

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

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L.C., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Baltimore, MD, Employer )

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**Docket No. 08-2410  
Issued: March 3, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 15, 2008 appellant filed a timely appeal from a January 9, 2008 merit decision of the Office of Workers' Compensation Programs and an August 15, 2008 merit decision by a hearing representative denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant established that she sustained a recurrence of disability commencing on or after July 21, 2007 causally related to her accepted October 4, 2000 employment injury.

**FACTUAL HISTORY**

On October 4, 2000 appellant, then a 49-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that while mopping a stairwell that day she slid off the steps

sustaining a right ankle injury. The Office accepted her claim for a minor right ankle sprain. Appellant returned to full duty on October 15, 2000.<sup>1</sup>

On August 10, 2007 appellant filed a claim for a recurrence of disability (Form CA-2a), alleging that on July 21, 2007 she experienced swelling and shooting pain in her right ankle causing instability and difficulty walking. She noted that she was experiencing symptoms similar to those of her original injury.

On July 27, 2007 appellant underwent several diagnostic tests on her right ankle. A magnetic resonance imaging (MRI) scan revealed a longitudinal partial thickness tear of the distal Achilles tendon. The MRI scan report noted that appellant's remote history of a fall seven years ago and that she has experienced persistent intermittent pain, which has recently worsened. An x-ray showed minimal deformity of the tip of the medial malleolus, which a physician noted was possibly related to an old trauma.

On July 30, 2007 appellant's treating physician returned her to regular duty with the restriction that she not walk over 50 minutes in an hour until she was seen by an orthopedic surgeon.

On July 31, 2007 appellant accepted a light-duty position requiring performance of her normal duties, but limiting her walking to no more than 50 minutes an hour.

On August 27, 2007 Dr. Gregory P. Guyton, a Board-certified orthopedic surgeon, examined appellant, who opined that in July 2007 she experienced an exacerbation of her long-standing, seven-year pain. Physical examination revealed swelling and tenderness over the calcaneocuboid joint. Dr. Guyton stated that appellant most likely sustained calcaneocuboid joint arthritis and ordered a computerized tomography (CT) scan.

In a September 10, 2007 follow-up report, Dr. Guyton discussed the results of the CT scan, finding that appellant sustained dorsal and lateral osteophyte off the calcaneocuboid joint, which he noted was consistent with an old, problematic avulsion fracture.

In an attending physician's report (Form CA-20) dated October 12, 2007, Dr. Guyton noted that appellant had a seven-year history of foot and ankle pain. He reported that appellant was scheduled for joint debridement surgery on October 18, 2007 and took her off work until January 1, 2008.

On October 18, 2007 appellant underwent an exostectomy of the right anterior process calcaneus. In the corresponding surgical report, Dr. Guyton opined that, appellant suffered from a right anterior process of the calcaneus exostosis associated with a previous inversion injury and probable avulsion fracture.

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<sup>1</sup> Appellant subsequently filed a claim for a recurrence on November 8, 2000 for the period October 19 through 25, 2000, which was accepted by the Office. She returned to full duty on October 30, 2000.

On October 26, 2007 appellant filed a claim for compensation (Form CA-7) for the period October 18 through November 3, 2007. She subsequently submitted four additional claims for compensation covering the period November 4, 2007 through January 1, 2008.

In a November 28, 2007 letter, the Office notified appellant of the deficiencies in her recurrence claim and requested additional information.

By decision dated January 9, 2008, the Office denied the recurrence claim, finding that appellant did not submit sufficient evidence establishing that she sustained a recurrence on July 21, 2007 causally related to her accepted employment injury.

Appellant subsequently submitted an undated statement, where she denied that she sustained a new injury to her right foot and that she has experienced swelling for years after her original injury, usually after standing on it for long periods of time. She further submitted a December 11, 2007 medical report signed by Dr. Edward R. Cohen, a Board-certified orthopedic surgeon, who reported that appellant was referred by her treating physician for an opinion addressing the cause of the current right ankle injury. Based on a brief review of appellant's medical history and a physical examination, he stated that in his opinion, based on a reasonable degree of medical probability, the present right ankle complaints were causally related to appellant's April 10, 2000 work-related injury.<sup>2</sup>

On January 22, 2008 appellant requested a review of the written record. In a decision dated August 15, 2008, the hearing representative denied modification of the January 9, 2008 decision, finding that she did not provide sufficient supporting evidence to establish her recurrence claim.

### **LEGAL PRECEDENT**

A 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."<sup>3</sup> A person 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 she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee 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

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<sup>2</sup> The Board notes that Dr. Cohen stated that appellant's injury occurred on April 10, 2000. It appears as though the doctor merely transposed the date of appellant's injury, which occurred on October 4, 2000 and intended to refer to the accepted injury at issue in this case.

<sup>3</sup> R.S., 58 ECAB \_\_\_ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

supports that conclusion with sound medical reasoning.<sup>4</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>5</sup>

### ANALYSIS

The Office accepted that on October 4, 2000, appellant sustained a minor right ankle sprain due to her employment. The issue is whether appellant established that she sustained a recurrence of disability commencing July 21, 2007 causally related to her employment injury. The Board finds that appellant has not met her burden of proof.

In order to establish a claim for a recurrence, appellant is required to submit evidence providing rationalized medical opinion describing how her current condition is related to the accepted employment injury.<sup>6</sup> In support of her claim, she submitted several medical reports from Dr. Guyton, dated August 27 through October 18, 2007, discussing her current right ankle condition. While Dr. Guyton continuously indicated that appellant suffered pain in her right ankle for seven years and that her current condition is related to a prior inversion injury and probable avulsion fracture, he fails to specifically identify appellant's accepted work injury as the cause of her current condition. Further, his opinions addressing causation lack rationalized explanations describing the relationship between appellant's history of right ankle injury and her current condition and thus are of little probative value.<sup>7</sup>

Similarly, Dr. Cohen's December 11, 2007 medical report is not sufficient to establish a recurrence. Here, he gave a brief summary of appellant's medical history and, after a physical examination, stated that appellant's current right ankle complaints are related to her employment injury. However, Dr. Cohen did not explain how the prior work injury caused her current condition nor did he provide any support for his conclusion that the two conditions were causally related. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached.<sup>8</sup> The Board finds that Dr. Cohen's report is of diminished probative value as he failed to include any discussion rationalizing his opinion on causal relationship.<sup>9</sup>

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a recurrence of disability due to her accepted right ankle sprain.

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<sup>4</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>5</sup> *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>6</sup> *See supra* note 3.

<sup>7</sup> *Robert Broome*, 55 ECAB 339 (2004); *Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>8</sup> *Jean Culliton*, 47 ECAB 728 (1996); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

<sup>9</sup> *See Robert Broome*, 55 ECAB 339 (2004).

**CONCLUSION**

The Board finds that appellant did not establish that she sustained a recurrence of disability commencing on or after July 21, 2007 causally related to her accepted October 4, 2000 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 9, 2008 decision of the Office of Workers' Compensation Programs and the August 15, 2008 decision of the hearing representative are affirmed.

Issued: March 3, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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