

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

C.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bartlett, IL, Employer**

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**Docket No. 09-625
Issued: January 21, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 5, 2009 appellant filed a timely appeal of the May 29 and October 2, 2008 decisions of the Office of Workers' Compensation Programs denying a recurrence of disability commencing March 19, 2008 and a December 31, 2008 decision denying compensation for disability from August 18, 2007 through March 18, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability from August 18, 2007 through March 18, 2008; and (2) whether appellant established a recurrence of disability commencing March 19, 2008 causally related to her accepted employment injuries.

On appeal, appellant contends that the report of her attending orthopedic surgeon supports her claim.

FACTUAL HISTORY

On October 27, 2005 appellant, then a 50-year-old part-time flexible rural carrier, filed an occupational disease claim for osteochondritis to her left leg. Her work duties included lifting heavy tubs of mail and hampers, reloading platforms with trays of mail and repeatedly stepping out of her vehicle and going up and down stairs to deliver mail. On January 25, 2006 the Office accepted her claim for osteochondritis dissecans (OCD) left.¹ Appellant's claim was also accepted for osteoarthritis of the left ankle and foot, and benign neoplasm in the short bones of the lower limb. She was initially treated by Dr. Theodore J. Suchy, an osteopath. On March 17, 2006 appellant underwent an arthroscopy with transarthroscopic drilling of osteochondral defect. In an attending physician's report dated June 22, 2006, Dr. Suchy advised that appellant could return to work with restrictions to sit down work only.

In an August 14, 2006 report, Dr. George B. Holmes, Jr., a Board-certified orthopedic surgeon, diagnosed status post OCD lesion, which he believed was causally related to a February 1, 2002 accident that occurred when appellant stepped off a stair on the ledge of a sidewalk. He advised that appellant should continue to work in a light-duty capacity. Dr. Holmes stated that one would expect that appellant would be able to return to her regular duties about three months after successful surgery. He noted that there did not appear to be any preexisting illness or injury that would complicate or account for her current symptoms. In a September 25, 2006 report, Dr. Holmes noted that a magnetic resonance imaging (MRI) scan showed a persistent large central body OCD lesion of her talus. Appellant underwent left ankle surgery on October 20, 2006. In a March 6, 2007 report, Dr. Holmes noted that appellant was doing well after surgery and was working in a light-duty sedentary job. On April 3, 2007 he released appellant to perform her regular work as a rural carrier. Dr. Holmes noted that appellant could function at a level consistent with a heavy-duty position and her regular job duties only require a medium-duty level of work. He opined that she was essentially at maximum medical improvement, although she did have some slight residual stiffness. The employing establishment reported that appellant returned to full duty effective April 3, 2007.

In a June 5, 2007 report, Dr. Holmes compared a prior MRI scan with a recent study and found that there was almost complete resolution of the bald hyperemia and that the large cystic area had resolved. He noted vary small little isolated punctuate areas that were relatively far apart and did not appear to show any joint involvement. Dr. Holmes advised that appellant was 95 percent better in terms of healing. He found that she was essentially at maximum medical improvement and he had no further recommendations for treatment. Dr. Holmes noted that appellant could continue work without restrictions and limitations.

On March 19, 2008 appellant filed a claim for compensation commencing March 9, 2008. Claim forms for continuing periods of disability were subsequently filed.

In a March 19, 2008 report, Dr. Holmes noted that he had not seen appellant since June 2007. Appellant told him that she had experienced an increase in pain over the prior several

¹ In a statement of accepted facts dated April 3, 2006, the Office indicated that appellant sustained her injury as a result of repetitive walking, climbing steps and lifting heavy packages. It also noted that she stopped work as of March 17, 2006 for surgery.

months and could not perform her usual employment. Dr. Holmes diagnosed a recurrence of appellant's OCD symptoms. He noted that her most recent MRI scan demonstrated some increased signal changes consistent with worsening of her OCD. Dr. Holmes stated that the next option would be an osteochondral transplant and, until appellant had this procedure, she should either be off work or in a strictly sedentary-type position. He found that appellant could not return to work and was currently disabled.

By letter dated March 28, 2008, the employing establishment controverted appellant's claim. It noted that she had been absent voluntarily from work due to a move to Florida in August 2007. The employing establishment was in the process of terminating appellant due to her absences from work.

In a letter dated April 10, 2008, appellant contended that her OCD never healed. She stated that her ankle had given out on two occasions, causing her to fall and injure herself. Appellant was off work as of August 19, 2007 to care for her mother, who passed away on October 9, 2007.

By decision dated May 29, 2008, the Office denied appellant's claim for disability commencing March 19, 2008. It noted that her claim remained open for medical treatment.

In a letter dated June 2, 2008, appellant stated that she was on full duty, not limited duty when she left to take care of her mother. She stated that the medical evidence of record established that her accepted condition had never healed.

On June 24, 2008 appellant requested a review of the written record.

In an August 7, 2008 medical report, Dr. Lin, a Board-certified orthopedic surgeon, diagnosed recurrent osteochondral lesion to the left ankle central dome of the talus. He provided an injection to relieve her pain. Dr. Lin recommended an allograft transplant to the lesion of the talus. He noted that this lesion was somewhat difficult to access and she might require an anterior arthrotomy with an osteotomy of the tubercle of the Chaput.

On August 14, 2008 appellant filed claims for compensation from August 18, 2007 through January 4, 2008.

By letter dated September 9, 2008, the Office advised appellant that her claims were not payable because the medical evidence did not establish how her claimed condition caused disability.

