

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

JOHN S. CAIN, JR., Appellant

and

**U.S. POSTAL SERVICE, NIMITZ STATION,
San Antonio, TX, Employer**

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**Docket No. 04-1766
Issued: December 16, 2005**

Appearances:
John S. Cain, Jr., pro se
Miriam D. Ozur, Esq., for the Director

Oral Argument October 20, 2005

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 6, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated April 6, 2004, denying his claims for a recurrence of total disability and a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the April 6, 2004 decision.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of total disability on June 18, 2002 causally related to his February 23, 1999 employment injury; and (2) whether he has any permanent impairment of his right lower extremity causally related to his employment injury.

FACTUAL HISTORY

On November 23, 1999 appellant, then a 60-year-old city letter carrier, filed a traumatic injury claim alleging that on February 23, 1999 he broke a bone in the second toe of his right foot and subsequently experienced swelling of the foot, ankle and lower part of his leg. The

Office accepted his claim for a temporary aggravation of a right foot metatarsal condition, right foot diabetic neuropathy and a fractured foot. He returned to work in a light-duty capacity on October 16, 1999. He stopped work again on June 18, 2002 and retired effective March 5, 2003.

In a September 13, 1999 report, Dr. Richard A. Pollak, an attending podiatrist, indicated that appellant could perform light-duty work with restrictions, including a 15-minute break for each 45 minutes of standing and no lifting over 25 to 30 pounds. In a November 22, 1999 report, Dr. Pollak stated that appellant had a history of diabetes mellitus, diabetic neuropathy, an infected bunion and a dislocation of a joint in his right foot. He experienced swelling and redness over the right foot following his mail delivery activities on February 23, 1999. Appellant underwent surgery on the right second metatarsophalangeal joint of his foot on March 1, 1999. On June 14, 1999 Dr. Pollak diagnosed the development of a Charcot's joint condition in appellant's foot caused by his diabetes and diabetic neuropathy and aggravated by his job duties.¹ On April 27, 2000 Dr. Pollak indicated that on May 15, 2000 appellant could return to work in a light-duty capacity processing mail while sitting at a desk or table. In a January 8, 2001 form report, Dr. Pollak diagnosed Charcot's joint of the right foot and a hallux valgus bunion deformity related to his right foot fracture. He checked the block marked "yes," indicating that the conditions were work related. Work restrictions established by Dr. Pollak included standing limited to two hours a day and walking limited to four hours a day.

In April 2001, appellant accepted a light-duty job with limited standing and walking and 15-minute breaks after each hour of standing.

In a report dated April 10, 2002, Dr. Daniel C. Valdez, a Board-certified orthopedic surgeon, provided a history of appellant's condition and findings on physical examination. He opined that appellant had a 38 percent permanent impairment of the right lower extremity causally related to diabetic neuropathy and right Charcot's foot with midfoot collapse.

In a June 18, 2002 report, Dr. Kathy A. La Civita, an attending Board-certified internist specializing in diabetes, stated that appellant's diabetes had been complicated by neuropathy and Charcot's joint of the right foot. She indicated that, due to his diabetes, appellant could not stand for more than 45 minutes a day and was temporarily totally disabled.

On September 20, 2002 appellant filed a claim for a schedule award.

In an October 31, 2002 report, a district medical adviser stated that, "[i]n cases of temporary aggravation, it is expected that the effects of that aggravation will result in no lasting impairment." He opined that the abnormalities described in the April 10, 2002 report of Dr. Valdez were due to appellant's underlying diabetic condition and not his accepted work-related foot conditions and, therefore, appellant had no permanent impairment of his right lower extremity causally related to his employment.

¹ "Charcot's joint" is a destructive neurogenic arthropathy with impaired pain perception or position sense. Diabetes mellitus is the underlying condition for Charcot's joint of the foot. See *The Merck Manual of Diagnosis and Therapy*, 1355-56 (16th ed. 1992).

By letter dated November 6, 2002, the Office advised appellant that he needed to submit additional evidence in support of his claim for total disability beginning June 18, 2002, including medical evidence establishing that his disability was caused by a worsening in his accepted conditions such that he could not perform his light-duty work or evidence that his light-duty job requirements had changed and no longer complied with his medical restrictions.

