



In a May 1, 2007 report, Dr. Robert Verde, a Board-certified orthopedic surgeon, noted that appellant injured his left ankle while affecting an arrest. He also noted appellant's history of prior left ankle injury. Dr. Verde interpreted x-rays of the left ankle and found mild arthritic changes and evidence of previous fractures. On May 24, 2007 he observed residual swelling of the ankle with minimal discomfort. Dr. Verde noted that appellant had returned to full duty. He also noted that appellant could return to him for treatment on an as-needed basis.

In a July 9, 2007 letter, appellant noted that his left ankle was swollen and that he was experiencing pain. He also requested to change physicians. The Office responded in a July 11, 2007 letter indicating that no further action was necessary as appellant had returned to full duty and Dr. Verde's report indicated that appellant did not require additional medical treatment for his accepted condition.

In a January 17, 2008 telephone call memorandum, the Office noted that appellant called regarding further treatment for his ankle. It advised him to file a recurrence claim.

On January 23, 2008 appellant filed Form CA-2a, a claim for recurrence of disability, beginning December 24, 2007. His Form CA-2a indicated that the recurrence happened on December 24, 2007 when he noticed his left ankle became extremely tender, swollen and painful. Appellant believed that his current left ankle condition was related to his original injury as he could not recall an injury to it subsequent to the April 5, 2007 work injury. He did not stop work after the alleged date of recurrence. Appellant and the employing establishment indicated that he had returned to regular duty after the original injury.

In a letter dated January 28, 2008, the Office advised appellant of the factual and medical evidence needed to establish his recurrence claim and provided him 30 days to submit additional information.

In response appellant indicated that his prior left ankle sprains were work related and occurred on March 6, 2001 and March 3, 2004. He also indicated that, between the April 5, 2007 work injury and the December 24, 2007 date of recurrence, he participated in a November 20, 2007 fitness examination for work, which required running. Appellant did not notice any pain or swelling after the fitness examination. He noted December 24, 2007 as the date of recurrence as he had woken up with left ankle swelling and pain that day.

In a January 24, 2008 report, Dr. Verde noted that appellant continued to have residual pain in his left ankle, which diagnosed degenerative arthritis at his left ankle and referred him for a magnetic resonance imaging (MRI) scan. On February 22, 2008 Dr. Jay Lerman, a Board-certified diagnostic radiologist, noted that appellant had left ankle and hindfoot trauma 13 to 14 years ago. After reviewing the MRI scan results of appellant's left ankle and hindfoot, he noted two marrow fragments in the anterolateral gutter of the fibula, who reported thickening and mild waviness of the anterior talofibular and calcaneal fibular ligaments consistent with an old or chronic inversion injury. Dr. Lerman also found anterior ankle impingement and posterior tibialis tendon dysfunction with associated posterior tibialis tenosynovitis. In a March 11, 2008 report, Dr. Verde reiterated that appellant had residual pain in his left ankle. He advised that appellant could benefit from an arthroscopic investigation by a foot and ankle specialist.

In a March 26, 2008 report, Dr. Steven Sheskier, a Board-certified orthopedic surgeon, summarized the history of appellant's work injury and noted that he had never returned to his normal baseline since the time of his injury. He indicated that appellant's medical history was noncontributory. Dr. Sheskier concluded that appellant had fluid around the posterior tibial tendon. He recommended a computerized tomography (CT) scan for the bone fragments found in the MRI scan.

In an April 15, 2008 decision, the Office denied appellant's claim for a recurrence finding that the factual and medical evidence was insufficient to establish a recurrence on December 24, 2007 causally related to the accepted injury on April 5, 2007.

On May 5, 2008 appellant submitted a statement explaining his history of medical treatment since the April 5, 2007 work incident. On May 8, 2008 he requested reconsideration.

Appellant submitted a May 2, 2008 medical note from Dr. Verde's office indicating that his current condition was causally related to his April 2007 injury. He also submitted an April 28, 2008 report from Dr. John Zboinski, a podiatrist, who noted appellant's medical history of his left ankle included a completely healed distal fibular fracture from 16 years earlier and a mild sprain sustained six years ago and again three years earlier. Dr. Zboinski also referenced appellant's statement that he had completely recovered from those injuries. He diagnosed internal derangement of the left ankle, anterior impingement syndrome, lateral ankle impingement syndrome and synovitis. Dr. Zboinski concluded that the current diagnosis was causally related to appellant's April 5, 2007 injury as he had been working full duty and was able to perform all physical activities associated with his employment up to that point. After the April 5, 2007 incident, appellant's left ankle became significantly more symptomatic with MRI scan findings consistent with acute synovitis and ankle impingement. Dr. Zboinski further concluded that, despite previous left ankle injuries, the April 5, 2007 work incident caused acute synovitis and ankle impingement as he would not expect these conditions to be associated with injuries occurring 3, 6 or 16 years ago. He recommended ankle arthroscopy.

