United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 06-1081**
	)	**Issued: September 27, 2006**
DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, San Antonio, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 10, 2006 appellant filed an appeal of a decision of the Office of Workers' Compensation Programs dated January 31, 2006 denying his claim for a recurrence of disability on November 15, 2003. 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 sustained a recurrence of disability on or after November 15, 2003 causally related to his accepted June 7, 2000 employment injury.

FACTUAL HISTORY

On June 9, 2000 appellant, a 43-year-old enumerator, filed a timely claim alleging that he sustained injuries to his right foot when he stepped in a mud hole in the performance of duty. On October 4, 2000 his claim was accepted for rupture of a tendon of the right foot and appellant was placed on the periodic rolls. His claim was later expanded to include aggravation of right

foot first naviculocuneiform arthrosis. Appellant underwent surgery on October 3, 2001 and October 10, 2002.

On October 30, 2003 appellant was released to work full duty with no restrictions by his treating physician, Dr. Darryl Cuda, a Board-certified orthopedic surgeon. However, he never returned to work at the employing establishment after the accepted injury.

On December 15, 2003 the Office terminated appellant's compensation benefits effective December 28, 2003, finding that he had no continuing disability from work as a result of the June 7, 2000 injury.

In an undated letter received by the Office on December 16, 2003, appellant claimed that his medication was "not working" and that he continued to experience pain in his left foot.

In a February 5, 2004 report, Dr. Cuda indicated that appellant was "actually doing O.K." He noted that he had no swelling; some tenderness "over the area"; and no antalgic to his gait. Dr. Cuda provided a diagnosis of bilateral foot pain.

A May 6, 2004 Texas Workers' Compensation Work Status Report bearing an illegible signature reflected a work injury diagnosis of "midfoot arthritis." The report further reflected that appellant was allowed to return to work with no restrictions.

Appellant submitted an unsigned report dated January 20, 2004 from Dr. Michael A. Oberlander, a Board-certified orthopedic surgeon, who provided an assessment of patellar tendinitis. His physical examination revealed "tenderness over inferior pole over patella."

On February 21, 2004 appellant requested a schedule award.

Appellant submitted an April 15, 2004 report from Dr. Richard Perez, a podiatrist, who opined that he was capable of working with restrictions provided by Dr. Cuda. Dr. Perez noted appellant's subjective complaints of nonunion to the right foot. On examination, he observed that he had a slightly antalgic gait favoring his affected right extremity. Dr. Perez stated that appellant had normal texture and turgor to his skin and no crepitus with range of motion of the medial column. He noted that pedal pulses were +2/4 bilaterally and symmetrically and that epicritics sensorium was intact. Dr. Perez stated that, although x-rays showed evidence of nonunion at the previously attempted fusion site, there were no signs of the screw loosening or breakage, which would indicate that the nonunion was fairly stable. Dr. Perez provided a diagnosis of "residual nonunion."

In a May 11, 2004 report, Dr. Perez indicated that he had denied appellant's request to be taken off work and put on "no duty," noting that it had been four years since his work-related injury and that no significant clinical change was found. Dr. Perez opined that appellant could work in a "sit down" job without significant impediment.

The Office referred appellant to Dr. Patrick W. Mulroy, a Board-certified physiatrist, for a second opinion evaluation and an impairment rating for schedule award purposes. In a June 23, 2004 report, Dr. Mulroy opined that appellant had a 14 percent impairment of his right foot. On examination of the right foot, he found mild tenderness over the first

metatarsophalangeal joint; mild tenderness involving the medial foot; and no significant edema. Dr. Mulroy also found right plantar flexion of 25 degrees; ankle extension of 15 degrees; hindfoot inversion of 25 degrees; and hindfoot exversion of 15 degrees. He determined that appellant had 5/5 hip flexion, knee extension, dorsiflexion, plantar flexion and extensor hallucis longus. Dr. Mulroy noted no atrophy at the bilateral quadriceps, tibialis anterior or the extensor digitorum brevis muscles. He also noted negative straight leg raises bilaterally. Dr. Mulroy provided a diagnosis of "traumatic arthritis of the navicular cuneiform joint status post arthrodesis October 3, 2001." He opined that the date of maximum medical improvement was February 1, 2002, four months following his surgical procedure.

