

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

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A.R., Appellant )  
and ) Docket No. 09-2203  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: August 24, 2010  
Evergreen Park, IL, Employer )  
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)

*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 September 2, 2009 appellant timely appealed the July 29, 2009 merit decision of the Office of Workers' Compensation Programs, which denied her claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.<sup>1</sup>

**ISSUE**

The issue is whether appellant sustained a recurrence of disability beginning October 21, 2008, causally related to her June 25, 2004 employment injury.

**FACTUAL HISTORY**

On June 25, 2004 appellant, then a 31-year-old mail carrier, injured her left lower extremity in the performance of duty. The Office initially accepted her traumatic injury claim

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<sup>1</sup> The record on appeal includes evidence received after the Office issued its July 29, 2009 merit decision. The Board cannot consider evidence for the first time on appeal. 20 C.F.R. § 501.2(c) (2009).

for fracture of the 5<sup>th</sup> metatarsal bone of the left foot. Appellant's claim was later expanded to include aggravation of plantar fibromatosis as an accepted condition. On October 3, 2006 she underwent Office-approved left foot surgery performed by Dr. Stephen V. Perns, a podiatrist, who also performed a September 21, 2007 procedure to remove hardware from appellant's left foot.

On May 30, 2008 appellant accepted a full-time, limited-duty position as a carrier. The physical requirements of the modified assignment included lifting 10 to 15 pounds an average of four hours a day, two hours of standing, walking, pulling and pushing, one hour of kneeling, bending and twisting and four to six hours driving. Appellant's duties included casing and tying down mail, completing collections and deliveries that included flat land, residential, relays, parcels and express mail.

Dr. Perns completed a work capacity evaluation (Form OWCP-5c) on September 18, 2008. He advised that appellant could work a maximum of eight hours per day. Appellant's physical limitations included three hours walking, three hours standing, three hours of both pushing and pulling, with a 50-pound weight restriction and two hours of lifting up to 15 pounds. Dr. Perns precluded all climbing and he imposed a one-hour limitation on squatting and kneeling. The restrictions were to remain in effect indefinitely.

As of October 20, 2008, Dr. Perns restricted appellant to "sitting duties only." When he examined her that same day he noted that she was just about done with her first trimester of pregnancy. Appellant stated that she was having a very hard time with her pregnancy. She also complained of having a great deal of pain in the arches and heels of both feet. Dr. Perns commented that there were no further complaints other than a recent hospitalization for pneumonia. On physical examination he noted that appellant was neurovascularly intact. Dr. Perns also noted moderate edema to the feet and pain to the medial plantar heels and arches, but negative Tinel's sign on percussion of the tarsal tunnel. He diagnosed bilateral plantar fasciitis. Dr. Perns stated that treatment options were limited due to appellant's pregnancy and advised that she "return to work with [a] strict sitting duty only type of job." He also advised appellant to soak her feet in warm water and perform some stretching exercises in the morning, refrain from walking barefoot and ice her heels and arches at night. Dr. Perns instructed appellant to return on an as-needed basis in the next couple of months. He further commented that, after appellant gave birth, he should be able to treat her more aggressively.

Appellant claimed that she reported for work on October 21, 2008 with Dr. Perns' latest restrictions but was sent home because the employing establishment could not accommodate those restrictions. She later filed several claims for wage-loss compensation (Form CA-7) for the period October 21, 2008 through January 3, 2009. The employing establishment indicated that it had asked appellant to file a recurrence claim (Form CA-2a), but she refused. It also noted that, with respect to the claimed period of November 3 to 15, 2008, appellant had been sent home because there was no available work to accommodate her changed work restrictions.

In a report dated December 15, 2008, Dr. Perns explained that he restricted appellant to sitting duties only effective October 20, 2008 because at the time she complained of increased pain and discomfort to the heels and arches of both feet. He said he told her that this was "more than likely due to increase in weight ... as well as ligamentous laxity due to her pregnancy."

According to Dr. Perns, the changed work restrictions effective October 20, 2008 were directly related to appellant's pregnancy. He based the change on increased edema to the feet, ankle and legs as well as increased pain on direct palpation of the plantar fascia and plantar calcaneus. Dr. Perns indicated that these findings were consistent with plantar fasciitis and worsening painful syndrome due to swelling or edema from pregnancy weight gain. In conclusion, he stated that appellant's then-current restriction of sitting duties only was related to her plantar fasciitis and pain and swelling in her feet, ankles and legs, which was related to her pregnancy or exacerbated by her pregnancy. Dr. Perns further noted that her change in light-duty status from sedentary work to seated or sitting duties would be temporary.

