United States Department of Labor
Employees' Compensation Appeals Board

A.G., Appellant	)	
and	)	**Docket No. 07-680**
	)	**Issued: July 10, 2007**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Hackensack, NJ, 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 January 16, 2007 appellant filed a timely appeal from a December 29, 2006 decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of disability. 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 that she sustained a recurrence of disability beginning December 9, 2004 causally related to her bilateral ankle osteoarthrosis.

FACTUAL HISTORY

On May 20, 2003 appellant, then a 49-year-old processor, filed an occupational disease claim alleging that on April 2, 2002 she first realized her bilateral calcaneal spurs were employment related. The Office accepted appellant's claim for bilateral ankle osteoarthrosis.[1]

On January 22, 2005 appellant filed a claim for a recurrence of disability beginning December 9, 2004 due to her bilateral ankle osteoarthrosis. On the back of the form, the employing establishment noted that appellant had been working a limited-duty sit down position, which required no standing.

In a letter dated June 6, 2005, the Office advised appellant of the additional medical and factual evidence needed to establish her claim for a recurrence of disability. The Office emphasized the need to submit a rationalized report from her attending physician explaining how and why the accepted injuries would disable her for her light-duty work for the claimed period.

The Office received a January 10, 2005 attending physician's report (Form CA-20), a March 31, 2005 disability status note and a May 7, 2005 report from Dr. Matthew B. Welch, an attending podiatrist, who diagnosed degenerative arthritis in both ankles, severe pain and bilateral ankle swelling. Dr. Welch indicated that appellant was totally disabled for the period June 19, 2003 to the present. He checked "yes" to the question of whether the condition had been caused or aggravated by appellant's employment. Under comments, Dr. Welch stated that the condition had been caused by appellant's using a lean-to or standing. On March 31, 2005 he noted that appellant was being treated for severe degenerative joint disease in both ankles. Dr. Welch indicated that appellant was totally disabled as a result of her inability to walk or stand for long periods of time. On May 7, 2005 he repeated the diagnoses and stated that appellant was then totally disabled and he extended her period of disability to July 31, 2005. A physical examination revealed "anterior and lateral aspect of both ankles is (sic) still severely swollen and painful and the range of motion is extremely limited." Dr. Welch stated that appellant was unable to stand "without experiencing extreme pain in both ankles and her gait is antalgic and shuffling." He opined that appellant was unable to perform any work for more than eight hours which involved walking, climbing, standing or lifting.

On June 6, 2005 Dr. John J. Anderson, an examining podiatrist, diagnosed severe bilateral ankle osteoarthritis, ankle joint tenosynovitis and "[e]xtreme difficulty with ambulation." A physical examination revealed greater swelling on the right, pretibial area profound inflammation "along the peroneal tendon apparatus, surface and anterolateral margin ankle gutter margins" and positive straight leg with the left greater than the right. Dr. Anderson opined that appellant's pain was "out of proportion to what I would think."

In a letter dated June 13, 2005, appellant noted that she had been placed on light duty and that on August 16, 2004 she fell on her right knee. She was unable to take public transportation

[1] The Social Security Administration accepted appellant's disability application effective June 2005. It found that appellant became disabled effective December 9, 2004 based on Social Security rules.

and was unable to drive. Appellant stated that she lost her apartment in 2005, relocated to New Mexico and was currently seeing Dr. Anderson.

On June 22, 2005 appellant submitted a copy of a December 13, 2004 Family and Medical Leave Act certification by Dr. Welch noting that her disability began on December 9, 2004.[2] The form noted that appellant was unable to drive.

The record contains magnetic resonance imaging (MRI) scans dated July 7, 2005 of both ankles. The left ankle MRI scan showed a large area of abnormal signal on the posteromedial to mid talar dome, consistent with a large osteochondral lesion. The right ankle MRI scan showed right ankle osteoarthritis and a posterior medial talar dome osteochondral defect.

On July 26, 2005 Dr. Anderson diagnosed obesity, chronic and profound bilateral ankle arthropathy which was significant for talar dome lesions and osteoarthritis, chronic pain and posterior tibial tendinitis and ankle joint tenosynovitis. He noted: "[o]besity is obviously contributing" as is the "[c]hronicity of her pain."

By decision August 24, 2005, the Office denied appellant's recurrence of disability claim.

In an August 29, 2005 office note, Dr. Anderson stated that appellant might be able to perform light deskwork but based upon her lower extremity impairment, "there is not a whole lot she is capable of doing outside of desk or [tele]phone work." He related that appellant was unable to wear shoes at that time.

On December 6, 2005 the Office received appellant's request for reconsideration and additional evidence in support of her request.

In a September 8, 2005 report, Dr. Joseph B. Walcher, a treating physician, stated that appellant was "wheelchair bound for the next [three] months" and was unable to "wear shoes during this period."

In an August 29, 2005 report, Dr. Anderson stated that appellant was capable of performing sedentary work. He reviewed the reports of Dr. Welch and noted that appellant had been on some sort of limited work status. Based upon his review of the medical records and appellant's history, he stated that appellant could only stand for 15 minutes in an eight-hour shift and "there is absolutely no way that she can even be standing, leaning, or resting or even going in an up an down position." A physical examination revealed bilateral edema. Dr. Anderson diagnosed bilateral joint osteochondritis dissecans and osteochondral lesions, ankle tenosynovitis, "osteoarthritis of the ankle, presume traumatic" and posterior tibial tendon insufficiency with tendinitis.

On February 27, 2006 Dr. Anderson noted that he had been seeing appellant since she relocated from New Jersey and diagnosed significant bilateral ankle disease, bilateral neuritis, bilateral neuropathy, bilateral neuritis, low back disease, diabetes and chronic pain.

