United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 07-805**
	)	**Issued: August 22, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Downers Grover, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 1, 2007 appellant filed a timely appeal from a January 3, 2007 merit decision of the Office of Workers' Compensation Programs denying her recurrence of disability claim. 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 established that she sustained a recurrence of disability for the period February 7 through April 22, 2005.

FACTUAL HISTORY

On August 26, 1996 appellant, then a 31-year-old letter carrier, filed an occupational disease claim alleging that on August 1, 1996 she first realized her posterior tibial tendinitis was employment related.[1] The Office accepted the claim for temporary aggravation of left ankle

[1] This was assigned file number 10-0458817 with March 1, 1996, the date appellant first became aware of the condition, as the date of injury.

bursitis and left extensor hallucis longus tendinitis. On March 31, 1998 appellant, filed a traumatic injury claim alleging that on March 30, 1998 she injured her right ankle while climbing into a mail truck.[2] The Office accepted the claim for right ankle strain and subsequently accepted a consequential lumbar strain injury, which resolved on November 23, 2004.[3] The Office paid wage-loss compensation for intermittent periods of disability due to her injuries and authorized left posterior tibial tendon reconstruction surgery, which was performed on October 26, 2001 and right posterior tibial tendon reconstruction surgery, which was performed on December 6, 2002. The Office accepted her claims for wage-loss compensation for intermittent periods of disability and a January 29, 2004 recurrence claim following her limited-duty job acceptance.[4]

Following her January 29, 2004 claim for a recurrence of disability, appellant accepted a sedentary limited-duty job offer and returned to work on August 26, 2004. The position required clerical duties performed sitting down. Physical restrictions included sitting eight hours and no walking, standing, bending, climbing, driving, twisting and lifting, pulling or pushing weight.

On February 16, 2005 Dr. George B. Holmes, Jr., a treating Board-certified orthopedic surgeon, diagnosed status post posterior tibial tendon reconstruction with calcaneal osteotomy. He related that a recent episode of increasing pain in her foot necessitated that she be off work since February 8, 2005. A neuromuscular physical examination was essentially unchanged and her ankle remained stable. Dr. Holmes noted that appellant complained of pain "over the midfoot area and in the anterior aspect of the ankle." An x-ray interpretation revealed some subtle changes in the Lisfranc joints and no gross arthritic changes were noted. Dr. Holmes stated that appellant would "probably remain off work until her return follow-up visit."

On February 26, 2005 appellant filed a recurrence claim for disability beginning February 7, 2005 due to her accepted March 30, 1998 employment injury.[5] The employing establishment noted that appellant is in a permanent sedentary position and the floors are either rubber or tile.

In a March 4, 2005 letter, appellant noted that she was off work due to walking on concrete floors at work. The scooter she had used since her return to light-duty work in September 2004 had been confiscated due to the office's failure to pay the seller. According to appellant, the scooter allowed her to go to the restroom, lunchroom and time clock so that she did not have to walk on the concrete floors. She stated that since the scooter had been

[2] This was assigned file number 10-0475996. The Office combined file number 10-0475996 with file number 10-0459918, with the latter as the master file number.

[3] On March 4, 2004 the Office authorized the purchase of the scooter, which was to be delivered and stored at the employing establishment. A scooter appellant had been using at the employing establishment was repossessed by the medical equipment supplier on February 20, 2004.

[4] By decision dated July 6, 2006, the Office issued appellant a schedule award for a seven percent permanent impairment of the left lower extremity.

[5] On March 29, 2005 appellant filed a claim for compensation (Form CA-7) for the period March 3 to April 3, 2005.

confiscated she has "been walking on the concrete floors," which aggravated her right ankle and foot condition.

On March 18, 2005 Dr. Holmes noted that appellant related that she had been unable to work due to episodes of pain. He stated that he was unable to find an underlying cause of these episodes in terms of x-ray findings or diagnostic studies. Dr. Holmes related that appellant's "condition appears to have worsened subjectively" and he was unable to find supporting objective evidence for her complaints.