In a decision dated January 9, 2009, the Office denied appellant's claim for wage-loss compensation beginning October 21, 2008. It found that the medical evidence did not establish that she was disabled for work due to her June 25, 2004 employment injury. Appellant subsequently requested a review of the written record and she submitted additional evidence.

In a report dated January 12, 2009, Dr. Perns noted that appellant still complained of difficulty standing on the left foot due to pain in the arch and heel region. He also noted that she had been trying to work light duty, but her employer would only allow her to work for about two hours and then would send her home stating that they did not have any jobs available with her work restrictions. On physical examination appellant was neurovascularly intact. Dr. Perns also noted fairly good motion of the ankle and subtalar joints without pain or crepitus and no edema or erythema of the feet. He reported discomfort on palpation of the plantar fascia and medial plantar left heel, but negative Tinel's sign on percussion of the tarsal tunnel. Dr. Perns diagnosed fasciitis with heel spur-type syndrome, left. He explained that, due to appellant's pregnancy and increasing weight and ligamentous laxity from pregnancy, he would like for her to maintain modified light duty with sedentary duty or sitting duties only.

By decision dated April 7, 2009, the Branch of Hearings and Review denied appellant's claim for wage-loss compensation beginning October 21, 2008. The hearing representative found that her inability to perform her limited-duty assignment on or after October 21, 2008 was due to her pregnancy and not because of her accepted employment injury.

Appellant requested reconsideration on April 24, 2009. She argued that the October 20, 2008 change in her work restrictions was because of a worsening of her accepted condition, not because of her pregnancy. Appellant requested compensation from October 21, 2008 through March 2009.

A January 15, 2009 note from appellant's gynecologist, Dr. John E. Patterson, III, indicated that appellant was 26 weeks' pregnant with an estimated delivery date of April 19, 2009. He advised that she was in good health and should be allowed to work with continued limited duties as she had been doing previously.

Dr. Perns saw appellant on April 20, 2009 and reported that she was approximately three weeks post C-section delivery of her son. Appellant was bedridden for the month preceding her C-section and her feet had reportedly been feeling pretty good with nominal swelling. However, over the last 10 days or so she had noticed increased pain to the bottoms of both heels. The pain was worse upon first arising from a rested position. Appellant denied any further or new

complaints with respect to her feet. On physical examination there was no erythema or ecchymosis and minimal edema to the lower extremities. Dr. Perns reported pain to the medial plantar heels of both feet, but negative Tinel's sign with percussion of the tarsal tunnel. He also noted that there was a slight firm nodular-type soft tissue mass to the plantar left heel. Appellant had very good muscle strength in all directions. Dr. Perns diagnosed bilateral plantar fasciitis, with left plantar fibromatosis.

With respect to appellant's work restrictions, Dr. Perns noted that the controversial light-duty letter he provided back in September 2008 was in regards to her plantar fasciitis and plantar fibromatosis.<sup>2</sup> He said that her light-duty status had nothing to do with her pregnancy. Dr. Perns explained that, when he associated ligamentous laxity with pregnancy, he was simply telling appellant that an increase in foot pain may be related to pregnancy. He further stated that her preexisting underlying plantar fasciitis prior to her pregnancy was the cause or reason behind her foot pain and subsequent light-duty status. Dr. Perns indicated that he stood behind his initial diagnosis and that he had given appellant light-duty status due to her plantar fasciitis and plantar fibromatosis and not because of her pregnancy.

In a decision dated July 29, 2009, the Office denied modification of the April 7, 2009 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.<sup>3</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to 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 her established physical limitations.<sup>4</sup> Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy her burden of proof by showing a change in the nature and extent of the injury-related condition such that she was no longer able to perform the light-duty assignment.<sup>5</sup>

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally related to the original injury.<sup>6</sup> This burden includes the necessity of furnishing evidence from a

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<sup>2</sup> The September 2008 narrative report Dr. Perns referenced is not part of the record currently on appeal. However, his September 18, 2008 OWCP-5c is part of the record before the Board.

<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Id.*

<sup>5</sup> *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

<sup>6</sup> 20 C.F.R. § 10.104(b); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

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.<sup>7</sup> The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>8</sup>

### ANALYSIS

Appellant has not alleged that her claimed recurrence of disability was the result of a change in the nature and extent of her light-duty assignment. There is no evidence that the employing establishment either withdrew the light-duty assignment or otherwise altered her job requirements. Based on information provided by both appellant and the employing establishment, she was physically unable to continue performing her modified carrier duties as of October 21, 2008 and the employing establishment reportedly could not accommodate Dr. Perns' more restrictive "sitting duties only" limitation. Thus, the record does not establish that the employing establishment either altered or withdrew her light-duty assignment on or about October 21, 2008.