In May 13, 2004 report, Dr. Perez opined that appellant should continue at "unrestricted duty."

On September 3, 2004 the Office granted appellant a schedule award for a 14 percent impairment of his right foot. The period of his award was from December 28, 2003 through July 15, 2004. The Office found that the date of maximum medical improvement was February 1, 2002.

In a June 16, 2005 letter to the Office, appellant requested permission to change his primary physician and asked for a continuation of his workers' compensation benefits, alleging that he still experienced pain in his foot and that he was unable to perform the kind of work he performed when injured in 2000.

Appellant submitted a November 8, 2005 report from Dr. Richard Keh, a podiatrist, who provided a thorough history of his right foot injury and treatment. Dr. Keh's physical examination of him revealed that his neurological status was grossly intact. He noted hyperesthesia along appellant's right foot. He found that motion of the first ray and the navicular cuneiform joint was especially painful with dorsiflexion and plantar flexion. X-rays showed degenerative changes and a nonunion of the area. Dr. Keh concluded that appellant had a nonunion first navicular cuneiform joint which caused pain, as well as neuralgias in the area.

On December 19, 2005 appellant filed a Form CA-2a, alleging a recurrence of disability on November 15, 2003. He stated, "It's been hurting since November 15, 2003. It hurts the most on cold days, but every day I have a hard time to walk." Appellant indicated that he never returned to work after the original work-related injury. On December 15, 2005 he also filed a CA-7 claim for compensation beginning July 16, 2004 onward.

On December 30, 2005 the Office informed appellant that the information submitted was insufficient to establish that his claimed recurrence was related to his accepted June 7, 2000 injury. The Office advised appellant to submit additional information within 30 days, including a narrative report from his physician which contained a diagnosis and reasoned opinion as to whether appellant was disabled from working and, if so, how his disability was causally related to the accepted injury. In response, appellant submitted an undated statement indicating his belief that his disability was related to his original work injury because appellant's bones had not healed properly. He also stated that he had never returned to work after the June 7, 2000 injury. Appellant also submitted a copy of Dr. Keh's November 8, 2005 report and a November 8, 2005 Alamo Foot Center registration form.

By decision letter dated January 31, 2006, the Office denied appellant's claim on the grounds that the evidence submitted did not establish that his claimed recurrence of disability was due to the accepted work injury. The Office found that the record did not contain a reasoned medical opinion establishing that he was disabled as of November 15, 2003 or explaining how his alleged disability was related to the accepted June 7, 2000 injury.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[2] In this case, appellant has the burden of establishing that he sustained a recurrence of a disability[3] on November 15, 2003 causally related to his June 7, 2000 employment injury.

An employee 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 he 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 disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.[4]

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.[5] Where no such rationale is present, the medical evidence is of diminished probative value.[6] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[7]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Joan R. Donovan*, 54 ECAB 615 (2003).

[3] 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." 20 C.F.R. § 10.5(x) (2003).

[4] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[5] *See Joan R. Donovan, supra* note 2; *see also John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

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

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

In order to establish that his claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his present condition and the accepted injury must support the physician's conclusion of a causal relationship.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on November 15, 2003 causally related to his June 7, 2000 employment injury. He has neither alleged a spontaneous change in his medical condition resulting from his accepted injury, nor established that he was disabled as a result of the injury or otherwise.

The medical evidence of record does not provide sufficient facts or rationalized medical opinion to support his claim. The Office accepted that appellant sustained injuries to his right foot when he stepped in a mud hole in the performance of duty on June 7, 2000. His claim was accepted for rupture of a tendon of the right foot and was later expanded to include aggravation of right foot first naviculocuneiform arthrosis. On October 30, 2003 Dr. Cuda released appellant to work full duty with no restrictions, although he never returned to work at the employing establishment after the accepted injury. Finding that he had no continuing disability from work as a result of the June 7, 2000 injury, the Office terminated appellant's compensation benefits effective December 28, 2003. The Board finds that none of the medical evidence of record supports appellant's contention that he was disabled on or after November 15, 2003.