In a March 20, 2005 attending physician's report (Form CA-20), Dr. Holmes indicated that appellant was totally disabled for the period February 8, 2005 to the present due to her March 30, 1998 employment injury.

By decision dated April 20, 2005, the Office denied appellant's claim for a recurrence of disability.[6] It found that appellant had not established a material worsening of her condition such that she would be unable to perform the duties of her limited-duty job. It also found that her job duties did not require her walking on concrete floors as she alleged.

In a letter dated May 11, 2005, appellant requested review of the written record by an Office hearing representative and submitted medical evidence in support of her claim. On May 28, 2005 Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon, diagnosed right ankle derangement and lumbar disc derangement with radiculopathy. He opined that appellant was capable of working with restrictions. These included sitting eight hours and no walking, standing, bending, climbing, driving, twisting and lifting, pulling or pushing weight.

In a June 8, 2005 report, Dr. Chmell stated that appellant continued to experience low back pain based upon subjective complaints. With respect to appellant's right ankle, he noted a bone scan performed on February 28, 2005 reported findings "consistent with active arthritic process at right ankle joint" and "increased uptake of the lumbar spine at L5." Dr. Chmell opined that appellant "has a serious problem in her right ankle and a moderately serious problem in her low back." As to her ability to work, Dr. Chmell noted that since May 28, 2005 appellant was capable of working within the restrictions he and other physicians had specified.

Appellant field a claim for a recurrence of disability beginning July 11, 2005 due to her accepted March 30, 1998 employment injury, which the Office accepted.[7]

By decision dated October 19, 2005, the Office hearing representative affirmed the April 20, 2005 decision denying appellant's recurrence for the period February 7 to April 22, 2005.claim. She found the medical evidence insufficient to establish that appellant sustained a recurrence of disability due to her accepted employment injuries.

[6] Appellant subsequently filed claims for compensation Form CA-7 for the periods April 4 to 22, 2005, April 28 to 29 and June 7 to July 1, 2005. The issue of whether appellant is entitled to wage-loss compensation for the April 28 to 29 and June 7 to July 1, 2005 is not before the Board as the Office has not issued a final decision on this issue. 20 C.F.R. § 501.2(c).

[7] Appellant filed a claim for wage-loss compensation Form CA-7 for the period August 13 and October 3, 2005, which the Office accepted.

Subsequent to hearing representative's decision, the Office received a September 11, 2003 report by Dr. Holmes; a May 3, 2004 functional capacity evaluation; a November 13, 2003 report and November 13, 2003 attending physician's report Form CA-20 by Dr. Timothy Lubenow, a Board-certified anesthesiologist; and attending physician's reports Form CA-20 dated July 21, 2005 and January 14, February 7 and May 1, 2006 and work status statements dated October 3, 2005 through September 11, 2006 from Dr. Chmell.

On July 21, 2005 Dr. Chmell diagnosed lumbar derangement and traumatic arthritis/bilateral ankle derangements and noted that appellant was totally disabled for the July 12 to 22, 2005. On January 14, 2006 he diagnosed right ankle foot derangement and lumbar disc derangement. In his February 7 and May 1, 2006 attending physician's reports, Dr. Chmell diagnosed lumbar disc derangement. In his work statements, he diagnosed bilateral ankle and hind foot derangements and lumbar derangement. On June 12, July 10 and August 7, 2006 Dr. Chmell concluded that appellant was totally disabled on those dates. He noted that appellant required a motorized scooter at the job site in the September 11, 2006 work statement.

In a letter dated October 6, 2006, appellant requested reconsideration. She noted that she had problems walking and there were no rubber floors at the employing establishment.

By decision dated January 3, 2007, the Office denied modification of the October 19, 2005 decision.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provides, in pertinent part:

> "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."[8]

When an employee who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 she 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.[9] This includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.[10] An award of compensation may not be

[8] 20 C.F.R. § 10.5(x).

