

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

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**S.B., Appellant** )  
 )  
**and** ) **Docket No. 10-790**  
 ) **Issued: November 29, 2010**  
**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Newark, NJ, Employer** )  
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*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*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 January 29, 2010 appellant filed a timely appeal from the October 22, 2009 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of her claim 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 her burden of proof to establish that she sustained a recurrence of disability commencing February 26, 2005 causally related to her accepted employment condition.

**FACTUAL HISTORY**

This case was previously before the Board. In a June 13, 2008 decision, the Board affirmed the Office decision dated May 24, 2007.<sup>1</sup> The Board found that appellant did not meet

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<sup>1</sup> Docket No. 08-181 (issued June 13, 2008).

her burden of proof to establish that she sustained a recurrence of disability on February 26, 2005 causally related to her accepted bilateral plantar fasciitis and heel spurs. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The evidence as relevant to this appeal is set forth.

On May 17, 2005 the Office referred appellant for a second opinion to Dr. Iqbal Ahmad, a Board-certified orthopedic surgeon. In a June 7, 2005 report, Dr. Ahmad noted that examination showed no evidence of atrophy or inflammation, no edema and satisfactory circulation and reflexes. He stated that appellant had bilateral flat feet, she had no difficulty in squatting and standing on her toes and heels and there was no discoloration or changes in temperature of her feet. Dr. Ahmad opined that her accepted conditions of sprain of both feet, plantar fasciitis and heel spurs resolved and she did not currently have any acute orthopedic condition. He noted that appellant reached maximum medical improvement and could return to her regular job, full time without restrictions. Dr. Ahmad advised that there was no need for further medical treatment or therapy.

In a December 20, 2005 report, Dr. Joseph DeMayo, a Board-certified family practitioner, noted that appellant had been under his care for severe plantar fasciitis and heel spurs and had severe pain while standing and walking at work. He advised that she returned to work on December 26, 2004 but experienced worsening pain when standing and walking. Appellant stopped on February 26, 2005 and was found permanently disabled. In a December 20, 2006 report, Dr. DeMayo noted that she was diagnosed with bilateral plantar fasciitis and returned to restricted duty in December 2004. He noted that, upon returning to work, appellant reported that her job required her to case and carry mail of different shapes and sizes to other areas in the mail facility and entailed walking and standing. Dr. DeMayo asserted that her position did not conform to her medical documentation and her job duties caused her condition to worsen and her work stoppage.

Appellant requested reconsideration and submitted reports from Dr. John Cozzarelli, a podiatrist, from March 6 to May 24, 2008. Dr. Cozzarelli treated her for bilateral heel pain and plantar fasciitis. He noted that appellant presented with bilateral heel pain which began two months prior. Dr. Cozzarelli diagnosed bilateral heel spur syndrome, bilateral plantar fasciitis and bilateral nerve entrapment. He noted treating appellant since November 10, 2004 for bilateral heel pain and recommended physical therapy and a night splint. Dr. Cozzarelli indicated that he did not treat her again until March 6, 2008 when she underwent fluoroscopic examination and diagnostic ultrasound. He noted findings of positive Tinel's sign along the posterior tibial nerve and the lateral plantar nerve and massive interior and posterior spurs and diagnosed bilateral plantar fasciitis, inferior and posterior calcaneal spurs bilaterally, nerve entrapment, bilateral neuritis and tarsal tunnel syndrome bilaterally. Dr. Cozzarelli noted that appellant worked as a mail processor gathering skids and trays of mail and was constantly bending and moving mail. He indicated that she had residual heel spur syndrome, bilateral nerve damage and bilateral plantar fasciitis. Dr. Cozzarelli opined that appellant's condition was directly related to her work and recommended surgery. He indicated that when a patient was diagnosed with pes planus, heel spur syndrome, plantar fasciitis, tarsal tunnel syndrome and nerve compression it was very hard to stand for any length of time. Dr. Cozzarelli characterized Dr. Ahmad's second opinion examination as superficial.

In a decision dated August 21, 2008, the Office denied modification of the May 24, 2007 decision.

On August 19, 2009 appellant requested reconsideration. She submitted a June 10, 2008 report from Dr. Cozzarelli, who noted initially treating her in April 2004. Dr. Cozzarelli diagnosed plantar fasciitis and heel spur syndrome of both feet and recommended physical therapy. He noted that appellant returned in March 2008 for treatment. Dr. Cozzarelli concurred with Dr. DeMayo's opinion that her condition would worsen if she was not on restricted duty with limited ambulation because walking and standing would aggravate her condition.