On September 18, 2008 Dr. Lin clarified his diagnosis. He noted appellant's history of injury on February 1, 2001. Dr. Lin advised that her prior surgery had failed and that appellant continued to suffer the consequences of the February 1, 2001 injury. Appellant's current diagnosis was a recurrence of osteochondral lesion of the central dome of the talus of the left ankle. Dr. Lin noted, "There is reasonable objective evidence to suggest that this recurrence injury is a direct consequence of the initial injury which occurred on February 1, 2001." Based on appellant's computerized tomography and MRI scan findings, she was a good candidate for a fresh osteochondral transplant to the talus to treat the lesion.

By decision dated October 2, 2008, the hearing representative found that appellant had not established that her disability for work commencing March 19, 2008 was causally related to her accepted condition.

In a letter dated October 16, 2008, appellant stated on October 2, 2007 that she attempted to rise from a seated position when her left ankle gave way causing her to fall on her left side. She struck the left side of her face against a wall and hurt her jaw and neck. On October 12, 2007, while walking from one room to another, appellant's left ankle gave out and she landed on a television, injuring the upper right side of her torso. She attributed both incidents to her accepted condition.

An MRI scan taken on October 17, 2008 was interpreted by Dr. Gregory Gullo, a Board-certified radiologist, as showing a mild degree of subluxation of the left articular disc with reduction on the open mouth views.

In a November 25, 2008 report, Dr. Lin summarized appellant's medical treatment. Based on the information available, he stated: "there is reasonable objective and subjective evidence that this current condition is the direct consequence of the previous work injury on February 1, 2001." Dr. Lin noted that appellant was over one year from her last procedure which had an 80 to 85 percent success rate but unfortunately had failed. He recommended a fresh allograft talus transplant to the persistent medial dome of the talus osteochondral lesion to treat her residual symptoms.

By decision dated December 31, 2008, the Office denied appellant's claim for disability from August 18, 2007 through March 18, 2008.

LEGAL PRECEDENT -- ISSUES 1 AND 2

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.²

Office procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.³

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims

² 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB ____ (Docket No. 07-2287, issued May 16, 2008).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

compensation is causally related to the accepted employment injury.⁴ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁵ This burden includes the necessity of furnishing evidence from a qualified 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.⁶ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁷

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁸ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁹ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹⁰

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for osteochondritis and osteoarthritis of the left ankle and foot, and benign neoplasm of the short bones of her lower limb. Appellant attributed her condition to repetitive walking, climbing steps and lifting heavy packages. On April 3, 2007 Dr. Holmes released appellant to perform her regular work as a rural carrier, noting that she could function at a level consistent with a heavy-duty position but that her regular job duties only required a medium-duty level of work. Subsequently, appellant submitted claims for wage-loss compensation commencing August 18, 2007.

The Board finds that appellant has not submitted sufficient medical evidence to establish her disability from August 18, 2007 through March 18, 2008. She returned to regular-duty work on April 7, 2007. However, as acknowledged by appellant, she took off work commencing August 19, 2007 to take care of her mother in Florida. Appellant remained in Florida after her mother's death. There is no evidence that her absence from work was causally related to her accepted conditions.

⁴ *Kenneth R. Love*, *supra* note 3.

⁵ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁶ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁸ *See Ricky S. Storms*, 52 ECAB 349 (2001); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁹ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

¹⁰ *See Ricky S. Storms*, *supra* note 8; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

The medical evidence does not establish that appellant was disabled during this period. In fact, there are no medical reports covering this time period. In a November 25, 2008 report, Dr. Lin advised that there was evidence that appellant's osteochondral lesion of the talus was a direct consequence of her work injury. He stated that her surgery had failed and recommended that she undergo a fresh allograft talus transparent. Dr. Lin did not address appellant's disability from August 18, 2007 through March 18, 2008. None of the reports by Dr. Holmes cover this time period. There is no medical evidence to establish that appellant was disabled from August 18, 2007 through March 18, 2008 due to a recurrence of her accepted condition. The Board finds that she has not met her burden of proof to establish her claim for disability.

ANALYSIS -- ISSUE 2

Appellant also filed a claim for disability commencing March 19, 2008. She submitted a March 19, 2008 report from Dr. Holmes, who indicated that appellant should be either off work or in a strictly sedentary position due to a recurrence of her OCD symptoms. However, Dr. Holmes did not address how the recurrence of her work-related condition was due to her accepted conditions as of March 19, 2008. He noted that he had not seen appellant since June 2007. Dr. Holmes also discussed the onset of an injury as when she stepped off a stair. However, appellant's condition was accepted as a result of her job duties which involved repetitive walking, climbing steps and lifting heavy packages. Her claim was accepted for an occupational disease and not for a traumatic injury. Dr. Lin advised that appellant had consequences from her February 1, 2001 injury but did not discuss the occupational nature of her accepted condition. He failed to address her disability commencing March 19, 2008 or to provide evidence of bridging symptoms. Dr. Lin's reports in 2008 are not sufficient to establish causal relation.

There is no rationalized medical evidence explaining how appellant sustained a recurrence of disability causally related to her accepted condition on March 19, 2008. Appellant has failed to meet her burden of proof.¹¹

CONCLUSION

The Board finds that the Office properly found that appellant has not met her burden of proof to establish a recurrence of disability for the period August 18, 2007 through March 18, 2008, nor commencing March 19, 2008, causally related to her accepted employment injuries.

¹¹ The Board notes that appellant's claim remains open for medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 31, October 2 and May 29, 2008 are affirmed.

Issued: January 21, 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