

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

R.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 09-1335
Issued: January 7, 2010**

Appearances:
Alan J. Shapiro, Esq. for the appellant
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 April 27, 2009 appellant, through counsel, filed a timely appeal of the July 22, 2008 and February 25, 2009 merit decisions of the Office of Workers' Compensation Programs denying his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained a recurrence of a medical condition commencing April 25, 2008 causally related to his employment-related injury.

FACTUAL HISTORY

This case has previously been before the Board.¹ In a December 7, 2000 decision, the Board set aside the Office's September 10, 1999 decision which denied appellant's request for reconsideration of a September 8, 1998 decision granting him a schedule award for an eight

¹ Docket No. 00-653 (issued December 7, 2000).

percent impairment of the right finger.² The Office abused its discretion in denying appellant's request as he advanced a relevant legal argument not previously considered. On remand, the Office issued a January 31, 2001 decision granting appellant a schedule award for a three percent impairment of the right arm.

On May 1, 2008 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence commencing April 25, 2008. He claimed that, following surgery on his right finger, he experienced several flare-ups. Appellant's finger became swollen for no apparent reason and split. On April 25, 2008 a physician advised appellant that his finger was infected. On the next day, a bone fragment emerged from his wound and he sought medical treatment. Appellant did not stop work or lose any time following the claimed recurrence.

In an April 25, 2008 disability certificate Dr. Sadhana Bhandari, a Board-certified internist, advised that appellant was evaluated on that date. Emergency room reports dated April 26, 2008 from Dr. Stewart W. Wright, Board-certified in emergency medicine, and a nurse whose signature is illegible listed appellant's medication.

By letter dated June 6, 2008, the Office advised appellant of the factual and medical evidence necessary to establish his recurrence claim.

In an unsigned April 26, 2008 hospital discharge note, Dr. Wright reviewed appellant's January 19, 1997 employment injury and medical, family and social background. Appellant noted that, for some time prior to examination, he had been having intermittent discomfort and swelling of his right ring fingertip where it was amputated. He did not recall any recent injury or trauma. Appellant advised Dr. Wright that, while washing dishes, part of the skin broke open on his finger. He picked out what he believed was a bone. Dr. Wright stated that, on examination, it actually looked like a piece of fingernail. On physical examination, he reported essentially normal findings with edema and a little bit of fluctuance almost consistent with felon in the finger, mild tenderness at the proximal interphalangeal and distal interphalangeal joints of the finger and a little break in the skin on the radial aspect where the fingernail was pulled out with no active drainage or other appreciable foreign body. Dr. Wright advised that an x-ray of the finger revealed no evidence of osteomyelitis or retained foreign body. He diagnosed right ring finger infection.

By decision dated July 22, 2008, the Office denied appellant's recurrence claim, finding the evidence insufficient to establish that he sustained a medical condition commencing April 25, 2008 due to his accepted January 19, 1997 employment-related injury.

On July 25, 2008 appellant, through his attorney, requested a telephonic hearing before an Office hearing representative.

² The Office accepted that on January 19, 1997 appellant, then a 43-year-old custodian, sustained amputation of his right ring fingertip when a desk jack slammed down on the finger. Following his January 19, 1997 employment injury, he initially returned to limited-duty work and subsequently was released to full-duty work on March 14, 1997.

In a February 25, 2009 decision, an Office hearing representative affirmed the July 22, 2008 decision. She found the medical evidence insufficient to establish that appellant sustained a recurrence of a medical condition commencing April 25, 2008 due to his accepted employment-related injury.

LEGAL PRECEDENT

A recurrence of 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.³

For recurrences of medical conditions, the claimant has the burden of proof to establish the relationship of the claimed recurrence to the injury.⁴ This burden includes the necessity of 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.⁵

ANALYSIS

The Office accepted appellant's claim for amputation of his right ring fingertip which occurred while in the performance of duty on January 19, 1997. Appellant was released to full-duty work on March 14, 1997. He filed a Form CA-2a alleging that as of April 25, 2008 he sustained a recurrence of his condition, as he experienced swelling in his right finger. Appellant sought medical treatment on that date. The Board finds, however, that appellant has failed to submit sufficient medical evidence to establish the recurrence of a medical condition due to his accepted injury.

Dr. Bhandari's disability certificate noted that appellant was evaluated on April 25, 2008. However, he did not diagnose a specific medical condition or address how the diagnosed condition was causally related to the accepted January 19, 1997 employment injury. The Board finds that Dr. Bhandari's report is insufficient to establish appellant's claim.

Dr. Wright's April 26, 2008 report only listed appellant's prescribed medication. This evidence is insufficient to establish appellant's claim. Dr. Wright did not provide a diagnosis of a medical condition or address any causal relationship between the diagnosed condition and the

³ 20 C.F.R. § 10.5(y); see *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (January 1995).

⁵ *Mary A. Ceglia*, *supra* note 3.

accepted employment injury. On April 26, 2008 he noted appellant's complaint of intermittent discomfort and swelling of his right ring fingertip where it had been amputated. Dr. Wright stated that what appellant believed to be a bone coming out from his finger was actually a fingernail. He reported essentially normal findings on physical and x-ray examination. Dr. Wright opined that appellant sustained a right ring finger infection. However, he did not provide an opinion addressing how the infection was causally related to the January 19, 1997 employment injury. The Board finds that this report is insufficient to establish appellant's claim.

The April 26, 2008 report from the nurse is of no probative medical value in establishing appellant's claim. A nurse is not a "physician" as defined under the Federal Employees' Compensation Act.⁶

Appellant has failed to submit rationalized medical evidence establishing a recurrence of a medical condition commencing April 25, 2008 due to the employment-related amputation of his right ring fingertip. He has not met his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of a medical condition commencing April 25, 2008 causally related to his accepted employment-related injury.

⁶ See 5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2009 and July 22, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 7, 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