

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

MONIQUE C. LARRY, Appellant

and

**U.S. POSTAL SERVICE, KENSINGTON
STATION, Detroit, MI, Employer**

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**Docket No. 04-1086
Issued: September 29, 2004**

Appearances:
Steve Burt, 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 March 17, 2004 appellant, through her representative, filed a timely appeal of the January 26, 2004 nonmerit decision of the Office of Workers' Compensation Programs. In this decision, the Office denied appellant's request for a merit review of its July 3, 2003 decision in which it denied appellant's claim of recurrence of disability on May 12, 2003 causally related to her May 5, 2003 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions in this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained a recurrence of disability on May 12, 2003 causally related to her May 5, 2003 employment injury; and (2) whether the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128.

FACTUAL HISTORY

On May 5, 2003 appellant, then a 30-year-old letter carrier, filed a traumatic injury claim alleging that on that date she sprained her right ankle when a dog walked up on her and scared her. She stated that, when she turned to back away and proceeded to the next address, she fell spraining her ankle. By letter dated May 21, 2003, the Office accepted appellant's claim for right ankle sprain.

Based on medical evidence indicating that appellant could return to work on May 12, 2003 with certain physical restrictions which included, no prolonged standing and/or walking longer than 15 minutes per hour, no squatting and/or kneeling, no climbing stairs or ladders and sitting for 75 percent of the time, the employing establishment offered appellant a modified position, which she accepted on May 7, 2003. The job offer provided her specific job duties and physical requirements which included, no walking upstairs, no driving, no reaching, sitting for four weeks and elevating her right leg at all times.

On May 15, 2003 appellant filed a claim alleging that she sustained a recurrence of disability on May 12, 2003. She stated that her physician took her off work completely because she was not healing. Appellant also stated that management would not accommodate her restrictions. She submitted treatment notes dated May 12, 2003 from a physician's assistant, Ron Ballard, revealing a diagnosis of mild right ankle sprain and her physical restrictions. A May 12, 2003 form report from Dr. Sharon R. Sneed, Board-certified in emergency medicine, provided a history of appellant's May 5, 2003 employment injury and a diagnosis of mild right ankle sprain.

By letter dated May 30, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her recurrence claim. The Office further advised her about the type of factual and medical evidence she needed to submit to establish her claim.

The Office received a June 6, 2003 disability certificate of Dr. Terry Scott Baul, appellant's treating family practitioner, indicating that she had a severely sprained right ankle, that she was totally disabled for work during the period June 10 through July 29, 2003 and her physical restrictions. Radiology reports dated May 27 and June 9, 2003 of Dr. Rojanandham Samudrala, a radiologist, revealed a diagnosis of soft tissue swelling in appellant's right ankle. The Office received copies of the employing establishment's offer of modified work to appellant. Medical treatment notes dated May 5, 2003 from a physician whose signature is illegible provided physical examination findings regarding appellant's right ankle and a diagnosis of right ankle sprain based on x-ray examination.

By decision dated July 3, 2003, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on May 12, 2003 causally related to her May 5, 2003 employment injury. The Office stated that the evidence of record failed to indicate why appellant was unable to work with restrictions beginning May 12, 2003.

Subsequent to the Office's July 3, 2003 decision, appellant submitted a June 3, 2003 narrative statement contending that her May 5, 2003 employment injury was related to her disability on May 12, 2003. She stated that, while performing limited-work duties during the

week of May 7, 2003 and following her physician's restrictions, her ankle injury worsened. Appellant also stated that she complained to her supervisor about the pain she was experiencing. She indicated that her foot was swollen by the time she saw her physician on May 12, 2003. Appellant further indicated that the medication she took caused drowsiness which caused her to fall asleep at work and thus, she could not take her medication until she went home at 4:45 p.m., which was a long time to suffer from pain. She contended that her injury could not heal while performing limited-duty work because her work space did not have the proper chairs or longer seats for elevation. Appellant stated that her supervisor did not offer her ice for the swelling, hot Epsom salt water, rubbing alcohol or comfortable props such as, pillows. She concluded that, since May 7, 2003, she had not sustained a new injury or worked anywhere else.

Appellant also submitted an undated note from Dr. Baul indicating that she sustained a severe right ankle injury while delivering mail. He stated that x-ray studies were negative for a fracture and that, in order to ensure a full recovery from her injury, appellant should not work. He further stated that she needed to elevate her leg and take pain and inflammation pills and that she may need physical therapy. Dr. Baul stated that he strongly encouraged adherence to his recommendations so that appellant could return to work without restrictions.