If appellant is to prevail on her recurrence claim, she must establish a change in the nature and extent of her employment-related condition such that she was no longer able to perform her light-duty assignment as a modified carrier.<sup>9</sup> As noted, Dr. Perns imposed a "sitting duties only" restriction when he examined appellant on October 20, 2008. At the time appellant reportedly was having a difficult pregnancy and experienced a great deal of pain in her arches and heels. Physical examination revealed moderate edema in both feet, pain to the medial plantar heels and arches and a negative Tinel's sign on percussion of the tarsal tunnel. Dr. Perns also noted that appellant was neurovascularly intact. He diagnosed bilateral plantar fasciitis. Dr. Perns indicated that treatment options were limited due to appellant's pregnancy and, therefore, he advised that she "return to work with [a] strict sitting duty only type of job." He also noted that, once appellant delivered her baby, her bilateral foot condition could be treated more aggressively.

While it is evident that appellant's pregnancy was not the primary cause of her bilateral foot condition, Dr. Perns' October 20, 2008 report suggested that the need for more restrictive work limitations was at least in part a function of her pregnancy. Conversely, he did not clearly indicate in his October 20, 2008 report that the change in work restrictions was a consequence of appellant's June 25, 2004 employment injury. The swelling and increased pain noted on physical examination perhaps justified the "sitting duties only" restriction, however, at that time Dr. Perns did not specifically relate the changed circumstances to appellant's accepted employment injury. In his subsequent report dated December 15, 2008, Dr. Perns explained to appellant that increased pain and discomfort to the heels and arches of both her feet was "more than likely due to increase in weight ... as well as ligamentous laxity due to her pregnancy." He further stated that on October 20, 2008 he changed her "work restrictions to sitting duties only

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<sup>7</sup> See Helen K. Holt, *supra* note 6.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>9</sup> Theresa L. Andrews, *supra* note 5.

which ... [was] directly related to her pregnancy....” Dr. Perns provided a similar explanation in his January 12, 2009 report when he noted that “due to [appellant’s] pregnancy and increasing weight and ligamentous laxity from pregnancy,” she should maintain modified light duty with sedentary duty or sitting duties only. Accordingly, his October 20 and December 15, 2008 and January 12, 2009 reports do not establish a change in the nature and extent of appellant’s employment-related condition.

In his April 20, 2009 report, Dr. Perns indicated that appellant’s light-duty status had nothing to do with her pregnancy. He explained that, when he previously associated ligamentous laxity with pregnancy, he was simply telling her that an increase in foot pain may be related to pregnancy. Dr. Perns unequivocally stated that he recommended light-duty status due to appellant’s preexisting plantar fasciitis and plantar fibromatosis and not due to her pregnancy. On its face this latest report appears to contradict earlier reports where he attributed the October 20, 2008 changed work restrictions to pregnancy-related weight gain, edema and ligamentous laxity. However, Dr. Perns’ April 20, 2009 report did not specifically mention the October 20, 2008 “sitting duties only” restriction. He only referenced a “controversial light[-]duty letter that was sent back in September....” This latest report did not distinguish between the September 18, 2008 restrictions and the more severe restrictions Dr. Perns imposed on October 20, 2008. The focus is on the circumstances that precipitated the change in work restrictions on October 20, 2008. Dr. Perns’ April 20, 2009 report does not clearly address that particular issue. However, even if one accepts the premise that appellant’s work restrictions were unrelated to her pregnancy, his April 20, 2009 report did not explain how the “sitting duties only” limitation was causally related to her June 25, 2004 employment injury. Merely, ruling out appellant’s pregnancy as a cause will not suffice.

The medical evidence of record does not establish a change in the nature and extent of appellant’s employment-related condition such that she was no longer able to perform her light-duty assignment as a modified carrier. The October 20, 2008 change in work restrictions to “sitting duties only” appears to have been due to a pregnancy-related exacerbation of appellant’s bilateral foot condition. As such, appellant has failed to establish an employment-related recurrence of disability. The Office, therefore, properly denied her claim for wage-loss compensation beginning October 21, 2008.

### **CONCLUSION**

Appellant has not established that she sustained a recurrence of disability on October 21, 2008, causally related to her June 25, 2004 employment injury

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2010  
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