In a decision dated October 22, 2009, the Office denied modification of the August 21, 2008 decision.

### **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.<sup>2</sup>

Causal relationship is a medical issue<sup>3</sup> 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.<sup>4</sup>

### **ANALYSIS**

The Office accepted appellant's claim for bilateral plantar fasciitis and heel spurs. Appellant returned to a light-duty position on December 24, 2004, as a distribution clerk. She stopped work on February 26, 2005 and filed a claim for a recurrence of disability alleging that she experienced pain in both feet causally related to her accepted work injury. 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. The record contains no evidence substantiating that there was a change in the nature and extent of the light-

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

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>4</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

duty requirements or that she was required to perform duties which exceeded her medical restrictions.

Appellant submitted treatment notes from Dr. Cozzarelli, who treated her for bilateral heel pain and plantar fasciitis; however, he did not note a specific date of any recurrence of disability or did he note a particular change in the nature of her physical condition, arising from the employment injury, which prevented her from performing her light-duty position.<sup>5</sup> On May 24, 2008 Dr. Cozzarelli noted diagnoses and stated that her work involved gathering skids and trays of mail with constant bending and moving mail. He noted that appellant had residual heel spur syndrome, bilateral nerve damage and bilateral plantar fasciitis and required surgery and opined that her condition was directly related to her employment. Dr. Cozzarelli further opined that patients with appellant's conditions found it very hard to stand for any length of time. However, his report is conclusory and insufficient to establish her claim as he did not provide a rationalized opinion explaining the reasons why her recurrent condition and disability was due to the accepted work injury.<sup>6</sup> Dr. Cozzarelli did list a specific date of a recurrence of disability or did he note a particular change in the nature of appellant's physical condition which prevented her from performing her light-duty position on February 26, 2005.

In a June 10, 2008 report, Dr. Cozzarelli concurred with Dr. DeMayo that appellant's condition would worsen if she was not on restricted duty with limited ambulation as walking and standing can aggravate and worsen her condition. As noted, he failed to note a specific date of a recurrence of disability nor did he note a particular change in the nature of her physical condition, arising from the employment injury, which prevented her from performing her light-duty position on February 26, 2005. Dr. Cozzarelli's general caution against appellant's return to work is prophylactic in nature. The Board has held that fear of future injury is not compensable under the Federal Employees' Compensation Act.<sup>7</sup> This evidence is insufficient to establish that appellant sustained a recurrence of disability on February 26, 2005 causally related to her accepted work injury.

The Board finds that Dr. Cozzarelli's reports are insufficient to establish appellant's claim for a recurrence of disability as he did not provide a rationalized opinion explaining the reasons why her disability beginning February 26, 2005 was due to the accepted work injury.

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<sup>5</sup> See *S.E.*, 60 ECAB \_\_\_ (Docket No. 08-2214, issued May 6, 2009) (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).

<sup>6</sup> 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).

<sup>7</sup> See *Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

Appellant has not met her 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 her from performing the light-duty position she assumed after she returned to work.

On appeal, appellant asserts that the medical evidence submitted from Dr. DeMayo and Dr. Cozzarelli establish her claim of a recurrence of disability on February 26, 2005. However, the Board previously found that Dr. DeMayo's reports did not provide a rationalized medical opinion explaining why her recurrent condition was due to the accepted work injury. Similarly, Dr. Cozzarelli's reports failed to note a specific date of 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 her from performing her light-duty position on February 26, 2005. With regard to appellant's assertion that Dr. DeMayo's December 20, 2006 report supported that the limited-duty position she held on December 2004 was not in conformance with her light-duty restrictions, the Board finds that Dr. Cozzarelli appears merely to be repeating her assertions regarding her work duties. There is no contemporaneous evidence of record establishing such assertions. Appellant further asserted that there was a conflict of opinion between Drs. DeMayo and Cozzarelli and Dr. Ahmed, the second opinion physician. However, as noted, Dr. DeMayo's and Dr. Cozzarelli's reports are of diminished probative value and not sufficient to create a medical conflict.<sup>8</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on February 26, 2005 causally related to her accepted bilateral plantar fasciitis and heel spurs in both feet.

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<sup>8</sup> See *John D. Jackson*, 55 ECAB 465 (2004) (a simple disagreement between two physicians does not, of itself, establish a conflict; to constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 29, 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