

FACTUAL HISTORY

On June 1, 2004 appellant, then a 57-year-old patient services assistant, filed a traumatic injury claim alleging that on that day she slipped in a crack on the asphalt parking lot and rolled her left ankle, which caused her to fall and land on her right side. OWCP accepted the claim for the following conditions: aggravation of right shoulder impingement, aggravation of degenerative disc disease, vertigo, multiple contusions, thoracic strain/lumbar strain, right Achilles tendon strain and right knee ecchymosis.² Appellant stopped work after the work injury and returned to her job on September 7, 2004 with permanent restrictions. She worked intermittently and was eventually placed on temporary total disability on December 6, 2004. Appellant returned to full-time regular duty work on September 24, 2007. Her position of patient services assistant, which she had been working since September 2007, is a sedentary position and mainly involved telephone duties, based on the work capacity established by impartial medical specialist, Dr. Robert W. Elkins, a Board-certified orthopedic surgeon on March 28, 2007. Appellant stopped work again on February 18, 2009.

On March 23, 2009 appellant filed a recurrence of disability claim commencing February 18, 2009 alleging disability due to lumbar pain and left Achilles tendinitis. By decisions dated May 28 and December 30, 2009, OWCP denied the recurrence claim. In the December 30, 2009 decision, OWCP's hearing representative found that, while the medical evidence was insufficient to support the claimed work stoppage, the collective statements from Dr. Kenneth E. Locklear, a family practitioner, and Dr. James Flanagan, a Board-certified orthopedic surgeon, which attributed the development of appellant's left Achilles tendinitis condition to her abnormal gait and her weight shifting from leg to leg for her accepted lumbar condition, was *prima facie* evidence of a possible consequential condition. The hearing representative stated that, under OWCP procedure, an opinion should be obtained from OWCP's medical adviser regarding causal relationship. Appellant returned to part-time limited duty from December 7 through 29, 2009.

On December 29, 2009 appellant was seen in an emergency room for back pain and urinary incontinence. Dr. Darrell G. Simpkins, a Board-certified emergency physician, assessed chronic back pain and urinary incontinence. Appellant stopped work on December 30, 2009 and returned to work for a limited time on January 6 and 7, 2010, but stopped work again on January 8, 2010.

On April 20, 2010 appellant filed a recurrence of disability claim commencing December 29, 2009. She stated that since the original injury she returned to full-duty work with permanent restrictions for her back and right shoulder. Appellant alleged her lumbar/lumbosacral injuries continued to deteriorate as documented by her magnetic resonance imaging (MRI) scans of April 2, 2007 and April 2, 2009 and a computerized tomography (CT) scan of December 30, 2009. The employing establishment indicated that, since the initial work injury, she had been provided with a lumbar support ergonomic chair, desk and telephone headset.

In a May 10, 2010 letter, OWCP informed appellant of the medical evidence needed to support a recurrence of total disability due to her employment-related conditions.

² Under claim number xxxxxx335, appellant has an accepted January 21, 2003 work injury for right shoulder conditions. Claim number xxxxxx335 is not before the Board on the present appeal.

Evidence received after the December 30, 2009 decision and OWCP's May 10, 2010 letter included: statements by appellant dated January 14, February 15, April 12 and 25, May 28 and June 30, 2010;³ copies of MRI scans of the lumbar spine dated July 29, 2004, April 2, 2007 and April 2, 2009 and a December 30, 2009 lumbar spine CT scan; disability slips dated February 18 and 23, 2009, placing appellant off work due to left Achilles tendinitis; the December 30, 2009 emergency room report and medical testing; a 25-year service award; and evidence previously of record.

Progress reports, return to work slips and letters from Dr. James E. Rice, a Board-certified orthopedic surgeon, dated December 30, 2009 through May 24, 2010 were received. In his December 30, 2009 report, Dr. Rice noted appellant's visit to the emergency room the previous night. He noted when she was last seen in April 2009, her April 2, 2009 MRI scan demonstrated degenerative spondylolisthesis at L5-S1. Dr. Rice stated that appellant had spondylolisthesis at L5-S1 as well as degenerative changes at L4-5, but there was nothing to suggest a cauda equine-type syndrome pathology. He took appellant off work until January 6, 2010. Dr. Rice later diagnosed lumbar disc degeneration, acquired spondylolisthesis, lumbar canal stenosis and sciatica and continued to take appellant off work. In his March 5, 2010 report, he opined that appellant's degenerative spondylolisthesis and other pain symptoms were associated with the work-related aggravation to her underlying degenerative condition. Dr. Rice noted that she continued to worsen over time and surgery was warranted. In his April 5, 2010 report, he noted that appellant had left ankle symptoms and had a chronic Achilles tendon problem. In a May 5, 2010 report, Dr. Rice noted significant pain in appellant's left Achilles tendon. He opined that she should remain out of work until June 5, 2010. On May 24, 2010 Dr. Rice discharged appellant from his care unless she was considering surgical intervention. In a May 24, 2010 report, he noted first treating her in March 2009. Dr. Rice noted the history of injury and appellant's subsequent treatment. He indicated on February 8, 2010 that she required a walker for assistance due to significant back and leg pain and was also noted to have Achilles tendon swelling. Dr. Rice stated that appellant remained very symptomatic with her back and leg pain and had difficulty ambulating. He noted that she had a well-documented history of long-term ongoing problems with her back and leg that "appears to stem" from the accepted 2004 work injury. Dr. Rice opined that appellant was permanently disabled as she was not capable of returning to work due to significant difficulty with sitting, standing and walking activities. He further opined that she would probably remain disabled even with surgery.

