United States Department of Labor
Employees' Compensation Appeals Board

JENNIFER D. ACTKINSON, Appellant	)	
and	)	**Docket No. 05-1493**
	)	**Issued: November 25, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Sonoma, CA, Employer	)	

Appearances:
Jennifer D. Actkinson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 29, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated April 15, 2005, finding that she had not established a recurrence of disability causally related to her December 13, 2001 employment injury. 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 met her burden of proof to establish that she sustained a recurrence of total disability on January 4, 2003 causally related to her December 13, 2001 work-related injury.

FACTUAL HISTORY

On December 13, 2001 appellant, a 39-year-old letter carrier, sprained her left ankle stepping out of a mail truck onto uneven pavement while in the performance of duty. Her claim was accepted for a left ankle sprain with subsequent surgery involving lateral ankle ligament repair. Appellant returned to full-time modified duty on August 20, 2002.

In a report dated October 9, 2002, Dr. Noah D. Weiss, a Board-certified orthopedic surgeon, diagnosed a new left foot drop, noting that appellant alleged that her foot dragged when she walked and reported pain in her ankle and up her left leg to the buttock. In an October 23, 2002 report, Dr. Weiss indicated that an October 18, 2002 nerve conduction study was completely normal from the peroneal nerve distally. In a December 18, 2002 report, Dr. Weiss provided a diagnosis of new left foot drop and stated that, in all probability, appellant's condition was not a work-related injury. He stated that appellant's ankle was "extremely stable" and opined that no further treatment was needed for appellant's chronic lateral ankle ligament instability.

In a January 9, 2003 letter to appellant, the Office referenced a telephone call in which she advised the Office that she could not return to work because her physician found her to be disabled due to her accepted work condition. The Office instructed appellant to provide additional information, including evidence that her job duties had become more demanding such that they no longer met the restrictions of the doctor, or a physician's narrative establishing that her condition had worsened such that she could no longer perform her duties.

In a January 5, 2003 report, Dr. Susan Lambert, Board-certified in occupational medicine, provided a diagnosis of left ankle pain and stated that appellant was unable to work until January 13, 2003. She found objective evidence of swelling diffusely to the left foot/ankle; limited range of motion due to pain; no warmth to the joint; and tender palpation to the lateral malleolus.

On January 17, 2003 appellant filed a claim for a recurrence of disability. Appellant alleged that her left foot and ankle continued to swell and she experienced pain. She stated that having worked on January 3, 2003, she awoke on the morning of January 4, 2003, and her leg and ankle were swollen and painful.

Appellant's supervisor reported on January 17, 2003 that the employing establishment had complied with the recommended physical restrictions and that appellant had been willing to work in spite of continued pain since the original injury.

By letter dated April 10, 2003, the Office advised appellant that the information submitted was insufficient to establish her claim for a recurrence of disability. It requested additional information, including her reasoning as to why she believed her current condition was related to her original injury and a physician's report with a diagnosis and an opinion as to the relationship between her condition and the December 13, 2001 injury.

An April 10, 2003 podiatrist's report bearing an illegible signature provided a diagnosis of left peroneal tendinitis with a possible split tear/subluxation and an opinion that appellant would probably need surgery. In another report of the same date, the podiatrist provided a diagnosis of peroneal nerve palsy. The report indicated objective evidence of weakness in the left leg, most likely due to more proximal etiology; pain and edema along the course of peroneals with subluxation noted with inversion; and edema of the left lateral ankle. A return to work with restrictions (no weight bearing on left leg and ankle) was recommended from February 1 to March 1, 2003.

A January 16, 2004 report signed by Dr. Joel M. Lewis reflected that appellant injured her arm and left ankle on January 6, 2004 when her mail truck went into a ditch.

By decision dated March 22, 2004, the Office denied appellant's claim for recurrence of disability, finding that the medical evidence of record did not establish that she was totally disabled or that her alleged disability was causally related to the accepted December 13, 2001 injury.

The Office referred appellant, together with a statement of accepted facts and the entire record, to Dr. John Randall Chu, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated April 15, 2004, Dr. Chu provided an accurate history of appellant's condition and related in detail the results of his physical examination. Dr. Chu indicated that appellant ambulated without a limp; could toe and heel stand without effort, having more difficulty on the left side; showed no significant swelling or erythema on the left side compared to the right side; was able to hold 15 degrees to the left in dorsiflexion with active assistance, but had difficulty past neutral without assistance; and had slight give on the anterior-posterior drawer testing on the left. He found that appellant had a full range of motion in her feet. Neurologically, he noted that appellant had normal muscle strength in all major muscle groups tested with no signs of decreased muscle strength or atrophy, with the exception of the left ankle dorsiflexion and plantar flexion, which was slightly weaker than the right side. He provided a diagnosis of "history of left ankle sprain; status post brostrom ligament reconstruction; and pain and instability of the ankle." Dr. Chu opined that appellant's foot drop was not directly related to her December 13, 2001 injury or her May, 2002 surgery. He noted that she experienced subjective ankle pain and mild instability, which were related to her work-related injury. Dr. Chu stated that no specific treatment was required for her symptoms and that she could work eight-hour days, provided that walking and standing were limited to six hours per day.

Appellant requested an oral hearing, which occurred on February 3, 2005. She testified that she returned to limited duty in 2003 but reinjured her foot and developed back pain shortly thereafter. Appellant stated that she filed a new claim, which was denied. She argued that her foot drop was related to the December 13, 2001 injury, contending that she had no foot or ankle problems prior to the injury.

