

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Erie, PA, Employer**

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**Docket No. 08-1134  
Issued: December 16, 2008**

*Appearances:*  
*Jeffrey P. Zeelander, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 10, 2008 appellant filed a timely appeal from the February 29, 2008 merit decision denying his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

**ISSUE**

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability or a recurrence of a medical condition on December 17, 2006 that was causally related to his accepted injury.

On appeal, appellant's representative argued that appellant met his burden of proof to establish a recurrence of disability, and that the Office improperly terminated appellant's medical benefits.

**FACTUAL HISTORY**

On August 18, 2001 appellant, a 62-year-old electronic technician, filed a traumatic injury claim alleging that he injured his right knee while pulling a belt on a machine the previous

day. The Office accepted his claim for a tear of the lateral meniscus of the right knee, and approved arthroscopic surgery, which occurred on February 14, 2002. Appellant returned to full duty, with no restrictions, on July 22, 2002.

The record contains an August 5, 2004 report from Dr. John J. Kastrup, a Board-certified orthopedic surgeon, who treated appellant for pain and swelling in his right ankle. Dr. Kastrup diagnosed right Achilles tendinitis and right knee osteoarthritis. He also noted that appellant had undergone left knee surgery in March 2003. Dr. Kastrup opined that the Achilles tendon condition was not related to appellant's accepted work injury. In a report dated August 27, 2004, Dr. Stephanie M. Galey, a Board-certified orthopedic surgeon, diagnosed chronic right Achilles tendinitis and recommended the use of a fixed boot. The record also contains a work slip dated July 20, 2007, bearing an illegible signature, which recommended that appellant "continue current work restrictions until next evaluation in October."

On January 8, 2008 appellant submitted a recurrence of disability claim (Form CA-2a). He alleged that on December 17, 2006 he was pulling on a belt to remove a mail jam at a waist-high position, using his arms and legs as leverage, when he felt a slight click in his right knee. Appellant stated that he sought medical treatment on December 18, 2006, but did not stop working following the alleged recurrence.

Appellant submitted a January 22, 2008 duty status report, bearing an illegible signature, which provided a diagnosis of left knee medial meniscal tear, and advised that he could return to work with restrictions. The report stated that appellant sustained a "right knee-tear" on August 17, 2001.

In a decision dated February 29, 2008, the Office denied the recurrence claim. It found that the medical evidence was insufficient to establish that appellant's claimed recurrence was causally related to his accepted work injury, noting that his claim appeared to state a claim for a new injury. The Office stated that medical treatment was not authorized and that prior authorization, if any, was terminated.

### **LEGAL PRECEDENT**

Section 10.5(x) of the Office's regulations defines "recurrence of disability" 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.<sup>1</sup> Therefore, the Board has held that, in order to establish a claim for a recurrence of disability, appellant must establish that he suffered a spontaneous material change in the employment-related condition without an intervening injury.<sup>2</sup>

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<sup>1</sup> 20 C.F.R. § 10.5(x) (2002). See *Carlos A. Marrero*, 50 ECAB 117 (1998).

<sup>2</sup> *Carlos A. Marrero*, *supra* note 1.

Appellant has the burden of establishing that he sustained a recurrence of a medical condition<sup>3</sup> that is causally related to his accepted employment injury. To meet his burden, appellant must furnish medical evidence from a 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 and supports that conclusion with sound medical rationale.<sup>4</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>5</sup>

The Office's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed, or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report, which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.<sup>6</sup>

### ANALYSIS

In the present case, appellant alleged that he sustained a recurrence of disability. However, he, in fact, continued to work following his alleged recurrence on December 17, 2006. Therefore, appellant was not disabled as defined by Office regulations.<sup>7</sup> Additionally, he specifically asserted that his current condition was caused in part by new incidents, occurring after his return to unrestricted duty following his initial accepted condition. These new incidents constitute new exposure to the work environment that purportedly caused the claimed illness. Since there were intervening factors, appellant did not, by definition, sustain a recurrence of disability.<sup>8</sup>

Appellant has also not met his burden of proof to establish that he sustained a recurrence of a medical condition on December 17, 2006. The Office accepted his claim for a tear of the lateral meniscus of the right knee and approved arthroscopic surgery, which occurred on February 14, 2002. Appellant returned to full duty with no restrictions on July 22, 2002. He alleged that, on December 17, 2006, he was pulling on a belt to remove a mail jam at a waist-high position, using his arms and legs as leverage, when he felt a slight click in his right knee, and stated that he sought medical treatment on December 18, 2006. However, appellant has failed to produce any rationalized medical opinion evidence establishing that he required further medical treatment for a condition that was causally related to his accepted right knee injury.

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<sup>3</sup> "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

<sup>4</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>5</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

<sup>7</sup> *See* 20 C.F.R. § 10.5(f) (2002).

<sup>8</sup> 20 C.F.R. § 10.5(x); *Philip L. Barnes*, 55 ECAB 426 (2004); *see also Carlos A. Marrero*, *supra* note 1.

The record contains an August 5, 2004 report from Dr. Kastrup, who diagnosed right Achilles tendinitis and right knee osteoarthritis. On August 27, 2004 Dr. Galey diagnosed chronic right Achilles tendinitis. There is no evidence of record establishing that appellant received medical treatment for his accepted condition between August 27, 2004 and January 22, 2008, when he was examined by an unidentified physician. As computed from the date of Dr. Galey's August 27, 2004 examination, the treatment on January 22, 2008 was rendered more than 90 days after appellant's release from medical care. Therefore, appellant was responsible for submitting an attending physician's report containing a description of the objective findings and supporting causal relationship between his current condition and the previously accepted work injury.

The medical evidence submitted was insufficient to establish a need for continuing medical treatment. The only medical evidence submitted after appellant's release from care was a July 20, 2007 work slip and a January 22, 2008 duty status report, both bearing the same illegible signature. As the reports bear illegible signatures, they do not constitute probative medical evidence.<sup>9</sup> Additionally, neither report contains an opinion as to the cause of appellant's current condition, or whether he required further medical treatment as a result of his accepted 2001 injury. 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.<sup>10</sup> The Board notes that there is no medical evidence of record to corroborate appellant's allegation that he was treated on December 18, 2006, the date following his alleged recurrence, for symptoms related to his accepted condition, or for any other condition. For all of these reasons, the Board finds that the evidence submitted was insufficient to establish that appellant sustained a recurrence of a medical condition on December 17, 2006.

The Board also notes that the allegations contained in appellant's claim form undermine his claim that his condition is causally related to the accepted knee injury. Appellant stated that he injured his right knee on December 17, 2006, while pulling on a belt to remove a mail jam at a waist-high position, using his arms and legs as leverage. He stated that he felt a slight click in his right knee and sought medical treatment the next day. Appellant has not alleged that his condition on December 17, 2006 was causally related to the accepted employment injury. Rather, he has alleged a new injury.

Appellant's representative argued that the Office improperly terminated his medical benefits. The Board notes that the Office did not terminate medical benefits related to appellant's August 18, 2001 traumatic injury claim. In its January 29, 2008 decision, the Office found that appellant was not entitled to medical benefits pursuant to his January 8, 2008 recurrence claim. It did not terminate appellant's entitlement to medical benefits on the basis that he had no residuals due to his accepted injury. In this case, his claim for medical coverage was denied due to his failure to submit an attending physician's report, supporting a causal

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<sup>9</sup> A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>10</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

relationship between the condition for which he was treated on the date of the alleged recurrence, and the previously accepted work injury.<sup>11</sup>

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability or a recurrence of a medical condition on December 17, 2006 that was causally related to his accepted injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 29, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).