United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket No. 10-608**
	)	**Issued: November 2, 2010**
U.S. POSTAL SERVICE, MAPLETON STATION, Indianapolis, IN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 4, 2010 appellant filed a timely appeal from the September 30, 2009 merit decision of the Office of Workers' Compensation Programs. The Board has jurisdiction to review the merits of the case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

This issue is whether appellant has established that she sustained a recurrence of a medical condition on November 13, 2008 causally related to the January 4, 2008 employment injury.

On appeal, appellant alleged that she did not get all the paperwork from her doctors in the allotted time. She alleges that her doctor's reports show that her injury from January 4, 2008 contributed to her current condition.

FACTUAL HISTORY

On January 15, 2008 appellant, then a 45-year-old part time flexible city letter carrier, filed a traumatic injury claim alleging that on January 4, 2008, when she stepped out of a long

life vehicle (LLV), she twisted her right ankle and that when she tried to catch herself, she twisted her left ankle and fell to the ground. She listed the nature of injury as sprain of the right ankle and fracture left foot. By letter dated January 17, 2008, the Office accepted appellant's claim for fracture of other tarsal and metatarsal bones, closed, left foot and left foot sprain. Appellant returned to work limited duty. On June 5, 2008 appellant accepted a modified job assignment that involved a maximum of three hours of walking. Dr. Andrew M. Bauermeister, a podiatrist, indicated that he saw appellant on August 15, 2008 and that she was instructed to discontinue physical therapy secondary to no minimal improvement. He noted that she had partially met her goals for discharge.

On November 13, 2008 appellant filed a claim alleging a recurrence of the January 4, 2008 employment injury commencing November 3, 2008. The claim form did not reveal any lost time. Appellant noted that after returning to full duty and carrying a whole route, the pain recurred in the same area as the previous injury. She noted that swelling occurred after working for approximately 12 hours. Appellant stated that her doctor put her on a four-hour walking limit. In support of her claim, she submitted a duty status report by Dr. Mark Lazar, a doctor of podiatric medicine, dated November 3, 2008 wherein he limited appellant to continuous lifting of 10 pounds, intermittent lifting of 35 pounds, walking four hours a day and climbing, kneeling and bending/stooping limited to two hours a day. In a November 17, 2008 note, Dr. Lazar indicated that appellant needed to wear "NB type shoes" to work. He listed the date of injury as January 4, 2008.

On December 11, 2008 appellant accepted the Office's limited-duty assignment.

By letter dated December 18, 2008, the Office requested further information. Appellant responded that she returned to work full duty only to have continued pain in her left foot.

By decision dated February 9, 2009, the Office denied appellant's claim for a recurrence as the evidence was not sufficient to establish that her claimed recurrent disability from work beginning November 3, 2008 was due to the accepted work injury.

In a January 13, 2009 attending physician's report, Dr. Lazar listed his finding as well healing fifth metatarsal left foot. He checked a box indicating that this condition was related to appellant's employment activity. Dr. Lazar indicated that appellant was partially disabled from October 2008 to the present time. He indicated that she needed to walk a four-hour route and drive four hours.

In a January 16, 2009 report, Dr. Lazar summarized his treatment of appellant. He noted that she presented to his office on January 7, 2008 complaining of pain since January 4, 2008 when she rolled her foot stepping out of a truck. Dr. Lazar noted a history of a previous fifth metatarsal fracture in May 2007. He indicated that a prior computerized tomography (CT) scan demonstrated a nondisplaced fracture of the fifth metatarsal base and that a later magnetic resonance imaging (MRI) scan showed mild stress reactions to the second and third metatarsal cunnelform and medial navicular, with no stress fracture identified. Dr. Lazar noted that appellant was treated with the below-knee cast and inflammatory medications, reduction of work and physical therapy. He noted that recently he saw appellant and changed her back to four hours of walking and four hours of driving and stated that hopefully within the next two to four

weeks she will be able to go back to her full walking route. In a note dated February 9, 2009, Dr. Lazar released appellant to return to work full duty.

A February 12, 2009 MRI scan of the right knee was interpreted by Dr. Charles D. VanMeter, a Board-certified orthopedic surgeon, as showing chondromalacia most marked in the patellofemoral compartment.

In a February 17, 2009 report, Dr. Jonathan Smerek, a Board-certified orthopedic surgeon, diagnosed appellant with left forefoot synovitis and advised that she could return to restricted work on February 18, 2009.

On February 28, 2009 appellant requested an oral hearing.