[2] Parts of the form are illegible.

In a report dated June 30, 2005, Dr. Allen F. Rickman, a Board-certified surgeon, noted that appellant presented in a wheel chair and that her medical history was positive for diabetes. A physical examination revealed significant antalgic gait due to pain in her ankles. Dr. Rickman diagnosed bilateral S1 joint low back pain with mild degenerative changes and bilateral hip osteoarthritis. He diagnosed severe bilateral foot and ankle problems in a January 27, 2006 treatment note. A physical examination revealed significant bilateral ankle swelling "with marked tenderness to palpation and decreased range of motion."

On November 7, 2005 Dr. Anderson diagnosed bilateral joint osteochondritis dissecans and osteochondral lesions, ankle tenosynovities, "osteoarthritis of the ankle, presume traumatic," and posterior tibial tendon insufficiency with tendinitis. In a January 30, 2006 treatment note, he reported that appellant continued to have "significant lower extremity pain and edema." Dr. Anderson noted that "[a] portion of this is neuritic pain and a portion arthritic pain and a portion we just can[not] seem to sort out."

In an August 8, 2006 statement, appellant detailed the history of her claimed recurrence.

In an October 24, 2006 letter, the employing establishment noted that appellant started a limited-duty assignment on June 9, 2003, which she worked in until December 9, 2003, when she stopped work and filed a claim for a recurrence of total disability. In a December 21, 2004 letter, appellant related that she was unable to work on December 9, 2004 due to her ankle pain. She related that following the filing of an Equal Employment Opportunity case, she returned to her prior position as a data entry clerk. As this position was sedentary, appellant noted that returning "to a sit down job alleviated greatly the condition of my ankles." She noted that she was not allowed to drive and had been informed by the employing establishment that she could not arrive a few hours prior to her starting time.

By decision dated December 29, 2006, the Office denied modification of the August 24, 2005 decision.

LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as the 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.[3] If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.[4]

[3] 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Phillip L. Barnes*, 55 ECAB 426 (2004).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997), *Donald T. Pippin*, 54 ECAB 631 (2003).

When an employee, who is disabled from the job he or 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 he or 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.[5] 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.[6] An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.[7]

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.[8] Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.[9]

ANALYSIS

The Office accepted appellant's claim for bilateral ankle osteoarthrosis. She alleged a recurrence of disability on December 9, 2004 due to her accepted employment injury. On June 6, 2005 the Office advised appellant of the medical and factual evidence needed to establish her claim for a recurrence of disability. However, appellant did not submit medical reports which contained a rationalized opinion explaining how her disability commencing on or after December 9, 2004 was causally related to the employment injury.[10] The Board notes that there is no evidence showing a change in the nature and extent of the light-duty job requirements.

Appellant submitted several reports of Dr. Welch, a podiatrist. In a January 10, 2005 attending physician's report, Dr. Welch diagnosed bilateral ankle swelling, severe pain and bilateral ankle degenerative arthritis. He concluded that she was totally disabled for the period

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

[6] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[7] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[8] *Conard Hightower*, 54 ECAB 796 (2003).

[9] *Albert C. Brown*, *supra* note 5.

[10] *See Helen K. Holt*, 50 ECAB 279 (1999).

June 19, 2003 to the present and checked "yes" to the question of whether the condition was employment related and noted the condition had been caused by her using a lean-to or standing. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking yes to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[11] Dr. Welch provided no explanation other than a conclusory statement attributing appellant's condition to her employment. In reports dated March 31 and May 7, 2005, he again diagnosed severe bilateral ankle pain and degenerative arthritis. Dr. Welch opined that appellant was totally disabled due to her inability to stand or walk for long periods of time. In the May 7, 2005 report, he noted that appellant was unable to perform any duties requiring walking, standing or lifting. As noted above, appellant was working a sedentary limited-duty position at the time of her alleged recurrence and her duties did not require walking, standing or lifting. Dr. Welch's reports do not state that appellant was disabled from performing her sedentary limited-duty position. Dr. Welch did not provide adequate medical rationale to explain how her accepted condition had changed or caused disability commencing December 9, 2004.[12] He did not explain how appellant's condition had worsened to the point where she was unable to perform her limited-duty sedentary work.[13] Without additional explanation or rationale, this report is insufficient to establish causal relationship or show that appellant's condition has worsened such that she was no longer able to perform her limited-duty position. On December 13, 2004 Dr. Welch noted that appellant's disability began on December 9, 2004 and indicated that she was unable to drive. This report is insufficient to support appellant's recurrence claim as it contains no medical rationale explaining how appellant's disability beginning December 9, 2004 was causally related to her accepted employment injury.

Appellant also submitted reports from Drs. Anderson, Rickman and Walcher. Neither Dr. Rickman nor Dr. Walcher referred to appellant's employment injury history. The physicians did not provide any medical rationale specifically relating any period of disability beginning December 9, 2004 to appellant's accepted condition of bilateral ankle osteoarthrosis. Thus, these reports are insufficient to support appellant's recurrence claim as they offer no opinion regarding the cause of an employee's condition.[14]

Consequently, the medical evidence is insufficient to establish that appellant sustained a recurrence of disability beginning December 9, 2004.

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[11] *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006).

[12] *Roma A. Mortenson-Kin*dschi, 57 ECAB ___ (Docket No. 05-977, issued February 10, 2006) (where the Board found that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[13] *Mary E. Marshall*, 56 ECAB ___ (Docket No. 04-1048, issued March 25, 2005) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[14] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (the Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

CONCLUSION

The Board finds that appellant has not established a recurrence of disability beginning December 9, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 29, 2006 is affirmed.

Issued: July 10, 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