In a November 18, 2002 report, Dr. La Civita stated that appellant's diabetes had caused his neuropathy and Charcot's joint of the right foot and he had work limitations because of these conditions, including standing for no more than 45 minutes at a time and limited walking. She indicated that appellant was disabled from his job at the employing establishment due to his progressive diabetes. Dr. La Civita opined that he had no work-related condition.

By letter dated November 22, 2002, appellant alleged that he had been performing work which exceeded his medical restrictions.

In a November 25, 2002 report, Dr. Pollak stated his opinion that appellant was totally disabled.

By decision dated December 10, 2002, the Office denied appellant's recurrence claim on the grounds that the medical evidence did not establish that he sustained a recurrence of total disability on June 18, 2002 causally related to his February 23, 1999 employment injury.

In a report dated October 30, 2003, Dr. Pollak indicated that appellant was disabled for regular work as of June 18, 2002 but could perform light-duty work with 15-minute breaks after each hour of standing, no more than 2 hours of walking a day over firm surfaces and no lifting over 25 pounds. His findings included a right toe fracture and dislocation, a severe hammertoe deformity and osteomyelitis. Dr. Pollak indicated that walking, standing and lifting had aggravated appellant's foot conditions. He stated, "[t]his condition has since turned into Charcot's foot deformity and has aggravated his diabetes requiring him to stop working." In a December 8, 2003 report, Dr. Pollak stated that in April 2000 he approved a strictly sedentary position for appellant but between January and June 2002, the employing establishment assigned him to duties which required standing and walking. He indicated that these activities aggravated appellant's foot conditions.

Appellant requested an oral hearing before an Office hearing representative that was held on December 11, 2003.

By decision dated April 6, 2004, the Office hearing representative affirmed the December 10, 2002 decision.

LEGAL PRECEDENT -- ISSUE 1

Where 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 to show that he 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 job requirements.²

The Board notes that the term “disability,” as used in the Act means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.³ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁴ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁵ Compensation benefits are available only while the effects of a work-related condition continue.⁶ “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.⁷

ANALYSIS -- ISSUE 1

Appellant sustained a work-related temporary aggravation of a right foot metatarsal condition, right foot diabetic neuropathy and a fractured foot on February 23, 1999. In April 2001 appellant accepted a limited-duty job with limited standing and walking and 15-minute breaks after each hour of standing. He subsequently filed a claim for a recurrence of total disability on June 18, 2002. To be entitled to compensation for total disability beginning on June 18, 2002, appellant must provide medical evidence establishing that he became disabled due to a worsening of his accepted work-related conditions or a change in his job duties such that he was unable to perform his light-duty work.

In a June 18, 2002 report, Dr. La Civita stated that, due to appellant’s diabetes, he could not stand for more than 45 minutes a day and was temporarily totally disabled. In a November 18, 2002 report, she stated that appellant’s diabetes had caused his neuropathy and Charcot’s joint of the right foot and he was disabled due to his progressive diabetes. She opined that he had no work-related condition. The Board has held that the opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians.⁸

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

³ *Patricia A. Keller*, 45 ECAB 278 (1993).

⁴ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁵ *Clement Jay After Buffalo*, 45 ECAB 707 (1994).

⁶ 20 C.F.R. § 10.500(a).

⁷ 20 C.F.R. § 10.5(x).

⁸ *Lee R. Newberry*, 34 ECAB 1294 (1983).

Dr. La Civita, a specialist in diabetes, has opined that appellant's disability in June 2002 was due to his underlying diabetes, not to any work-related condition.