On October 30, 2003 Dr. Cuda opined that appellant was capable of working full-duty with no restrictions. In his February 5, 2004 report, Dr. Cuda indicated that appellant was "actually doing O.K." and noted that he had no swelling; some tenderness "over the area"; and no antalgic to his gait. Dr. Cuda's reports do not provide any opinion that appellant was disabled as of November 15, 2003 or at any time thereafter. Therefore, they lack probative value.

Dr. Oberlander's unsigned January 20, 2004 report reflected an assessment of patellar tendinitis and subjective complaints of "tenderness over inferior pole over patella." In that his report is unsigned and, therefore, cannot be verified, it cannot be considered as probative medical evidence.[9] Moreover, it does not contain an opinion regarding appellant's ability to work on the dates in question and is, therefore, not relevant to the case at hand.

Reports from Dr. Perez do not support appellant's claim for recurrence of disability. In his April 15, 2004 report, he opined that appellant was capable of working with restrictions provided by Dr. Cuda. Dr. Perez stated that, although x-rays showed evidence of nonunion at the previously attempted fusion site, there were no signs of the screw loosening or breakage, which would indicate that the nonunion was fairly stable. In a May 11, 2004 report, Dr. Perez indicated that he had denied appellant's request to be taken off work, noting that it had been four years since his work-related injury and that no significant clinical change was found. He opined that appellant could work in a "sit down" job without significant impediment. In a May 13, 2004

[8] *Mary A. Ceglia*, *supra* note 6.

[9] *Mertin J. Sills*, 39 ECAB 572 (1988).

report, Dr. Perez opined that he should continue at "unrestricted duty." Although he indicated that appellant's condition was related to his accepted work injury, he did not opine that he was disabled. On the contrary, in each report, Dr. Perez opined that appellant could work and he specifically refused to grant his request for a work excuse.

Dr. Mulroy's June 23, 2004 report was performed for the purpose of rendering an opinion as to the degree of permanent impairment of appellant's right foot. He provided a diagnosis of "traumatic arthritis of the navicular cuneiform joint status post arthrodesis October 3, 2001" and opined that the date of maximum medical improvement was February 1, 2002, four months following appellant's surgical procedure. On examination of the right foot, Dr. Mulroy found mild tenderness over the first metatarsophalangeal joint, mild tenderness involving the medial foot and no significant edema. He also found right plantar flexion of 25 degrees, ankle extension of 15 degrees, hindfoot inversion of 25 degrees and hindfoot exversion of 15 degrees. Dr. Mulroy determined that appellant had 5/5 hip flexion, knee extension, dorsiflexion, plantar flexion and extensor hallucis longus. He noted no atrophy at the bilateral quadriceps, tibialis anterior or the extensor digitorum brevis muscles. Dr. Mulroy also noted negative straight leg raises bilaterally. However, he did not offer an opinion as to whether appellant was disabled on or after November 15, 2003. Therefore, his report lacks probative value.

In his November 8, 2005 report, Dr. Keh provided a thorough history of appellant's right foot injury and treatment. His physical examination of him revealed that his neurological status was grossly intact. Dr. Keh noted hyperesthesia along appellant's right foot and found that motion of the first ray and the navicular cuneiform joint was especially painful with dorsiflexion and plantar flexion. He noted that x-rays showed degenerative changes and a nonunion of the area. Dr. Keh concluded that appellant had a nonunion first navicular cuneiform joint which caused pain, as well as neuralgias in the area. Although his report was thorough, it failed to address appellant's disability on or after November 15, 2003. Therefore, it, too, lacks probative value.

Appellant asserted his belief that he was disabled as of November 15, 2003 and that his disability was related to the June 7, 2000 injury, because the bones in his foot never healed properly. However, an award of compensation cannot be predicated upon his belief of causal relationship.[10] It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence. The record does not contain a medical report providing a reasoned medical opinion that appellant was disabled on or after November 15, 2003 or that his alleged disability was causally related to the June 7, 2000 employment injury. The Board accordingly finds that he did not meet his burden of proof and the Office properly denied the claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability on or after November 15, 2003 related to his accepted June 7, 2000 employment injury.

[10] *See Dennis M. Mascarenas*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 31, 2006 is affirmed.

Issued: September 27, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board