

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

ROBERT L. HERNANDEZ, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Odessa, TX, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-884
Issued: July 11, 2005**

Appearances:
Robert L. Hernandez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 3, 2005 appellant filed a timely appeal of a December 17, 2004 decision of the Office of Workers' Compensation Programs, denying his claim for a recurrence of disability commencing July 22, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a recurrence of disability from July 22 to August 19, 2004 causally related to his accepted foot injury.

FACTUAL HISTORY

On August 8, 2002 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim for continuation of pay/compensation (Form CA-1) alleging that he sustained a right foot stress fracture as a result of a July 29, 2002 employment incident. Appellant reported that he lost his footing on a wet step and twisted his foot. The record indicates that appellant initially returned to a light-duty position. Duty status reports (Form CA-17) from Dr. Francisco Salcido,

an attending family practitioner, provided work restrictions. In a duty status report dated June 3, 2003, Dr. Salcido indicated that appellant could resume regular work.

On September 15, 2004 appellant submitted a notice of recurrence (Form CA-2a) claiming that he was disabled as of July 22, 2004. Appellant indicated on the form that he returned to light duty on August 19, 2004. He submitted an undated narrative report from Dr. Salcido, who indicated that appellant had initially been diagnosed by a podiatrist with a stress fracture of the fourth metacarpal on the right foot. Dr. Salcido reported that on August 22, 2002 appellant was diagnosed with bilateral plantar fasciitis and he had tried to compensate for this ailment, and had sustained a stress fracture. He opined that appellant would continue to experience exacerbations from the plantar fasciitis.

In a letter dated October 5, 2004, the Office noted that appellant had returned to regular duty in March 2003. The Office also noted the definition of a recurrence of disability and requested that appellant submit additional evidence. By separate letter of the same date, the Office advised appellant that his original claim had been accepted for right plantar fascial fibromatosis.

Appellant submitted an October 25, 2004 report from Dr. Salcido, who stated that appellant had plantar fasciitis and neuromas on the plantar surface of both feet. He stated that plantar fasciitis is often found in occupations that require one to be on their feet for prolonged periods and appellant had experienced recurrent exacerbations in the past. Dr. Salcido stated that on July 26, 2004 appellant was unable to be on his feet due to pain and he was treated with anti-inflammatory medication and physical therapy. He concluded that appellant would continue to experience exacerbations.

By decision dated December 17, 2004, the Office determined that the medical evidence was not sufficient to establish a recurrence of disability as of July 22, 2004. The Office noted that if appellant was claiming his condition was related to current work factors he may pursue a claim for a new injury.

LEGAL PRECEDENT

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

A person 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 the

¹ 20 C.F.R. § 10.5(x).

disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

ANALYSIS

In the present case, the record indicated that appellant had returned to regular duty in 2003. The Office stated that appellant returned in March 2003, and the record contains a duty status report dated June 3, 2003 indicating that appellant could perform his regular work. Appellant then filed a notice of recurrence as of July 22, 2004, indicating that he returned to work on August 19, 2004.

It is appellant's burden of proof to submit medical evidence showing a change in the employment injury resulting in disability. Dr. Salcido reported that he treated appellant on July 26, 2004 for pain in his feet. He did not, however, provide a reasoned medical opinion as to a change in the accepted right plantar fascial fibromatosis. Dr. Salcido indicated that appellant would have recurrent exacerbations, but he referred to occupational duties of prolonged standing. As noted by the Office, if appellant is alleging that his foot condition on and after July 26, 2004 was aggravated by his federal employment, this would be a claim for a new injury since new employment factors have been implicated.³ The issue in the present case is the claim for a recurrence of disability and the medical evidence is not sufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant did not submit sufficient medical evidence to establish a recurrence of disability commencing July 22, 2004.

² *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 17, 2004 is affirmed.

Issued: July 11, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member