Dr. Pollak indicated in his reports that appellant's recurrence of total disability on June 18, 2002 was work related. In a January 8, 2001 form report, he diagnosed Charcot's joint of the right foot and a bunion deformity related to his right foot fracture. He checked the block marked "yes," indicating that the conditions were work related. The Board has held that an opinion on causal relationship which consists of checking "yes" to a form question as to whether the claimant's disability was related to the history given is of little probative value.⁹ Without any explanation or rationale, such a report is insufficient to establish causal relationship.¹⁰ Therefore, Dr. Pollak's report is not sufficient to establish that appellant's Charcot's joint condition and bunion deformity were work related. In a November 25, 2002 report, Dr. Pollak stated his opinion that appellant was totally disabled. However, he did not indicate the cause of his total disability. In a report dated October 30, 2003, Dr. Pollak indicated that appellant was disabled for his regular work as of June 18, 2002 but could perform light-duty work with 15-minute breaks after each hour of standing, no more than 2 hours of walking a day over firm surfaces and no lifting over 25 pounds. As he opined that appellant was capable of performing light-duty work, this report does not establish a work-related recurrence of total disability on June 18, 2002. Dr. Pollak's findings, in his October 30, 2003 report, included a hammertoe deformity and osteomyelitis. However, these conditions have not been accepted by the Office as related to appellant's February 23, 1999 employment injury. Dr. Pollak indicated that walking, standing and lifting at work had caused appellant's Charcot's foot deformity and aggravated his diabetes, requiring him to stop working. However, he did not provide sufficient medical rationale explaining how appellant's job duties caused the Charcot's foot condition or aggravated his underlying diabetes condition such that he could not perform his light-duty job.

In a December 8, 2003 report, Dr. Pollak stated that he had approved a sedentary job in 2000 but, between January and June 2002, the employing establishment assigned appellant to duties which required standing and walking and aggravated his foot conditions. However, this statement that appellant could perform only sedentary work conflicts with Dr. Pollak's October 30, 2003 report in which he indicated that appellant could perform a light-duty position that included some standing and walking. Dr. Pollak did not indicate that he had knowledge of specific changes in appellant's light-duty walking and standing job requirements in 2002 such that he became totally disabled. He failed to provide a rationalized medical opinion explaining how appellant's recurrence of total disability was due to a change in the nature of his injury-related back conditions sustained on February 23, 1999 or a change in the nature and extent of his light-duty job requirements such that he became totally disabled on June 18, 2002. Such medical rationale is critical in light of the fact that appellant's claimed recurrence of total disability on June 18, 2002 occurred more than three years after the original employment injury on February 23, 1999.

⁹ *Calvin E. King*, 51 ECAB 394 (2000).

¹⁰ *Id.*

The Board finds that appellant failed to establish that there was a change in the nature and extent of his accepted employment-related conditions or a change in the nature and extent of his light-duty job requirements such that he was totally disabled. Therefore, he failed to meet his burden of proof and the Office properly denied his claim for a recurrence of total disability.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of the Federal Employees' Compensation Act¹¹ and its implementing regulation¹² sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*¹³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹⁴

ANALYSIS -- ISSUE 2

Appellant sustained a temporary aggravation of a right foot metatarsal condition, right foot diabetic neuropathy and a fractured foot in the performance of duty and subsequently filed a claim for compensation for a schedule award.

On April 10, 2002 Dr. Valdez opined that appellant had a 38 percent permanent impairment of the right lower extremity causally related to his diabetic neuropathy and right Charcot's foot with midfoot collapse. However, the Office accepted only a temporary aggravation of appellant's right lower extremity conditions caused by his underlying diabetes. Dr. Valdez did not explain how the temporary aggravation of appellant's foot condition in February 1999 resulted in the permanent impairment he rated in 2002. Further, the Office has not accepted appellant's Charcot's foot condition as work related. Due to these deficiencies, the report of Dr. Valdez is not sufficient to establish that appellant had a work-related permanent impairment of his right lower extremity.

In an October 31, 2002 report, the district medical adviser stated that, "[i]n cases of temporary aggravation, it is expected that the effects of that aggravation will result in no lasting impairment." He opined that the abnormalities described in the April 10, 2002 report of Dr. Valdez were due to appellant's underlying diabetic condition and not his accepted work-related foot conditions.

¹¹ 5 U.S.C. § 8107.

¹² 20 C.F.R. § 10.404.

¹³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

¹⁴ *See* 20 C.F.R. § 10.404.

The Board finds that the medical evidence is not sufficient to establish that appellant had any permanent impairment of his right lower extremity causally related to his February 23, 1999 employment injury. Therefore, the Office properly denied his schedule award claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of total disability on June 18, 2002 causally related to his February 23, 1999 employment injury. The Board further finds that appellant failed to establish that he had any work-related permanent impairment of his right lower extremity entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 6, 2004 is affirmed.

Issued: December 16, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board