In a June 10, 2008 decision, the Office reviewed the merits of appellant's cause and denied modification of its April 15, 2008 decision. It found that the medical evidence was insufficient to establish a recurrence causally related to the initial work injury.

### **LEGAL PRECEDENT**

A recurrence of a 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.<sup>1</sup>

For recurrences of medical conditions, the claimant has the burden of proof to establish the relationship of the claimed recurrence to the injury.<sup>2</sup> This burden includes the necessity of

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<sup>1</sup> 20 C.F.R. § 10.5(y).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (January 1995).

furnishing 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. Where no such rationale is present, the medical evidence is of diminished probative value. In order to establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his present condition and the accepted injury must support the physician's conclusion of a causal relationship.<sup>3</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>4</sup>

### ANALYSIS

The Office accepted appellant's claim for left ankle sprain as an aggravation of preexisting arthritis and healed left ankle fractures. The record reflects that appellant had returned to full duty on May 21, 2007 and that Dr. Verde released him from medical care on May 24, 2007. Although appellant asserted that he continued to need treatment, the evidence of record indicates he was not treated for his ankle condition between May 24, 2007 and January 24, 2008. He filed a recurrence claim on January 23, 2008 alleging a recurrence beginning December 24, 2007. Appellant did not stop work subsequent to filing a Form CA-2a. The Board finds that the medical evidence is insufficient to establish a recurrence of a medical condition beginning December 24, 2007 causally related to the accepted left ankle sprain.

In an April 28, 2008 report, Dr. Zboinski diagnosed left ankle impingement and synovitis. He noted that appellant's current condition was caused by the April 5, 2007 work incident as appellant had been able to work full duty prior to the incident and that his symptoms had not increased until after the incident. However, the Board has held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient, without supporting medical rationale, to establish causal relationship.<sup>5</sup> As Dr. Zboinski did not provide medical reasoning for his opinion, it is insufficient to establish appellant's claim. Also, he concluded that appellant's April 5, 2007 work injury was the cause of his current left ankle condition as he would not expect prior ankle injuries to be associated with the current diagnosis. Dr. Zboinski did not prefer any reasoning behind his conclusion that the old ankle injuries would not have caused appellant's current ankle impingement or synovitis.<sup>6</sup> Furthermore, he did not demonstrate any

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<sup>3</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (January 1995).

<sup>5</sup> *Thomas R. Horsfall*, 48 ECAB 180 (1996).

<sup>6</sup> See *William C. Thomas*, 45 ECAB 591 (1994) (where the Board has held that reports consisting solely of conclusory statements without supporting rationale are of little probative value).

awareness that the claimed recurrence began on December 24, 2007 nor did he address why appellant's employment-related condition would have recurred at that time. This is important in view of appellant's previous history of left ankle injuries, his return to regular duties after his work injury and his lack of medical treatment in the interim period between the middle of 2007 and the filing of his recurrence claim.

Dr. Verde's reports provided appellant's status throughout treatment and noted that he had degenerative arthritis. These reports did not specifically explain why the claimed recurrence beginning December 24, 2007 was caused by the April 5, 2007 work incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>7</sup> Furthermore, the May 2, 2007 fax sheet from Dr. Verde's office indicated that appellant's current condition was causally related to the April 2007 injury. However, this is of little probative value as there is no indication that the document is from a physician.<sup>8</sup> Additionally, Dr. Sheskier's March 26, 2008 report noted appellant's medical history but did not specifically address whether the claimed recurrence beginning December 24, 2007 was due to the accepted left ankle sprain. Moreover, he did not demonstrate an accurate understanding of appellant's history of appellant's previous left ankle injuries.<sup>9</sup> Dr. Lerman found that MRI scan testing revealed ankle impingement and tenosynovitis but he did not specifically address causal relationship between the claimed recurrence beginning December 24, 2007 and the April 5, 2007 work injury. Moreover, he observed that the thickening and mild waviness of the anterior talofibular and calcaneal fibular ligaments were consistent with an old or chronic inversion injury.

Consequently, the medical evidence is insufficient to establish a recurrence of a medical condition causally related to the accepted left ankle condition.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing a recurrence of a medical condition on December 24, 2007 causally related to his accepted left ankle condition.

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<sup>7</sup> See *K.W.*, 59 ECAB \_\_\_ (Docket No. 07-1669, issued December 13, 2007).

<sup>8</sup> See *D.D.*, 57 ECAB 734 (medical reports lacking proper identification do not constitute probative medical evidence).

<sup>9</sup> See *Vernon R. Stewart*, 5 ECAB 276, 280 (1953) (where the Board held that medical opinions based on histories that do not adequately reflect the basic facts are of little probative value in establishing a claim).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated June 10 and April 15, 2008 are affirmed.

Issued: May 4, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board