

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

S.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Newark, NJ, Employer**

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**Docket No. 08-181
Issued: June 13, 2008**

Appearances:
Thomas R. Uliase, 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 October 23, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 24, 2007 which denied appellant's claim for a recurrence of disability commencing February 26, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability commencing February 26, 2005 causally related to her accepted employment condition.

FACTUAL HISTORY

On November 10, 2004 appellant, then a 47-year-old distribution clerk, filed an occupational disease claim alleging that she developed bilateral plantar fasciitis in the performance of duty. She noticed the condition in June 2004 and stopped work on November 10, 2004.

In support of her claim, appellant submitted a report from Dr. Joseph M. DeMayo, a Board-certified family practitioner, dated November 6, 2004, who treated appellant for pain in the heel and plantar area of both feet and diagnosed plantar fasciitis. Dr. DeMayo opined that appellant's symptoms were work related as her position required her to stand and walk for prolonged periods of time which increased her symptoms. In a return to work certificate dated December 15, 2004, he noted that appellant could return to work on December 18, 2004 subject to restrictions of limited standing and ambulation. Appellant submitted a statement dated January 12, 2005, and noted that her job duties required her to stand and walk for long periods of time feeding labels into a delivery bar coder machine and controlling mail intake.

The record indicates that appellant returned to a light-duty position on December 24, 2004 and stopped completely on February 26, 2005. On March 3, 2005 the Office accepted appellant's claim for bilateral plantar fasciitis and heel spurs. It advised appellant that the medical evidence did not show that she was totally disabled after December 17, 2004. The Office informed appellant of the type of medical evidence needed to support disability.

On March 20, 2005 appellant filed a CA-2a, notice of recurrence of disability. She noted that on February 26, 2005 she had pain in her feet and heels that was due to her accepted work injury. Appellant indicated that at the time of her recurrence she was working a limited-duty position and stopped work on February 26, 2005.

By letter dated May 13, 2005, the Office advised appellant of the type of evidence needed to establish her claim for a recurrence of disability on February 26, 2005 and particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed recurrent disability and the original work injury.

On May 17, 2005 the Office referred appellant for a second opinion to Dr. Iqbal Ahmad, a Board-certified orthopedist. The Office provided Dr. Ahmad with appellant's medical records, a statement of accepted facts and a detailed description of appellant's duties. In a June 7, 2005 report, Dr. Ahmad noted reviewing the records provided and performed a physical examination of appellant. He noted that examination revealed pain over both feet, increased pain over the plantar aspect of both feet, no evidence of atrophy or inflammation, no edema and satisfactory circulation and reflexes. Dr. Ahmad stated that appellant had bilateral flat feet, she had no difficulty in squatting and standing on her toes and heels and there was no discoloration or changes in temperature of her feet. He opined that appellant's accepted conditions of sprain of both feet, plantar fasciitis and heel spurs resolved and appellant did not currently have an acute orthopedic condition. Dr. Ahmad noted that appellant reached maximum medical improvement and could return to her regular job, full time without restrictions. He indicated that there was no need for further treatment or therapy.

In a statement dated May 23, 2005, appellant indicated that she went back to work on December 26, 2004, but she still experienced pain in both feet. She stated that on February 26, 2005 her condition worsened and she could not continue to work.

In a decision dated June 14, 2005, the Office denied appellant's claim for a recurrence of disability commencing February 26, 2005.

By letter dated June 24, 2005, appellant requested an oral hearing which was held on December 20, 2005. She submitted a report from Dr. DeMayo dated December 20, 2005. Dr. DeMayo noted that appellant had been under his care for severe plantar fasciitis and heel spurs and experienced severe pain while standing and walking at work. He advised that appellant returned to work on December 26, 2004 but experienced worsening pain when standing and walking and stopped on February 26, 2005 and remained permanently disabled.

The employing establishment submitted a fitness-for-duty examination performed by Dr. Francis W. Meo, a Board-certified orthopedist, dated August 23, 2005. Dr. Meo noted a history of appellant's condition and diagnosed plantar fasciitis and heel spurs. He noted that appellant was morbidly obese. Dr. Meo indicated that during the examination on August 23, 2005, appellant was unable to accomplish anything with regard to the physical examination; however, in a June 2005 second opinion examination, appellant was able to squat and stand on her toes. He concluded that appellant was not fully forthcoming and her symptoms were exaggerated. Dr. Meo indicated that appellant did not sustain a recurrence of disability on February 26, 2005 causally related to her work injury; rather, he attributed her current condition to morbid obesity and opined that appellant could return to work full time without restrictions.

In a decision dated March 1, 2006, the hearing representative affirmed the Office decision dated June 14, 2005.¹

By letter dated February 21, 2007, appellant requested reconsideration. In a brief dated February 1, 2007, she asserted that Dr. DeMayo's report of December 20, 2005 supported that she sustained a recurrence of disability on February 26, 2005 causally related to her work injury and created a conflict in opinion with the report of the Office referral physician. Appellant submitted a September 6, 2005 statement from a union representative who noted that, on August 23, 2005, he accompanied her to a fitness-for-duty examination and offered his opinion on her condition.

