

In a March 28, 2008 report, a physician diagnosed bilateral plantar fasciitis. He did not address whether appellant was unable to work. In an April 21, 2008 report, Dr. Daniel Shamir, a Board-certified physiatrist, prescribed physical therapy two to three times a week for 12 weeks for appellant's accepted conditions.

On June 6, 2008 appellant filed a claim for a recurrence of disability beginning April 7, 2008.

By letter dated June 13, 2008, the Office asked appellant to provide a comprehensive medical report containing a diagnosis, findings on physical examination and a rationalized medical opinion explaining why she was unable to perform even limited-duty work due to her accepted lower extremity conditions.

On June 13, 2008 Dr. Shamir provided physical findings. He diagnosed a history of L4-5 spinal disc dessication and herniated disc, with persistent low back pain and intermittent bilateral lower limb pain and painful bilateral lower extremity arthralgias without evidence of swelling or effusion. Dr. Shamir noted that the arthralgias had improved overall. He stated that appellant was to remain off work. On July 8, 2008 Dr. Shamir stated that appellant was under treatment for her accepted aggravation of bilateral plantar fasciitis, shin splints and Achilles tendinitis. On April 14, 2008 he examined appellant and outlined work restrictions. Appellant returned to work under the restrictions but sustained an exacerbation of her conditions. She remained off work as of April 5, 2008 and was precluded from any sustained gainful activity. Dr. Shamir estimated a return to work in two months following physical therapy and obtaining orthotic footwear.

On August 15, 2008 the Office advised appellant that she needed to provide rationalized medical opinion to establish that she was totally disabled for work beginning April 7, 2008 due to her accepted lower extremity conditions.

Appellant submitted an August 15, 2008 report from a physical therapist.

On August 21, 2008 Dr. Shamir provided findings on physical examination. He noted that appellant had been diagnosed with rheumatoid arthritis. Dr. Shamir advised that she was to remain off work and was precluded from sustained gainful activity. On September 4, 2008 he stated that appellant presented in March 2008 with increased bilateral foot pain. On April 14, 2008 appellant had increased tingling and numbness in her feet with diffuse weakness in her legs. Objective findings include hyperpronation of her feet and bilateral heel spurs revealed by x-ray as reported by her podiatrist. Dr. Shamir stated that appellant's return to work had exacerbated her accepted conditions.

In notes dated September 15, 2008, Dr. Daniel J. Karns, a Board-certified orthopedic surgeon, stated that appellant experienced bilateral foot and ankle pain for the prior two years. He provided findings on physical examination and diagnosed bilateral ankle pain. Dr. Shamir noted that appellant had not worked since April 2008.

By decision dated November 4, 2008, the Office denied appellant's claim for a recurrence of disability commencing April 7, 2008. It found that the medical evidence did not establish that her disability was causally related to her August 13, 2007 accepted aggravation of bilateral plantar fasciitis, bilateral shin splints and bilateral Achilles tendinitis.

Appellant requested an oral hearing with an Office hearing representative that was held on March 19, 2009.

By decision dated June 3, 2009, an Office hearing representative affirmed the November 4, 2008 decision.¹

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or 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 he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.² To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.³

ANALYSIS

Appellant has the burden to provide medical evidence establishing that she was totally disabled on April 7, 2008 due to a worsening of her accepted aggravation of bilateral plantar fasciitis, bilateral shin splints and bilateral Achilles tendinitis, or a change in her job duties such that she was unable to perform her light-duty work. She alleged that a change in the nature and extent of her accepted conditions caused her recurrence of total disability.

In a March 28, 2008 report, a physician diagnosed bilateral plantar fasciitis. He did not address whether appellant was disabled for work. Therefore, this report is not sufficient to establish total disability beginning April 7, 2007 due to her accepted conditions.

¹ Subsequent to the June 3, 2009 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal. The Board notes that, while this appeal was pending, the Office issued a July 29, 2009 decision denying appellant's claim for disability from March 10 to 13, 2008. The issue in the July 29, 2009 decision is different from that on appeal in this case and is not null and void. *See Douglas E. Billings*, 41 ECAB 880 (1990).

² *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) provides, "*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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her 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 or her established physical limitations."

³ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Maurissa Mack*, 50 ECAB 498, 503 (1999).

