United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 09-1788**
	)	**Issued: June 18, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Upland, CA, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 25, 2009, which affirmed a January 14, 2009 decision denying his claims for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability commencing September 21, 2007 causally related to his accepted employment condition.

FACTUAL HISTORY

On April 19, 2002 appellant, then a 44-year-old window clerk, filed an occupational disease claim alleging that he developed heel spurs due to prolonged standing at work. The Office accepted his claim for bilateral heel spurs and bilateral plantar fasciitis. Appellant worked intermittently and on April 8, 2006 accepted a full-time, light-duty position and worked until

February 13, 2007 when he was placed on administrative leave for engaging in threatening behavior in the workplace.

Appellant was initially treated by Dr. Brad A. Katzman, a podiatrist, from May 20, 2002 to March 25, 2004, who diagnosed chronic plantar fasciitis with heel spur syndrome secondary to cumulative trauma arising out of employment. Dr. Katzman noted that appellant worked full-time regular duty since December 2002. On November 23, 2004 appellant requested light duty. He submitted a November 8, 2004 light-duty request from Dr. Katzman, who diagnosed plantar fasciitis and recommended full-time work with restrictions. Appellant continued to submit reports from Dr. Katzman noting his treatment for chronic plantar fasciitis and recommending orthotics. In a duty status report dated April 4, 2006, Dr. Katzman advised that appellant could continue to work full time with restrictions of lifting up to 20 pounds intermittently for eight hours per day, sitting for eight hours per day, standing for one hour per day cumulative, walking for three to four hours per day, no climbing, kneeling, bending/stooping, twisting, pulling/pushing or operating machinery.

On April 8, 2006 the employing establishment offered appellant a full-time modified distribution window clerk position subject to Dr. Katzman's restrictions. The duties included vending services for one hour per day, passports for six hours per day, reception/telephones and customer service for eight hours per day and checking the accountable cage for four hours per day. The physical requirements including lifting up to 20 pounds, standing one hour per day cumulative, walking for three to four hours per day and sitting for eight hours per day. Appellant accepted the position and returned to work on April 10, 2006.

In correspondence dated February 16, 2007, the employing establishment notified that appellant was being placed in emergency off duty status effective February 13, 2007 for engaging in threatening behavior while on duty.

On June 13, 2007 the employer offered appellant a modified clerk position eight hours per day subject to the restrictions set forth by Dr. Katzman. The duties consisted of vending service for one hour per day, lobby director for eight hours per day, preparation of second notices for parcels, letters and flats for two hours per day and restocking the lobby for one hour per day. The physical requirements included standing for up to four hours per day, sitting for eight hours per day, walking for four hours per day and lifting containers from 5 to 20 pounds continuously and 30 pounds intermittently for eight hours per day. Appellant did not accept the position.

Appellant submitted reports and treatment notes from Dr. Katzman dated July 2 to August 23, 2007, who diagnosed plantar fasciitis and noted that appellant continued to have residuals of his work injury. In duty status reports dated July 5 and August 23, 2007, the podiatrist advised that appellant could work full time with restrictions. In an August 8, 2007 report, Dr. Katzman diagnosed chronic plantar fasciitis with heel spur syndrome secondary to cumulative trauma, arising out of employment. He opined that appellant was permanent and stationary and reached maximum medical improvement on May 20, 2003. On September 27, 2007 the podiatrist noted treating appellant for left plantar fasciitis and indicated that he was on disability for stress. Subsequent reports from December 12, 2007 to October 20, 2008 continued noting his status. In a June 2, 2008 duty status report, Dr. Katzman returned appellant to work in his usual position, full time with restrictions.

Appellant submitted a Form CA-7, claim for compensation for leave without pay for the period beginning September 21, 2007. In a December 2, 2008 statement, he indicated that the Merit Systems Protection Board issued a decision which attributed his disability to stress caused by a supervisor. Appellant requested the Office compensate him beginning September 2007 because the agency did not provide reasonable accommodation for his work injuries.

By letter dated December 11, 2008, the agency challenged appellant's claim for compensation for the period beginning September 21, 2007 noting that he had not worked since February 13, 2007 because he was placed in an emergency off duty status due to an Office of Inspector General investigation. The agency noted that appellant was offered a position on June 14, 2007 but refused the job.

By letter dated December 12, 2008, the Office informed appellant that his claim would be developed as a recurrence of disability. It advised him of the type of factual and medical evidence needed to establish his recurrence claim and requested that he submit such evidence, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed recurrent condition and specific employment factors.

Appellant submitted a CA-7 form, claim for compensation, for the period June 21 to November 30, 2008.

In support of his claim, appellant submitted a step one-grievance outline dated March 7, 2007 in which he disputed his placement in emergency off duty status as a violation of the bargaining agreement. In an August 22, 2007 settlement, the grievance was resolved and the February 16, 2007 emergency placement in off duty status was revoked and he was permitted to return to work. In a December 9, 2008 statement, appellant asserted that on March 7, 2007 the agency did not provide reasonable accommodations. On December 11, 2008 he again requested reasonable accommodations in a stress free environment. Appellant submitted a January 3, 2009 statement and asserted that he last worked on February 13, 2007 and the position he held at that time was not suitable. He further asserted that, from February 13, 2007 to December 1, 2008, his supervisor caused stress and depression. Appellant indicated that the workplace was not safe for him prior to December 1, 2008 and that management made no effort to provide accommodation and referenced a Merit Systems Protection Board decision, which he believed supported his position. He stated that on June 14, 2007 his supervisor tried to assign him a job that was not suitable work and refused to allow him to return to work. Appellant indicated that his accepted plantar fasciitis and heel spur conditions did not change or affect his ability to perform his job. He submitted reports from Dr. Harry Lewis, a Board-certified psychiatrist, dated December 24 and 31, 2008, who treated him for a depressive disorder and released him to work without restrictions effective December 24, 2008.

