

FACTUAL HISTORY

Appellant, a 41-year-old former mail handler, sustained an injury to his right lower extremity on September 5, 2002 when a coworker threw a stapler at him. The Office accepted his claim for right leg contusion. After a series of limited-duty assignments, appellant was released to resume regular work effective October 14, 2002.² However, within a month's time, he resigned his position with the employing establishment.³ Appellant subsequently obtained employment in the private sector. In February 2005, he informed the Office that he had relocated to Florida. Appellant also requested a copy of the Office's September 24, 2002 notification of the acceptance of his claim.

On January 30, 2008 appellant wrote to the Office requesting that his case be reopened because his condition had reportedly worsened. He made similar requests on February 6, 20 and March 4, 2008.

On March 26, 2008 appellant filed a claim for recurrence of disability (Form CA-2a) beginning October 22, 2002. He reported that his condition had worsened and he was experiencing constant pain and numbness. Appellant woke up with his foot swollen, very numb and in constant pain. He advised that his doctor had fitted him for a foot brace. Appellant submitted medical records from Kaiser Permanente for treatment he received between September 6 and December 3, 2002.⁴ He stated that he had not sustained a new injury or illness between the time he returned to work and his claimed recurrence beginning October 22, 2002. Appellant reported employment in the private sector as a transportation specialist from January 30, 2003 to January 1, 2005 and as a clerk/forklift driver from April 1 through October 31, 2005. He had been unemployed since October 31, 2005 "due to injury."

On April 7, 2008 the Office advised appellant that the evidence of record was insufficient to establish that his claimed recurrence of disability was causally related to his September 5, 2002 work injury. It noted that the most recent medical evidence was dated December 3, 2002 and requested appellant to provide updated treatment records. Appellant was afforded 30 days to submit the requested information. On April 25, 2008 the Office received another copy of the Kaiser Permanente treatment records, but no post-December 2002 medical records.

In a decision dated May 16, 2008, the Office denied appellant's recurrence of disability claim.

On May 28, 2008 appellant requested a telephonic hearing, which was held on September 10, 2008. He testified that he continued to have problems with his ankle that had worsened over the years. After resigning from the employing establishment in 2002, appellant did not have health insurance and did not see a physician until recently. An unidentified Florida

² Appellant accepted a limited-duty assignment on September 5, 2002. He accepted additional offers of limited-duty work on September 30 and October 2, 2002. Appellant was excused from all work for the period September 30 to October 2, 2002 and October 7 to 11, 2002.

³ The employing establishment indicated that appellant resigned "on or about" November 16, 2002.

⁴ Appellant was last seen on December 3, 2002 by Dr. Christopher J. Walters, a podiatrist.

neurologist administered a nerve conduction study and reportedly told appellant that he had nerve damage in his right leg and a pinched nerve from his ankle to his knee. Appellant did not submit a copy of this report or any other medical evidence.

By decision dated November 18, 2008, the hearing representative affirmed the May 16, 2008 decision.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his work-related injury or illness is withdrawn -- except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force -- or when the physical requirements of such an assignment are altered so that they exceed his established physical limitations.⁶ Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy his burden of proof by showing a change in the nature and extent of the injury-related condition such that he was no longer able to perform the light-duty assignment.⁷

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing that the recurrence of disability is causally related to the original injury.⁸ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁹ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.¹⁰

ANALYSIS

Appellant claimed a recurrence of disability beginning October 22, 2002. Following his September 5, 2002 injury, accepted for a contusion, medical records from Kaiser Permanente indicate that, when seen on October 10, 2002, he was advised he could resume his regular work as of October 14, 2002. The record indicates that appellant was next seen on November 11, 2002. Dr. Christopher J. Walters, a podiatrist, examined appellant and diagnosed

⁵ 20 C.F.R. § 10.5(x).

⁶ *Id.*

⁷ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

⁸ 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁹ See *Helen K. Holt*, *supra* note 8.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

a possible peroneus brevis (PB) tendon tear versus synovitis or possible fasciitis. He reviewed a previous x-ray of appellant's right ankle, which was normal. Dr. Walters recommended a magnetic resonance imaging (MRI) scan and advised appellant to return after obtaining the MRI scan. Appellant returned for a follow-up visit on December 3, 2002. According to Dr. Walters, appellant claimed his right foot was feeling better. While there was occasional numbness, there was no further pain. Dr. Walters advised that the recent right foot MRI scan was interpreted as normal. His final assessment was a history consistent with tendinitis and contusion, which was "improved." Dr. Walters recommended swimming for rehabilitation or a stationary bike. He also advised appellant to slowly increase activity as tolerated and to return for follow-up "as needed." The record does not include any evidence of additional treatment. Appellant noted that he had not seen a doctor for more than five years following his resignation from the employing establishment in 2002.

After being released to regular duty effective October 14, 2002, appellant twice saw Dr. Walters. Although appellant claims to have been disabled beginning October 22, 2002, Dr. Walters' November 11 and December 3, 2002 treatment notes did not find appellant disabled from work due to residuals of his accepted condition. In fact, the record reflects that appellant held several jobs in the private sector following his federal employment. Appellant reported that he was gainfully employed for more than 2½ years beginning January 30, 2003. The record is devoid of any medical evidence establishing that appellant was unable to perform his regular mail handler duties on or after October 22, 2002 due to his accepted contusion. Accordingly, the Board finds that the Office properly denied his recurrence of disability claim.

CONCLUSION

Appellant has not established that he sustained a recurrence of disability on October 22, 2002, causally related to his September 5, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2009
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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