The Office received discharge instructions of a patient other than appellant. Dr. Baul's May 7, 2003 disability certificate indicated that she had a severe sprained right ankle and that she was totally disabled during the period May 7 through June 4, 2003. His June 30, 2003 disability certificate reiterated that appellant had a right ankle sprain and provided that she was disabled during the period May 12 through June 30, 2003. A May 5, 2003 treatment note from a physician's assistant whose signature is illegible indicated that appellant was seen in the emergency room on that date. An employing establishment supervisor whose signature is illegible completed an employing establishment form report indicating that work sitting down was available to appellant. This same form was signed by a physician's assistant and a physician whose signatures and date of signing are illegible indicating that appellant sustained a sprained ankle. An undated disability certificate of C. Mitchell, a registered nurse, revealed that appellant was unable to work from May 12 through June 30, 2003 and that she could return to work without restrictions on June 30, 2003. Dr. Samudrala's May 5, 2003 report revealed that appellant had soft tissue swelling of the right ankle. Treatment notes dated June 13, 17, 19, 20, 24 and 26, 2003 from a physical therapist whose signature is illegible provided the treatment appellant received for her right ankle.

In a December 30, 2003 letter, appellant, through her representative, requested reconsideration of the Office's July 3, 2003 decision. Her request was accompanied by Dr. Baul's December 10, 2003 medical report. In this report, he stated that he treated appellant for a severely sprained right ankle that she sustained while working for the employing establishment. He reported that appellant developed soft tissue swelling at the right malleolus site and that she was placed on crutches and given analgesic for pain. Dr. Baul recommended that appellant refrain from working so that her injured right ankle could heal quicker. He stated that he put her on bed rest with her legs elevated, which would enable her to heal quicker and return to work without restrictions.

By decision dated January 26, 2004, the Office issued a decision denying appellant's request for a merit review of her claim on the grounds that the evidence submitted was

cumulative in nature. The Office found that Dr. Baul's December 10, 2003 medical report failed to provide any medical rationale in support of his opinion that appellant was totally disabled for work and that it was substantially similar to material on file that had already been considered.

LEGAL PRECEDENT -- ISSUE 1

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 to show that she cannot perform such limited-duty work. 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 limited-duty job requirements.²

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.³

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter.⁴ While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁵

ANALYSIS -- ISSUE 1

In this case, appellant has alleged that she sustained a recurrence of disability commencing May 12, 2003. She submitted Dr. Baul's disability certificates indicating that appellant was totally disabled during intermittent periods between May 7 and July 29, 2003 due to a severely strained ankle, and his undated treatment note also indicating that she was disabled for work due to a severe ankle injury while delivering mail. Although Dr. Baul's disability certificates and treatment notes do not contain rationale sufficient to completely discharge

¹ 20 C.F.R. § 10.5(x) (1999).

² *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *James H. Botts*, 50 ECAB 265 (1999).

⁴ *Horace L. Fuller*, 53 ECAB ____ (Docket No. 02-1181, issued September 6, 2002).

⁵ *James P. Bailey*, 53 ECAB ____ (Docket No. 01-1993, issued April 11, 2002); *William J. Cantrell*, 34 ECAB 1233 (1983).

appellant's burden of proving by the weight of reliable, substantial and probative evidence that she sustained a recurrence of total disability commencing on May 12, 2003 causally related to her May 5, 2003 accepted condition, they constitute substantial evidence in support of her claim and raise an inference of causal relationship between her recurrence of disability and her original traumatic injury, that is sufficient to require further development of the case record by the Office.⁶ Additionally, there is no contrary medical evidence in the record.

On remand the Office should refer appellant together with a statement of accepted facts, a complete case record and specific questions to be answered to an appropriate Board-certified specialist for a rationalized second medical opinion as to whether she sustained a recurrence of disability, and was, therefore, totally disabled beginning May 12, 2003 due to her accepted right ankle sprain. After such development as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision as to whether appellant has established that she sustained a recurrence of disability on May 12, 2003 causally related to her May 5, 2003 employment injury. In view of the Board's disposition of the merits of appellant's claim, the issue of whether the Office properly denied her request for a merit review of her claim is moot.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2004 and July 3, 2003 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this decision.

Issued: September 29, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).