

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

E.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Des Moines, IA, Employer**

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**Docket No. 09-1797
Issued: June 15, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2009 appellant filed a timely appeal of a June 24, 2009 decision of the Office of Workers' Compensation Programs denying his claim for leave buy back. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he had a period of disability between June 19, 2007 and January 10, 2009 causally related to his accepted employment injury.

FACTUAL HISTORY

On September 27, 2008 appellant, then a 39-year-old mail handler, filed an occupational disease claim alleging that he injured his left ankle after carrying mail for 12 years.¹ He became

¹ Appellant was a part-time letter carrier from August 1, 2006 to November 24, 2007 at which time he became a full-time mail handler.

aware of his condition in August 2006. Appellant missed intermittent periods of work and began working restricted duty on the date he filed this claim.

In a June 22, 2007 report, Dr. David Flagel, Board-certified in family medicine, noted treating appellant for a migraine headache and left ankle pain. Appellant had childhood history of left Achilles tendon tear and scarring that had bothered him. Dr. Flagel stated that appellant worked for the employing establishment and needed to take a sick day for stinging and pain in his left Achilles tendon. He noted appellant's report of stress due to his brother's chronic heart problems and recent heart transplant surgery. Examination revealed a large scar on appellant's left leg with local swelling around the Achilles tendon just proximal to the ankle. In a work status report of the same date, Dr. Flagel excused appellant for work from June 19 and 24, 2007. On August 23, 2007 he noted appellant's history of chronic left ankle pain. Dr. Flagel stated that appellant severed his left Achilles tendon during childhood, which required surgery and resulted in occasional flare-ups. He found that the left Achilles tendon was very thickened with overlaying scarring from appellant's previous injury with diffuse tenderness in the scarring area. Dr. Flagel diagnosed chronic left ankle pain with occasional episodes of flare up. He advised that appellant was unable to work August 21 and 22, 2007 but could otherwise work full duty. On October 26, 2007 Dr. Flagel noted appellant's complaint of left heel pain. He indicated that appellant had previously been diagnosed with Achilles tendinopathy and tarsal tunnel syndrome of the left heel.

On October 5, 2007 Dr. Elizabeth McCurdy, an osteopath Board-certified in family medicine, noted appellant's complaint of worsening chronic left ankle pain. She diagnosed elevated blood pressure, hyperlipidemia and left ankle pain. Dr. McCurdy advised that he could return to work on October 8, 2007.

On December 7, 2007 Dr. Flagel noted that appellant had surgery on his left Achilles tendon during childhood and that a magnetic resonance imaging (MRI) scan of his left foot showed tendinopathy. The left posterior Achilles heel was extremely swollen and tender. Dr. Flagel excused appellant from work from December 3 through 10, 2007 and advised him to follow up as needed. On January 3, 2008 he reiterated that appellant had chronic left ankle pain following his childhood injury to his left Achilles tendon and excused appellant for work from December 28, 2007 to January 3, 2008.

In reports dated February 27 and March 19, 2008, Dr. Julie Albrecht, a podiatrist, diagnosed left tarsal tunnel and probable partial tear of the Achilles tendon with secondary scarring. She recommended tarsal tunnel release. On December 10, 2008 Dr. Albrecht summarized appellant's medical history and that he was postoperative for tarsal tunnel. The site was healing well but a subsequent examination revealed a partial tear of the Achilles tendon with acute tenderness overlaying previous tendinopathy. Dr. Albrecht opined that previous scar tissue and pushing and pulling activities at work caused a secondary tear of the left Achilles tendon.

On December 29, 2008 the Office accepted appellant's claim for aggravated partial tear of the left Achilles tendon.² It also accepted aggravated mass lesion of the left Achilles tendon.

² On December 22, 2008 the Office had originally denied appellant's claim finding that the medical evidence did not establish that the claimed medical condition resulted from the accepted work activities.

On January 19, 2009 appellant filed a claim for leave buy back from June 19, 2007 to January 10, 2009.³ He submitted Forms CA-7 claiming intermittent compensation, advising that he was in a leave without pay status or requesting leave buy back.