In a June 15, 2009 report, Dr. Ronald L. Banta, a foot surgeon, indicated that appellant had been his patient and was being treated for traumatic degenerative arthritis in the left foot at the mid tarsal joint. He noted that incidental findings demonstrate calcaneal valgus bilaterally and lateral ankle weakness on the left side as well as peroneal tendinitis. Dr. Banta noted that the condition had been building for the past two years. He noted that x-rays demonstrated degenerative changes in the three cunciforms of the left foot at the mid tarsal joint, with mild osteoporosis. Dr. Banta then opined, "Based on [appellant's] job description the changes could be compounded by continuous walking. We believe her daily job walking requirement may be worsening this condition."

At the hearing held on July 10, 2009, appellant noted that she had worked for the employing establishment for 24 years. She noted that as a city letter carrier, she processed and cased mail in the morning and then had a walking and driving route. Appellant noted that she usually worked 6 days a week, anywhere from 8 to LLV 10 hours a day. She stated that on January 4, 2008, while she was in her LLV when she stepped out onto a curb, twisted her right ankle and that as she tried to catch herself, she rotated the left ankle and fell to the ground, at which time she felt extreme pain in her left foot. Appellant discussed her medical treatment. She indicated that after the injury she was off work for awhile and then returned to light duty until September 2008. Appellant noted that she also was suffering from carpal tunnel syndrome at the time. She indicated that she was released to work on October 29, 2008 to a walking route and that when she went back, she continued to have pain in her foot and was again placed on restrictions. Appellant noted that these restrictions allowed her to work an eight-hour day, but limited her walking. She indicated that the main reason she filed a claim for recurrence was because she wanted her medical bills to be paid.

By decision dated September 30, 2009, the hearing representative affirmed the Office's February 9, 2009 decision. The hearing representative found that there was no rationalized medical evidence in support of appellant's contention that her condition or disability on or after November 3, 2008 was due to the January 4, 2008 work injury.

LEGAL PRECEDENT

Section 10(x) of the Office's regulations provide that a recurrence of disability means any disability 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.[1] This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his work-related injury or illness is withdrawn (except when such withdrawal occurs for reason of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignments were altered so that they exceed his or her established physical limitations.[2]

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden to establish by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. The 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 supports that conclusion with sound medical reasoning.[3] Where no such rationale is present, medical evidence is of diminished probative value.[4]

A recurrence of a medical condition is defined as a documented need for further medical treatment after the treatment for the accepted condition or injury.[5] Continuous treatment for the original condition or injury is not considered a recurrence of a medical treatment nor is an examination without treatment.[6] As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.[7] It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.[8]

The Office's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return PRN (as needed) or computed by the claims examiner from the date of the last examination), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.[9]

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[1] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[2] *Id.*

[3] *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

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

[5] 20 C.F.R. § 10.5(y).

[6] *Id.*

[7] *Id.* at § 10.5(x).

[8] *Id.* at § 10.104; *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

ANALYSIS

The Office accepted that on January 4, 2008 appellant sustained a left foot sprain and fracture or other tarsal and metatarsal bones, closed, left foot. Appellant returned to work. On November 3, 2008 she alleged that she sustained a recurrence, noting that she was restricted to a four-hour walking limit. Appellant did not, though, claim any lost time from work.

Appellant has not submitted evidence sufficient to show that she established a recurrence of a medical condition causally related to the January 4, 2008 employment injury. The duty status report completed by Dr. Lazar on November 3, 2008 merely notes work restrictions, it does not provide a detailed discussion linking appellant's current restrictions to her accepted injury. Dr. Lazar's November 17, 2008 note only provides instructions with regard to footwear; he does not discuss her condition or causal relationship. In a January 16, 2009 report, he listed his finding as "Healing 5th metatarasal left foot" and indicated that appellant was partially disabled from October 2008 to the present time. Dr. Lazar briefly discusses his treatment of appellant but did not explain how she sustained a recurrence of the accepted injury. Dr. Smerek does not indicate that appellant sustained a recurrence of her accepted injury in November 2008 and Dr. VanMeter does not discuss causal relationship in his MRI scan report. Dr. Banta noted in a June 15, 2009 report that he believed that appellant's daily job walking requirement may be worsening her condition; he does not address the specific accepted condition that occurred as a result of January 4, 2008 employment injury. Accordingly, appellant has not established a recurrence of a medical condition.

Furthermore appellant's claim for medical coverage was properly denied due to her failure to submit an attending physician's report supporting a causal relationship between the condition for which he was treated on the date of the alleged recurrence, and the previously accepted work injury.[10] The last time she received medical treatment prior to her alleged recurrence on November 3, 2008 was on August 15, 2008 when she saw Dr. Bauermeister. Appellant has not submitted a detailed medical report indicating that she needed medical treatment after November 3, 2008 causally related to her accepted injury.[11]

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of a medical condition on November 13, 2008 of her accepted work-related injury of January 4, 2008.

[10] *Id.*

[11] The Board notes that appellant submitted additional evidence after the Office rendered its September 30, 2009 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Denis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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