from Frankford Hospital dated September 9, 1983, copies of bills and prescriptions for orthopedic shoes, and copies of documents noting that appellant had passed the GED, a copy of her high school diploma, notification of a doctor's appointment, an earnings and leave statement, an explanation of the arthritic aquatic program, an advertisement for a splint for plantar fasciitis, a copy of her driver's license, notification of acceptance into a full-time practical nursing program and appellant's subsequent rejection because of her feet and low back condition.

dated to her onset of symptoms while at work. He additionally opined that appellant's chronic lumbosacral spine sprain "could be posturally related to her flat feet and foot condition."

In a June 30, 1988 report, Dr. Stanley A. Markunas, a specialist in family medicine, noted that appellant had been treated since 1984 for acute bilateral metatarsalgia secondary to her employment as a mail carrier. Appellant underwent seven surgeries to her feet, including treatment for a Morton's neuroma. He opined that appellant experienced painful ambulation which was caused by low back pain as a result of the altered gait due to her foot condition.

In an April 3, 1989 medical report, Dr. Ronald Goldberg, a Board-certified internist, noted the history of injury and examination findings. He advised that appellant developed pain in her feet and low back while at work, which was diagnosed as a Morton's neuroma of the feet and heel spurs for which she underwent several surgical procedures. Dr. Goldberg advised that the surgical procedures, low back brace, orthopedic shoes and physical therapy did not provide appellant with a complete recovery and that she was unable to perform the same duties as she did prior to the onset of her symptomatology. Based on appellant's work history, which included long periods of standing and delivery of mail up and down steps, Dr. Goldberg opined that she developed the neuroma of her feet which subsequently necessitated multiple surgeries to her feet. He advised that appellant also developed pain and aching in her feet and legs and deformities of her toes, which caused problems in her ankles, lower extremities and lower back. Dr. Goldberg assessed a 34 percent impairment based on impairment to appellant's feet, lower extremities and lower back.

In a December 5, 1997 progress note, Dr. Bruce W. Wulfsberg, a Board-certified orthopedic surgeon, advised that appellant had chronic metatarsalgia and was given shoes for this in the past. Appellant had metatarsal pain, which was increased with pressure on the foot, but did not seem to be a Morton's type of discomfort. In a January 16, 1998 progress note, Dr. Wulfsberg noted that there was no change in her examination. In a February 20, 1998 progress report, Dr. Wulfsberg advised that appellant was being treated for metatarsalgia, slight hammering of her toes and tightness in her heel cords. In an October 16, 2000 report, Dr. Wulfsberg opined that appellant's plantar metatarsal pain was probably secondary to tightness through her heel cords. In a July 10, 2000 report, Dr. Wulfsberg advised that appellant had mallets on the second and third toes. In an August 30, 2001 report, Dr. Wulfsberg advised that appellant continued to have tightness in her heel cords and recommended that night splinting, deep diabetic shoes and a home exercise program be continued.³

By decision dated May 13, 2002, the Office denied appellant's recurrence of disability claim, finding that the evidence did not establish that her disability from October 29, 1980 onward was causally related to the May 12, 1970 injury.

In a letter dated June 5, 2002, appellant's attorney requested an oral hearing, which was held August 5, 2003. In an April 24, 2002 report, Dr. Christopher D. Johnson, a Board-certified

³ Dr. Wulfsberg also submitted reports for conditions unrelated to the current recurrence claim. In a December 7, 2001 report, he diagnosed a subluxable patella and submitted progress reports relating to this condition. In an April 10, 2002 attending physician's report, Dr. Wulfsberg opined that the patella femal syndrome was not related to employment activity.

orthopedic surgeon, noted that appellant had been treated extensively for metatarsalgia and had more than five corrective surgeries involving her feet, including multiple Morton's neurectomies. Physical examination results were provided. He diagnosed chronic metatarsalgia and the possibility of failed surgery and recommended that appellant be fitted with new orthotics and undergo flexibility exercises.

By decision dated November 19, 2003, the Office hearing representative affirmed the May 13, 2002 decision.

LEGAL PRECEDENT

When an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.⁴

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁵ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of causal relationship.⁶ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷

ANALYSIS

Appellant has the burden of proof in establishing a change in the nature and extent of her employment-related condition beginning on the date of the claimed recurrence of total disability, October 29, 1980. In support of her claim for total disability beginning October 29, 1980, appellant submitted a factual statement alleging that her condition had been continuous since the original injury of May 12, 1970 and provided a date of October 29, 1980 as the date of the claimed recurrence. Although the medical evidence appellant submitted noted various conditions concerning her feet, ankles and lower back, none of the medical opinion evidence addressed the claim for total disability relative to the issue of a recurrence claim.

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁶ For the importance of bridging information in establishing a claim of recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988).

⁷ See *Kathy A. Kelley*, 55 ECAB ____ (Docket No. 03-1660, issued January 5, 2004).

Dr. Smolenski provided no opinion on causal relationship. As the onset of her symptoms began while she was at work, Dr. Stein had opined that appellant's chronic foot problem and the symptoms in her feet were related to her employment duties. The Board, however, has held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting medical rationale, to establish causal relationship.⁸ Dr. Stein failed to provide any rationale or bridging information as to how appellant's current conditions could develop from her work-related injury from 1970. Dr. Stein's opinion that appellant's chronic lumbosacral spine strain "could be" posturally related to her flat feet and foot condition, is expressed in equivocal terms and fails to address causal relationship of the claimed recurrence, and medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value.⁹ Dr. Stein's reports are insufficient to establish the claim.

Dr. Wulfsberg diagnosed numerous medical conditions concerning appellant's foot condition; however, he failed to offer an opinion on causal relationship to the claimed recurrence or provide an opinion as to how such conditions developed. Dr. Markunas advised that appellant was suffering from acute bilateral metatarsalgia secondary to her employment, but failed to address the claim for total disability relative to the issue of the recurrence of disability claim. Dr. Goldberg opined that the surgical procedures, low back brace, orthopedic procedures and physical therapy never provided appellant with a complete recovery and that the pain in her feet caused a multitude of other medical problems. He failed to explain how appellant's current conditions caused disability on or about October 29, 1980 due to the accepted injury. He offered an opinion on the percent of permanent impairment appellant had suffered due to her feet, lower extremities and lower back. Although Dr. Johnson had noted the possibility of a failed surgery syndrome, he did not specifically provide an opinion as to whether appellant was totally disabled as of October 29, 1980 and whether such disability was caused or aggravated by the employment injury. Additionally, Dr. Johnson's statement of a "possibility" of a failed surgery syndrome is purely speculative that such a condition exists.¹⁰

CONCLUSION

Appellant failed to submit such rationalized medical evidence which establishes a causal relationship between her condition and her work-related injury and, therefore, failed to meet her burden of proof to establish that she sustained a recurrence of total disability on or about October 29, 1980.

⁸ *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004).

⁹ *Frank Luis Rembisz*, 52 ECAB 147 (2000).

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 19, 2003 is affirmed.

Issued: September 1, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member