In a March 27, 2008 report, Dr. Flagel noted appellant's complaint of leg and calf pain. He found tendinitis and left Achilles tendinopathy. In a work status report of the same date, Dr. Flagel excused appellant from work from March 21 through 30, 2008 and advised that he follow up as needed. In a May 5, 2008 work status report, he noted that he excused appellant from work from May 1 and 5, 2008. In an August 17, 2008 work status report, Dr. Flagel noted that he excused appellant from work between August 15 and 19, 2008 and that he could return on August 20, 2008. On July 28, 2008 a physician's assistant indicated that appellant was disabled from July 25 to 27, 2008 due to pain and he could return to regular duty on July 28, 2008.

On May 12, 2008 Dr. Albrecht performed a left tarsal tunnel release. On May 22, 2008 she advised that appellant could return to work with sit down duty. In reports dated between June 11 and September 8, 2008, Dr. Albrecht advised that appellant continue working light duty. On October 7, 2008 she stated that an MRI scan showed a new partial tear over overlaying tendinopathy on appellant's left Achilles tendon and advised continued light duty. On December 22, 2008 Dr. Albrecht diagnosed calcaneal valgus, healed Achilles rupture and healed status post tarsal tunnel. She advised a return to full duty on December 23, 2008 and discharged appellant from care.

In a January 19, 2009 report, Dr. Flagel indicated that appellant was under his care between January 5 and 10, 2009. He noted that appellant could return to normal full-time activities on January 10, 2009.

On February 26, 2009 Dr. Scott Neff, an osteopath Board-certified in orthopedic surgery, found that appellant's left Achilles tendon had a fairly significant mass lesion about two centimeters proximal to the place of insertion. He noted that appellant had been working regularly except for the time subsequent to his tarsal tunnel release.

On April 30, 2009 the Office advised appellant of the evidence necessary to support his disability between June 19, 2007 and January 10, 2009 and allowed him 30 days to submit additional evidence. Appellant submitted an April 17, 2009 surgical report from Dr. Neff who performed an excision of the scarred mass legion from the left Achilles tendon.

In a June 24, 2009 decision, the Office denied appellant's claim for 261.9 hours of wage-loss compensation and leave buy back from June 19, 2007 to January 10, 2009, finding that the medical evidence did not support disability for the period due to the accepted conditions.⁴

³ On January 29, 2009 appellant filed a claim for a schedule award, which is not an issue presently before the Board.

⁴ The record indicates that the Office separately developed appellant's wage-loss incidental to his undergoing authorized medical treatment. Therefore, wage-loss incidental to authorized medical treatment is not at issue in the present appeal.

LEGAL PRECEDENT

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.⁵ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury. Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁶

In situations where compensation is claimed for periods where leave was used, the Office has the authority to determine whether the employee was disabled during the period for which compensation is claimed.⁷ It determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buy back, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.⁸

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed injury and his employment.⁹ To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration, as well as findings upon physical examination of appellant and his medical history, state whether the employment factors caused or aggravated his diagnosed conditions and present medical rationale in support of his or her opinion.¹⁰

ANALYSIS

The Office accepted appellant's claim for aggravated partial tear and aggravated mass lesion of the left Achilles tendon. Appellant filed a claim for leave buy back for intermittent hours of disability from June 19, 2007 to January 10, 2009. However, the medical evidence does not support that his accepted injuries caused total disability during the period claimed.

The record contains reports from Dr. Flagel who diagnosed chronic left ankle pain that had occurred since appellant's childhood injury when he severed his left Achilles tendon. He excused appellant from work between August 21 and 22, 2007, December 3 and 10, 2007 and

⁵ *David H. Gross*, 32 ECAB 24 (1980).

⁶ *Laurie S. Swanson*, 53 ECAB 517 (2002).

⁷ *See id.* *See also* 20 C.F.R. § 10.425 ("The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing agency.")