There is no medical evidence of record showing that appellant was examined by a physician on or about April 7, 2008. On April 21, 2008 Dr. Shamir prescribed physical therapy two to three times a week for her bilateral plantar shin splints, plantar fasciitis and Achilles tendinitis. He did not indicate any dates of disability. On June 13, 2008 Dr. Shamir provided physical findings and diagnosed a history of L4-5 spinal disc dessication and a herniated disc with persistent low back pain and intermittent bilateral lower limb pain, and painful bilateral lower extremity arthralgias without evidence of swelling or effusion. He noted that the lower extremity arthralgias had improved overall. Dr. Shamir stated that appellant was to remain off work. However, he did not mention April 7, 2008, the date she claimed a recurrence of total disability. Dr. Shamir did not explain why appellant was unable to perform limited-duty work as of April 7, 2008. Additionally, it is unclear from his report whether her disability was due to her nonwork-related back condition rather than her accepted lower extremity conditions.

On July 8, 2008 Dr. Shamir stated that appellant was under treatment for her accepted bilateral plantar fasciitis, shin splints and Achilles tendinitis. He noted that on April 14, 2008 he examined her and outlined work restrictions. Appellant returned to work under those restrictions but sustained an exacerbation of her conditions. She remained off work as of April 5, 2008 and remained precluded from any sustained gainful activity. Dr. Shamir estimated a return to work in two months following physical therapy and beginning the use of orthotic footwear. However, he provided no physical findings to support his opinion that appellant was totally disabled. Dr. Shamir did not explain how she became totally disabled due to her accepted conditions. There are no medical reports or notes from Dr. Shamir dated April 5, 2008 or another physician to support disability on that date or, as noted, on April 7, 2008. On August 21, 2008 Dr. Shamir provided findings on physical examination. He noted that appellant had been diagnosed with rheumatoid arthritis. Dr. Shamir stated that she was to remain off work and was precluded from sustained gainful activity. However, he provided no rationalized medical explanation as to why she was totally disabled beginning April 7, 2008. On September 4, 2008 Dr. Shamir stated that appellant presented in March 2008 with increased bilateral foot pain and on April 14, 2008 she had increased tingling and numbness in her feet and diffuse weakness in her legs. Objective findings include hyperpronation of her feet and bilateral heel spurs revealed by x-ray as reported by her podiatrist. Dr. Shamir stated that her return to work exacerbated her accepted aggravations of bilateral plantar fasciitis, shin splints and Achilles tendinitis. However, he provided minimal physical findings to support his opinion. Dr. Shamir did not explain with medical rationale how appellant's limited-duty job exacerbated her accepted conditions such that she was disabled from even limited-duty work beginning April 7, 2008.

On September 15, 2008 Dr. Karns stated that appellant had experienced bilateral foot and ankle pain for the past two years. He provided findings on physical examination and diagnosed bilateral ankle pain. Although Dr. Karns noted that appellant had not worked since April 2008, he did not provide specific dates of disability. He did not explain how she was totally disabled in April 2008 due to a change in the nature and extent of her accepted aggravations of bilateral plantar fasciitis, shin splints and Achilles tendinitis or a change in her limited-duty job such that she was totally disabled. Therefore, this report is not sufficient to establish that appellant sustained a recurrence of total disability on April 7, 2008 causally related to her August 13, 2007 employment injury.

Appellant submitted an August 15, 2008 report from a physical therapist. A physical therapist does not qualify as a physician under the Act.⁴ Registered nurses, licensed practical nurses, physician's assistants and physical therapists are not physicians as defined under the Act and their opinions are of no probative value.⁵ Consequently, the physical therapy report is not sufficient to establish that appellant sustained a work-related recurrence of total disability.

The Board finds that appellant failed to establish that she was totally disabled on April 7, 2008 due to a change in the nature and extent of her accepted aggravations of bilateral plantar fasciitis, bilateral shin splints and bilateral Achilles tendinitis or a change in the nature and extent of her light-duty job requirements. Therefore, the Office properly denied her claim for a recurrence of total disability.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she had a recurrence of total disability on April 7, 2008 causally related to her August 13, 2007 accepted lower extremity conditions.

⁴ See 5 U.S.C. § 8101(2) which provides: “‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law”; see also *Roy L. Humphrey*, 57 ECAB 238 (2005); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 3, 2009 is affirmed.

Issued: April 13, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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