

experiencing inflammatory arthropathy of his lower extremities that was not causally related to the December 14, 2005 employment injury. The Office noted that, at the time of his accepted May 11, 2005 bilateral ankle strain, he was already being treated for bilateral bursitis of the ankles. A June 2005 computerized tomography (CT) scan revealed advanced degenerative changes that preexisted the May 11, 2005 employment injury. The Office provided appellant with a recurrence of disability form to complete if he wished to file a recurrence claim regarding the May 11, 2005 injury. On November 22, 2007 appellant filed a claim for a recurrence of disability causally related to his May 11, 2005 accepted bilateral ankle sprains and strains. He indicated that he was unable to work and required medical treatment due to headaches and pain in his feet, ankles, knees and back.

In a September 14, 2007 report, Dr. Michael K. Vandenberg, an attending rheumatologist, stated that he had treated appellant for several months for arthritis of the knees, ankles and feet. He advised that appellant was temporarily totally disabled because of the severity of his arthritic symptoms. In a January 31, 2008 report, Dr. Vandenberg noted that appellant experienced low back pain after slipping on a wet floor at work in 2003. He slipped on stairs and fell in 2004, injuring his knees, and he injured his right knee again in 2005 when he struck it against a rail. Dr. Vandenberg provided findings on physical examination and diagnosed osteoarthritis of the knees, possible CPPD (calcium pyrophosphate dehydrate deposition disease), synovitis of the knees, ankles and metatarsal joints and lumbar spinal stenosis. Dr. Vandenberg opined that the work injuries in 2003, 2004 and 2005 caused a portion of appellant's current pain syndrome and therefore his condition was employment related.

By decision dated September 26, 2008, the Office denied appellant's claim for a recurrence of disability, finding that the medical evidence failed to establish that his disability was causally related to the May 11, 2005 accepted bilateral ankle sprains and strains.¹

By letter postmarked December 22, 2008, appellant requested an oral hearing. He filed this appeal with the Board on March 4, 2009.

LEGAL PRECEDENT -- ISSUE 1

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."² An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and

¹ The Office referred to a May 11, 2008 employment injury in the latter portion of its September 26, 2008 decision. It is clear that the Office meant to refer to appellant's May 11, 2005 employment injury.

² R.S., 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

supports that conclusion with sound reasoning.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

ANALYSIS -- ISSUE 1

Appellant has the burden to provide medical evidence establishing that he sustained a recurrence of disability causally related to his May 11, 2005 accepted bilateral ankle sprains.

In a September 14, 2007 report, Dr. Vandenberg stated that he had treated appellant for several months for arthritis of the knees, ankles and feet. He indicated that appellant was temporarily totally disabled because of the severity of his arthritic symptoms. In a January 31, 2008 report, Dr. Vandenberg noted that appellant slipped on a wet floor at work in 2003 and experienced low back pain, slipped on stairs and fell in 2004, injuring his knees, and injured his right knee again in 2005 when he struck it against a rail. He provided findings on physical examination and diagnosed osteoarthritis of the knees, possible CPPD, synovitis of the knees, ankles and metatarsal joints and lumbar spinal stenosis. Dr. Vandenberg opined that the work injuries in 2003, 2004 and 2005 caused a portion of appellant's current pain syndrome and therefore his condition was employment related. He did not provide a history of any injury that precipitated the claimed recurrence of disability or explain how appellant's disability was causally related to his May 11, 2005 employment injury. Dr. Vandenberg did not explain his opinion that appellant's disability was caused, in part, by the May 11, 2005 employment injury in light of the fact that she had a preexisting bilateral arthritis ankle condition documented by a CT scan. Due to these deficiencies, the reports of Dr. Vandenberg are not sufficient to establish that appellant sustained a recurrence of disability causally related to his accepted May 11, 2005 bilateral ankle sprains. Appellant also attributed his recurrence of disability to knee pain, foot pain, back pain and headaches. A claim for a recurrence of disability or need for medical treatment cannot be considered for medical conditions that have not been accepted by the Office as work related. For these reasons, the medical evidence does not establish that appellant had a recurrence of disability causally related to his accepted May 11, 2005 employment injury.

On appeal, appellant contends that certain medical records are missing from the file, but he did not specify the dates of the missing medical reports and the names of the physicians.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he had a recurrence of disability causally related to his May 11, 2005 bilateral ankle sprains.

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ *See Ronald C. Hand*, 49 ECAB 113 (1957); *see also Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 26, 2008 is affirmed.

Issued: March 8, 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