

June 26, 2000. On June 30, 2000 the Office accepted appellant's claim for left ankle sprain/strain.

On July 3, 2003 appellant filed a claim alleging a recurrence of her May 5, 2000 employment injury on June 17, 2003. On July 12, 2003 appellant filed a claim for wage loss commencing June 24, 2003.

Appellant indicated that she was limited in her walking and standing in her employment which led to a demotion and lay off. In support thereof, appellant submitted a July 3, 2003 medical report by Dr. Angelo Petrolla, a podiatrist, who diagnosed: "ankle sprain, old with ligamentous injury as well as degenerative arthritic disease of the joint itself." In discussing appellant's history, Dr. Petrolla noted that appellant had injured her left ankle in 2000. He noted that x-rays showed some degenerative arthritic changes and that examination and palpitation in the ankle joint shows pain around the anterior talor fibular and lateral calcaneal fibular ligaments which have not healed properly. The employing establishment controverted the recurrence claim. By letter dated August 20, 2003, the Office requested that appellant submit further information.

In a statement dated September 10, 2003, appellant noted that on June 10, 2000 she was employed as a part-time office clerk by the employing establishment due to a demotion. She indicated that at the time of her injury she was employed as a field operation supervisor. Appellant was terminated effective June 11, 2000. She noted that she has had no employment since June 23, 2003.

By decision dated October 1, 2003, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant's current condition was due to the accepted work injury of May 5, 2000.

A magnetic resonance imaging of appellant's left ankle was interpreted on October 9, 2003 as showing evidence of tenosynovitis of the flexor hallucis longus, but no evidence of tendon tear.

By letter dated October 8, 2003, appellant requested an oral hearing.

In a note dated October 28, 2003, Dr. Petrolla indicated that appellant needed an ankle brace as her pain had increased with activity and weight bearing. He listed the date of injury as May 5, 2000.

At the hearing on June 24, 2004, appellant testified that she injured her ankle on May 5, 2000, that she did not have any other accident involving her left ankle but it just deteriorated over time and by June 2003 she was having frequent episodes of the ankle "giving way." Appellant testified that she continued to work after leaving her temporary job with the employing establishment and that she worked "sit down" jobs at Pharmor and Manpower. Appellant testified that she worked at Dillard's, a department store, which was predominantly a walking job, from August 2002 until June 2004 at which time she was terminated. She testified that she left because she was having more difficulty with her ankle and that she has not worked since June 2003. Appellant noted that before she started to work at Dillard's her ankle would occasionally swell but not to the degree that it did in 2003. Appellant noted that she saw her

family physician between 2000 and 2003 and that she referred her to Dr. Petrolla when her ankle began to swell.

In a medical report dated July 27, 2004, Dr. Petrolla opined:

“I can give you my opinion as to a causal relationship for [appellant’s] injury and the pain she is having right now. Ankle sprains cause more damage than just sprain of the ligament. There is often time damage to the cartilage inside the joint, osteochondral injury. I believe that is the case with [appellant]. Even though I have not examined her afterwards I have literally examined thousands of sprains and I have followed them for a number of years. Almost all severe ankle sprains go on to have some type of [d]egenerative [a]rthritis that is cartilage destruction, loss of articular surface, chronic synovitis and [c]asperities/tend[i]nitis in and around the joint. I believe that is the case here. I can say with reasonable certainty that the type of ankle sprain she had would cause the following: [d]egenerative [a]rthritis that is cartilage destruction, loss of articular surface as well as reactive synovitis in the joint.

“Now there is only one way that can actually be ascertained and that would be through an ankle scope, which would be fine to make a diagnosis and even for treatment, if necessary. However, I am reasonably certain that all of these things do exist in the joint and they are secondary to an ankle sprain. There is no way, since I did not see the patient for the initial injury, there is no way for me to prove that other than through something like an ankle scope. However, with the amount of experience that I have, with the amount of ankles that I have looked at and treated, that is likely what is going on inside this joint.”

By decision dated September 7, 2004, the hearing representative affirmed the Office’s October 1, 2003 decision denying appellant’s claim for a recurrence.

LEGAL PRECEDENT

Recurrence of disability is defined in the Office’s regulations as 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

An individual 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 compensation is claimed is causally related to the accepted injury.² This burden includes the necessity of furnishing medical evidence from a physician, who on the basis of a complete and accurate factual and medical history, concludes

¹ 20 C.F.R. § 10.5(x); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1)(a) (May 1997).

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁵

ANALYSIS

In the instant case, appellant's claim was accepted for a May 5, 2000 left ankle sprain/strain. Appellant's physician released her to work with no restrictions as of June 26, 2000. There is no evidence in the record that appellant saw a physician with regard to her ankle after that time until she saw Dr. Petrolla in July 2003, three years later. In the interim, appellant began work at Dillard's, a department store, in August 2002 and continued in this position until June 2003, a position that required her to do a lot of walking. She noted that in June 2003 she started having frequent ankle pain. Therefore, it appears that any injury to appellant's ankle was due to new exposure to factors causing or aggravating her condition, specifically, her employment with the department store. Although Dr. Petrolla indicated in his July 27, 2004 report that appellant's employment-related ankle sprain caused her current condition, he did not explain why appellant did not seek medical treatment for over three years or explain why appellant's current condition was caused by her ankle sprain/strain from three years ago as opposed to her constant walking in her more recent employment with Dillard's. Although Dr. Petrolla noted that ankle sprains can cause more damage than a sprain of the ligament and opined that "I believe that is the case with [appellant]," he only provided generalizations and nothing specific to appellant's circumstances. Moreover, the doctor indicated that, although he was "reasonably certain" his opinion was correct, he could only ascertain appellant's condition "through an ankle scope" since he had not treated appellant in several years. The Board finds that Dr. Petrolla's opinion was speculative at best and accordingly is not sufficient to establish that appellant sustained a recurrence of her accepted employment injury.⁶

CONCLUSION

Appellant has not established that she sustained a recurrence of disability as of June 17, 2003 causally related to her May 5, 2000 employment-related left ankle sprain/strain

³ *Mary S. Brock*, 40 ECAB 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

⁶ *See Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 7, 2004 is affirmed.

Issued: May 18, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member