By decision dated April 15, 2005, the Office hearing representative affirmed the March 22, 2004 decision, finding that the medical evidence failed to establish a recurrence of disability causally related to the employment injury.

LEGAL PRECEDENT

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.[1] The Board notes that a recurrence of disability is defined as the 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.[2]

The issue of whether an employee has a disability from performing a modified position is primarily a medical question and must be resolved by probative medical evidence. The medical evidence required is rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship between the employee's current condition and the accepted injury. In order to establish that her claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between her present condition and the accepted injury must support the physician's conclusion of a causal relationship.[3]

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relation.[4]

In assessing the medical evidence of record, the Board considers the physician's relative area of expertise, the opportunity for and thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the level of analysis manifested in reaching his or her stated conclusions, and the medical rationale expressed in support of the physician's opinion.[5] The Board has held that a medical opinion not fortified by rationale is of diminished probative value.[6]

ANALYSIS

Appellant has not met her burden of proving that she sustained a recurrence of disability beginning January 4, 2003. Although she does not contend that the requirements of her limited-duty position changed, appellant has alleged a change in the nature and extent of her injury-related condition. However, she has failed to produce any rationalized medical opinion evidence explaining how her present condition is causally related to the December 13, 2001 employment injury.

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[1] *Joseph D. Duncan*, 54 ECAB ___ (Docket No. 02-1115, issued March 4, 2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[2] *See* 20 C.F.R. § 10.5(x).

[3] *Mary A. Ceglia***,** 55 ECAB ___ (Docket No. 04-113, issued July 22, 2004).

[4] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[5] *See Maurissa Mack*, 50 ECAB 498 (1999).

[6] *See Annie L. Billingsley*, 50 ECAB 210 (1998).

The Office accepted appellant's claim for a left ankle sprain and subsequent surgery. Appellant returned to a light-duty position on August 20, 2002 and filed a claim for a recurrence of disability on January 17, 2003, alleging that she was unable to work. The Office advised appellant of the evidence needed to establish her claim. However, appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she sustained total disability as of January 4, 2003 due to residuals of her December 13, 2001 injury. On December 18, 2002 Dr. Weiss provided a diagnosis of new left foot drop, but stated that in all probability, appellant's condition was not a work-related injury. He stated that appellant's ankle was "extremely stable" and opined that no further treatment was needed for appellant's chronic lateral ankle ligament instability. In a January 5, 2003 report, Dr. Lambert provided a diagnosis of left ankle pain and stated that appellant was unable to work until January 13, 2003. She found objective evidence of swelling diffusely to the left foot/ankle; limited range of motion due to pain; no warmth to the joint; and tender palpation to the lateral malleolus. However, Dr. Lambert expressed no opinion as to the cause of appellant's condition and her report is of limited probative value. Two reports from appellant's podiatrist provided diagnoses of left peroneal tendinitis with a possible split tear/subluxation and peroneal nerve palsy. These reports lack probative value in that the doctor's signature is illegible, such that the identity of the treating physician cannot be determined.[7] Moreover, neither report provides an opinion regarding the relationship between appellant's current diagnosed conditions and her 2001 work-related injury, or addresses the relevant issue of total disability for work. In a January 16, 2004 report, Dr. Lewis reflected that appellant injured her arm and left ankle on January 6, 2004 when her mail truck went into a ditch. Dr. Lewis' report is irrelevant to the issue of appellant's 2003 recurrence of disability claim and is, therefore, of no probative value.[8]

In an April 15, 2004 second opinion report, Dr. Chu opined that appellant's foot drop was not directly related to her December 13, 2001 injury or her May, 2002 surgery, and that she experienced subjective ankle pain and mild instability, which were related to her work-related injury. However, he concluded that no specific treatment was required for her symptoms and that she could work eight-hour days, provided that walking and standing were limited to six hours per day. Dr. Chu indicated that appellant ambulated without a limp; could toe and heel stand without effort, having more difficulty on the left side; showed no significant swelling or erythema on the left side compared to the right side; was able to hold 15 degrees to the left in dorsiflexion with active assistance, but had difficulty past neutral without assistance; and had slight give on the anterior-posterior drawer testing on the left. He found that appellant had full range of motion in her feet. Neurologically, he noted that appellant had normal muscle strength in all major muscle groups tested with no signs of decreased muscle strength or atrophy, with the exception of the left ankle dorsiflexion and plantar flexion, which was slightly weaker than the right side.

[7] 5 U.S.C. § 8101(2). The term physician is defined under section 8101(2), as follows: "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

[8] The Board notes that the alleged January 6, 2004 injury may be the subject of a separate traumatic injury claim.

At the oral hearing, appellant asserted that her foot drop was related to the original injury, contending that she had no foot or ankle problems prior to the injury. However, appellant's belief alone that her current condition was causally related to her accepted 2001 injury is insufficient to warrant an award of compensation. Appellant has failed to establish by the weight of the reliable, probative and substantial evidence a change in the nature and extent of the injury-related condition resulting in her inability to perform the duties of her modified employment. The second opinion examiner found that appellant was capable of working eight-hour days with restrictions and that her foot drop condition was not employment related. Appellant has provided absolutely no rationalized opinion evidence establishing either that she was disabled as of January 4, 2003 or that her current condition is related to her original employment-related injury. As she has not submitted any medical evidence showing that she sustained a recurrence of disability due to her accepted employment injury, the Board finds that she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish a recurrence of total disability on January 4, 2003 causally related to her December 13, 2001 injury.

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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