In a decision dated January 14, 2009, the Office denied appellant's claim for recurrence of disability on June 21, 2007 on the grounds that he failed to establish that he experienced a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements, which would prohibit him from performing the light-duty position he assumed after he returned to work.

Appellant requested a telephonic oral hearing which was held on May 14, 2009. He submitted a January 5, 2009 report from Dr. Katzman who noted appellant's continued complaints of pain of the bilateral heels and diagnosed chronic plantar fasciitis. In a duty status report dated January 5, 2009, Dr. Katzman advised that appellant could work full time with restrictions. On March 23, 2009 the podiatrist diagnosed chronic plantar fasciitis and noted that appellant remained on modified work with the same restrictions.

In a decision dated June 25, 2009, the hearing representative affirmed the Office decision dated January 14, 2009, which denied appellant's claim for a recurrence of disability beginning September 21, 2007.[1]

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[2] The Board has held that, when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of the Federal Employees' Compensation Act.[3]

Causal relationship is a medical issue[4] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

ANALYSIS

The Office accepted appellant's claim for bilateral heel spurs and bilateral plantar fasciitis. On April 8, 2006 appellant accepted a full time, light-duty position. He worked in that position until February 13, 2007, when he was placed on administrative leave due to an

[1] The hearing representative noted that appellant's CA-7 form listed his date of disability as September 21, 2007 and therefore determined this to be the claimed date of recurrence of disability.

[2] *Terry R. Hedman*, 38 ECAB 222 (1986). *See* 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

[3] *A.M.*, 61 ECAB ___ (Docket No. 09-1895, issued April 23, 2010). *See John W. Normand*, 39 ECAB 1378 (1988).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

investigation for threatening behavior. On June 21, 2007 appellant was offered a full-time modified clerk position subject to the restrictions set forth by Dr. Katzman. He did not accept the position. Appellant filed a claim for compensation beginning September 21, 2007, which the Office developed as a recurrence of disability. He indicated that he was not working because the agency failed to provide reasonable accommodations. The Board finds that, in the instant case, appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.

Appellant submitted reports from Dr. Katzman dated July 2 to August 23, 2007, who noted diagnoses and treatment. In duty status reports dated July 5 and August 23, 2007, the podiatrist advised that appellant could work full time with restrictions. These reports are insufficient to establish the claim as they do not support that appellant was totally disabled. Rather, the reports support that appellant could work full time with restrictions consistent with prior restrictions from Dr. Katzman under which appellant previously worked. On September 27, 2007 Dr. Katzman noted appellant's plantar fasciitis but indicated that appellant was on disability for stress. Other reports from the podiatrist dated December 12, 2007 and March 11, 2008, noted appellant's treatment for left heel pain and indicated that he had not worked since February 2007. However, none of Dr. Katzman's reports, most contemporaneous with the recurrence of disability, noted a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his light-duty position beginning September 21, 2007.[6] The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[7]

In a subsequent report, Dr. Katzman continued noting appellant's complaints of pain in both heels and indicated that physical examination was unchanged. He diagnosed chronic planter fasciitis with heel spur syndrome secondary to cumulative trauma arising out of employment. Dr. Katzman noted that appellant could return to work in his usual position, full time with restrictions. These reports do not support appellant's claim for recurrence of disability as Dr. Katzman did not specifically address how a particular change in the nature of appellant's physical condition, arising from the employment injury, prevented appellant from performing his light-duty position beginning September 21, 2007. Rather, Dr. Katzman advised that appellant could work full time with restrictions. Therefore, these reports are insufficient to meet appellant's burden or proof.

Other reports from Dr. Lewis dated December 24 and 31, 2008, noted appellant's treatment for a depressive disorder. He released him to work without restrictions effective December 24, 2008. However, the Board notes that Dr. Lewis did not address how any disability beginning September 21, 2007 was due to the accepted foot conditions and the Office has not

[6] *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

[7] *See Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

accepted any emotional or stress-related condition.[8] Therefore, these reports are insufficient to establish appellant's claim. Therefore, the Board finds that appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition.

Regarding change in the nature and extent of the light-duty requirements, appellant was working in a full-time light-duty position, consistent with Dr. Katzman's restrictions, when he was placed in emergency off duty status effective February 13, 2007 due to threatening behavior while on duty. When a claimant stops working at the employing establishment for reasons unrelated to his employment-related physical condition, he has no disability within the meaning of the Act.[9] The record indicates that appellant stopped working in his light-duty position for reasons unrelated to his employment injuries. The Board further notes that there is no credible evidence which substantiates any change in the nature and extent of the light-duty requirements at the time appellant was placed off duty due to reasons unrelated to his work injury. On June 12, 2007 appellant was offered a light-duty position, which was in conformance with the medical restrictions set forth by his treating physician but he did not accept this offer. As he stopped his light-duty position for reasons unrelated to his accepted work injury, the evidence does not establish a change in the nature of his light-duty requirement.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position he assumed after he returned to work.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on September 21, 2007 causally related to his accepted condition.

[8] The record indicates that appellant filed a claim for an emotional condition that is being developed as a separate claim by the Office. This matter is not before the Board on the present appeal.

[9] *See supra* note 3. In *Normand*, where the claimant was removed from his light-duty position for disciplinary reasons, the Board found no evidence of disability within the meaning of the Act.

ORDER

IT IS HEREBY ORDERED THAT the June 25 and January 14, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 18, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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