⁸ *See Swanson, supra* note 6.

⁹ *Paul E. Thams*, 56 ECAB 503 (2005).

¹⁰ *Donald W. Long*, 41 ECAB 142 (1989).

December 28, 2007 and January 3, 2008. However, Dr. Flagel did not identify the accepted work injuries or specifically address the reasons why any period of disability was due to the accepted employment-related aggravated partial tear and aggravated mass lesion of the left Achilles tendon. Moreover, he generally noted treating appellant for his left ankle condition without specifying whether he was treating appellant's accepted conditions. This specification is particularly important as appellant had a preexisting left Achilles tendon injury as well as a concurrent left tarsal tunnel condition, left Achilles tendinopathy and chronic left ankle pain.

Dr. Flagel's reports dated March 27, 2008 found tendinitis and left Achilles tendinopathy and excused appellant from work between March 21 and 30, 2008. To the extent that Dr. Flagel indicated that these conditions caused appellant's disability from work between March 21 and 30, 2008, they are not accepted conditions and do not support that appellant was disabled due to a work-related injury. The record also contains several work status reports from him in which he indicated that appellant was disabled from work between June 19 and 24, 2007, May 1 and 5, 2008 and August 15 and 19, 2008. However, these reports did not contain a medical opinion explaining the cause of the disability. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Dr. Flagel's January 19, 2009 report noted treating appellant between January 5 and 10, 2009 and advised that he could return to full duty on January 10, 2009. However, Dr. Flagel did not indicate how long appellant was disabled from work and he did not explain whether the accepted conditions were the cause of the disability. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹²

Similarly, in an October 5, 2007 report, Dr. McCurdy diagnosed left ankle pain, elevated blood pressure and hyperlipidemia. She indicated that appellant could return to work on October 8, 2007. However, Dr. McCurdy did not specify the duration of his disability or address whether his accepted conditions caused total disability from work. Identifying causation is particularly important as elevated blood pressure and hyperlipidemia are not accepted conditions.

The reports from Dr. Albrecht do not support that appellant's disability for the claimed period as the physician consistently advised that appellant could continue working. For example, in reports dated between June 11 and October 7, 2008, Dr. Albrecht advised continued light duty following diagnosing partial tear of the left Achilles tendon. In a December 22, 2008 report, she discharged appellant from care and advised return to full duty on December 23, 2008. Dr. Albrecht also treated him primarily for his tarsal tunnel condition that is not an accepted condition.

The record also contains a report from a physician's assistant. However, the Board has noted a physician's assistant is not a physician as defined under the statute and therefore any

¹¹ *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

¹² *T.M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009).

report from such individual does not constitute competent medical evidence which, in general, can only be given by a qualified physician.¹³

None of the other medical reports of record specifically address the issue of whether appellant had any employment-related disability from June 19, 2007 to January 10, 2009. Therefore, appellant failed to provide sufficient medical evidence to establish that his claimed disability was causally related to his accepted employment injury. Consequently, the Office properly denied his claim for leave buy back for the period claimed.

On appeal, appellant asserts that Dr. Flagel has been his treating physician and is familiar with the type of work appellant performs. He further asserts that this supports Dr. Flagel's opinion that he was unable to return to work. Although the record contains reports from Dr. Flagel indicating disability, none of these reports contained sufficient rationalized medical opinion explaining whether or how appellant's disability for the claimed period was causally related to his accepted injury. As noted, medical evidence without an opinion on causal relationship is of diminished probative value.

CONCLUSION

The Board finds that appellant did not establish that his disability from June 19, 2007 to January 10, 2009 was causally related to his accepted employment injury. Therefore, the Office properly denied his claim for leave buy back.¹⁴

¹³ See *George H. Clark*, 56 ECAB 162 (2004).

¹⁴ The Board notes that appellant submitted new evidence after the Office issued its decision. However, the Board may only review evidence that was in the record at the time the Office issued its final decision. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 24, 2009 is affirmed.

Issued: June 15, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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