Appellant also provided medical evidence. In a June 28, 2005 prescription note, Dr. DeMayo reported treating appellant for painful feet and he diagnosed plantar fasciitis and heel spurs. He noted that standing, walking and bearing weight caused pain and advised that appellant would be off work from August 10 to September 30, 2005. On September 1, 2005 Dr. DeMayo noted that appellant's severe plantar fasciitis and heel spurs prevented her from working. In a report dated December 20, 2006, he noted that appellant was diagnosed with bilateral plantar fasciitis and heel spurs in November 2004 and returned to a restricted-duty position in December 2004. Dr. DeMayo noted that the medical documentation restricted appellant to very limited standing and ambulation with breaks to sit down. Upon returning to work, appellant reported that her job required her to case and carry mail of different shapes and sizes to other areas in the mail facility and entailed walking and standing. Dr. DeMayo noted that after a few months appellant's condition worsened and she stopped work. He asserted that appellant's position did not conform to her medical documentation and her occupational duties

¹ On February 8, 2007 appellant appealed to the Board. In a letter dated February 21, 2007, she asked to withdraw her appeal. In an order dated June 8, 2007, the Board granted appellant's request to dismiss the appeal. Docket No. 07-862 (issued June 8, 2007).

caused her condition to worsen. Appellant submitted a magnetic resonance imaging (MRI) scan of the left foot dated August 12, 2005, which revealed plantar fasciitis and minimal degenerative changes. An MRI scan of the right foot dated August 16, 2005, revealed mild degenerative changes, evidence of mild Achilles tendinitis and mild plantar fasciitis.

In a decision dated May 24, 2007, the Office denied modification of the June 14, 2005 decision which determined that appellant failed to establish that her recurrence of disability on or after February 26, 2005 was causally related to the accepted conditions.

LEGAL PRECEDENT

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 of record establishes that she 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 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 requirements.²

Causal relationship is a medical issue,³ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

The Office accepted appellant's claim for bilateral plantar fasciitis and heel spurs. Appellant returned to a light-duty position on December 24, 2004, as a distribution clerk. She stopped work on February 26, 2005 and filed a claim for a recurrence of disability alleging that she experienced pain in both feet causally related to her accepted work injury. In the instant case, appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.

Appellant submitted notes dated June 28 and September 1, 2005 from Dr. DeMayo who indicated that appellant was treated for painful feet and he diagnosed plantar fasciitis and heel spurs. He noted that standing, walking and bearing weight caused appellant pain and advised that she would be totally disabled from August 10 to September 30, 2005. However, none of

² *Terry R. Hedman*, 38 ECAB 222 (1986). See 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Dr. DeMayo's reports, most contemporaneous with the recurrence of disability, noted a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing her light-duty position.⁵ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁶ In a report dated December 20, 2005, Dr. DeMayo noted that appellant returned to work on December 26, 2004 but experienced worsening pain when standing and walking and stopped on February 26, 2005 and remained permanently disabled. He failed to provide a rationale medical opinion explaining why appellant's recurrent condition was due to the accepted work injury when appellant has other nonwork-related conditions affecting her feet including morbid obesity.

In a December 20, 2006 report, Dr. DeMayo noted appellant's conditions and her return to a restricted-duty position in December 2004. Appellant advised Dr. DeMayo that her position required her to case and carry mail to other areas in the mail facility which entailed walking and standing. Dr. DeMayo noted that after a few months appellant's condition worsened and she stopped work. He asserted that appellant's position did not conform to her medical documentation and appellant's occupational duties caused her condition to worsen. However, Dr. DeMayo's report is conclusory and insufficient to establish appellant's claim as he did not provide a rationalized opinion explaining the reasons appellant's recurrent condition and disability was due to the accepted work injury.⁷ Additionally, he failed to note a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing her light-duty position.

To further develop the claim, the Office referred appellant to Dr. Ahmad for a second opinion. In a June 7, 2005 report, Dr. Ahmad diagnosed sprain of both feet, resolved, plantar fasciitis and heel spurs, resolved. He noted that examination revealed that appellant had bilateral flat feet, there was increased pain over the plantar aspect of both feet, no evidence of atrophy, inflammation or edema, satisfactory circulation and reflexes, she experienced no difficulty in squatting and standing on her toes and heels and there was no discoloration or changes in temperature of her feet. Dr. Ahmad opined that appellant's accepted conditions of sprain of both feet, plantar fasciitis and heel spurs resolved and that appellant reached maximum medical improvement and could return to her regular job, full time without restrictions.

The employing establishment referred appellant for a fitness-for-duty examination which was performed by Dr. Meo on August 23, 2005. Dr. Meo noted an essentially unremarkable physical examination and advised that appellant was morbidly obese. He indicated that appellant was unable to accomplish anything with regard to the physical examination and opined that appellant was not fully forthcoming and her symptoms were exaggerated. Dr. Meo opined that

⁵ See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

⁶ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ See *id.*

appellant did not sustain a recurrence of disability on February 26, 2005 causally related to her work injury, rather, he attributed appellant's current condition to morbid obesity.

Finally, the Board finds that there is no credible evidence which substantiates that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded her medical restrictions. Dr. DeMayo's December 20, 2006 report noted that when appellant returned to a limited-duty position in December 2004 the employer did not follow the light-duty restrictions as set forth in the medical documentation. However, he appears merely to be repeating appellant's assertions regarding her work duties. The record does not establish that appellant's work exceeded her light-duty restrictions. The record contains no evidence substantiating that there was a change in the nature and extent of the light-duty requirements or that she was required to perform duties which exceeded her medical restrictions.

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit her from performing the light-duty position she assumed after she returned to work.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on February 26, 2005 causally related to her accepted bilateral plantar fasciitis and heel spurs in both feet.

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2007 decision of the Office of Worker' Compensation Programs is affirmed.

Issued: June 13, 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