[9] *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

[10] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138 (1982).

made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.[11]

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[12] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[13] Moreover, the physician's conclusion must be supported by sound medical reasoning.[14]

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify her disability and entitlement to compensation.[15]

ANALYSIS

The Office accepted that appellant sustained an employment-related temporary aggravation of left ankle bursitis and left extensor hallucis longus tendinitis and consequential lumbar strain, which had resolved. Appellant accepted a sedentary limited-duty job offer and returned to work on August 26, 2004. On February 26, 2005 she filed a claim for a recurrence claim for disability on beginning February 7, 2005 due to her accepted employment injury. Appellant contended that since the scooter had been confiscated she has walked on concrete floors which had aggravated her right ankle and foot condition.

The Board finds that appellant has not established a recurrence of disability beginning February 7, 2005. There is no allegation that there was a change in the nature and extent of the limited-duty job requirements. Instead, appellant alleges that her condition was aggravated following the repossession of her electric scooter. She alleged that walking on the concrete floor to the restroom, sign-in sheet and lunchroom aggravated her condition. This contention that her condition had been aggravated by walking on the floor instead of using her motorized scooter to get around suggests a new injury and not a recurrence. As noted above, a recurrence occurs when there is a "spontaneous change in a medical condition" with no new exposure or

[11] *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

[12] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[13] Section 10.104(a), (b) of the Code of Federal Regulations provides that, when an employee has received medical care as a result of the recurrence, she should arrange for the attending physician to submit a detailed medical report. The physician's report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

[14] *Robert H. St. Onge*, *supra* note 12.

[15] *Amelia S. Jefferson*, 57 ECAB __ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

intervening injury. Thus, to the extent that appellant contends that her condition had been aggravated by walking at work, any disability resulting from the alleged aggravation would be considered a new injury and not a recurrence as defined by the regulations.

In support of appellant's recurrence claim, she submitted reports from Drs. Holmes and Chmell addressing her ability to work during the claimed period. In reports dated February 16 and March 18, 2005, Dr. Holmes reported that appellant had been unable to work due to episodes of pain. In the February 16, 2004 report, he noted an essentially unchanged physical examination and a stable ankle. In the March 18, 2005 report, Dr. Holmes stated that appellant's "condition appears to have worsened subjectively" and he was unable to find supporting objective evidence for her subjective complaints. He indicated, in a March 20, 2005 Form CA-20 that appellant was totally disabled for the period February 8, 2005 to the present due to her March 30, 1998 employment injury. However, it is well established that a physician's opinion on causal relationship that consists of checking "yes" to a form question is of diminished probative value.[16] Thus, this report is insufficient to support appellant's recurrence claim.

In reports dated May 28 and June 8, 2005, Dr. Chmell opined that appellant was capable of working with restrictions. His reports dated January 14, February 7 and May 1, 2006, do not address the issue of disability. These reports are insufficient to support appellant's recurrence for the claimed period as Dr. Chmell noted that she was capable of working with restrictions or provide no opinion as to whether she was totally disabled for the period in question. The remaining medical evidence by Dr. Chmell does not address the issue of whether appellant was disabled from performing her modified position for the period February 7 to April 22, 2005. These reports address appellant's condition and disability status for periods in June, July and August 2006. Thus, they are not relevant to the issue of whether appellant was totally disabled from performing her limited-duty job for the period February 7 to April 22, 2005. Dr. Chmell's reports are of diminished probative value in establishing a recurrence of disability for the period February 7 to April 22, 2005.

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence of disability. A mere conclusion without the necessary medical rational explaining how and why the physician believes that a claimant's accepted exposure would result in a diagnosed condition is not sufficient to meet her burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.[17] The record in this case does not contain a medical report providing a reasoned medical opinion that appellant's claimed recurrence of disability was caused by the accepted conditions. Therefore, the Board finds that she has not met her burden of proof in this case.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability for the period February 7 to April 22, 2005.

[16] *Cecelia M. Corley*, 56 ECAB ___ (Docket No. 05-324, issued August 16, 2005).

[17] *Beverly A. Spencer*, 55 ECAB 501 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 3, 2007 is affirmed.

Issued: August 22, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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