Disability slips dated June 4 and 22, 2010 from Robeson Family Practice were received along with medical reports from Dr. Locklear dated November 25, 2009 and June 22, 2010. In his June 22, 2010 report, Dr. Locklear noted that appellant has a long history of an abnormal gait, limping and used a rollator to assist her with balance and ambulation. He opined that her bilateral Achilles tendinitis was originally caused by the May 27, 2004 parking lot fall when her left ankle twisted outward and caused her to fall. Dr. Locklear indicated that, since the original injury, appellant has alternated her weight bearing from her right leg to her left leg when ambulating based on the extent of pain she had in her lumbosacral region and whichever leg was most affected by her lumbar radiculopathy. He opined that she continually reagravated her left Achilles tendinitis since her May 27, 2004 work injury, as a result of her L5-S1

³ In her June 30, 2010 statement, appellant asked that her claim be expanded to include additional conditions. On July 27, 2010 OWCP advised her of the medical evidence needed to expand the accepted conditions of her claim.

spondylolisthesis, and lumbar radiculopathy, which caused pain and spasms in the leg, which resulted in abnormal gait, as well as causing overuse, increased weight bearing, pressure and stress on the left Achilles tendon, which evolved into a chronic left Achilles tendinitis problem. Dr. Locklear opined that appellant was permanently and totally disabled from any gainful employment due to her work injuries. He advised that her injuries were repeatedly reaggravated while performing her daily job tasks and caused further exacerbation of her injuries as reflected in the MRI scans since July 29, 2004 and her recent December 30, 2009 CT scan.

Medical reports from Dr. Flanagan were received. In a March 17, 2009 report, Dr. Flanagan indicated that appellant continued to have tenderness over the left Achilles tendon and physical therapy was warranted. In a February 9, 2010 report, he noted that she ambulated with a walker mostly for her lower back problems and indicated there was no significant change from previous examination with regard to the left Achilles tendon. Dr. Flanagan released appellant from medical care. In a March 9, 2010 report, he indicated that she had been his patient since her May 27, 2004 work injury. Dr. Flanagan advised that appellant continues to have problems with her back and left ankle over the years which resulted in a nodule that developed in the mid zone of the Achilles tendon on the left foot. He opined that the nodule and pain in the left Achilles tendon resulted from the original injury. In both his February 9 and March 9, 2010 reports, Dr. Flanagan explained that appellant's low back problems could cause her to have tightness in the leg causing increased stress on the tendons. This could also result in problems with hamstring tendons as well as the gastroc soleus complex which would aggravate and cause pain in the Achilles. Dr. Flanagan further stated in a March 9, 2010 report that appellant was unable to work in any capacity from February 24 until October 7, 2009. He advised that she was out of work due to pain and swelling of her left Achilles tendinitis. Dr. Flanagan further stated that there was no new injury, only recurrent pain in the left Achilles area.

By decision dated July 29, 2010, OWCP denied appellant's recurrence claim. It found that there was no objective medical evidence or medical rationale of a material worsening of the accepted conditions or a change in appellant's limited-duty assignment.

LEGAL PRECEDENT

OWCP's regulations define the term recurrence of disability as an inability 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. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁴ OWCP's procedure manual provides that a recurrence of disability also includes worsening of disability due to an accepted consequential injury.⁵

⁴ 20 C.F.R. § 10.5(x).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997).

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 or she cannot perform such light duty. As part of this burden, the employee must show either 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.⁶ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁷

ANALYSIS

OWCP accepted that on May 27, 2004 appellant sustained aggravation of right shoulder impingement, aggravation of degenerative disc disease, vertigo, multiple contusions, thoracic strain/lumbar strain, right Achilles tendon strain and right knee ecchymosis. Following appellant's accepted work injury, appellant eventually returned to her date-of-injury position, a sedentary position which mainly involved telephone duties, with modifications to her workstation along with permanent restrictions. She stopped work on December 29, 2009 and filed a recurrence claim that is the subject of the present appeal.

The Board finds that appellant did not submit sufficient medical evidence to establish that she had disability beginning December 29, 2009 causally related to her May 27, 2004 employment injury. The Board notes that appellant has not claimed nor is there any evidence showing a change in the nature and extent of appellant's work assignment or that her work assignment exceeded her permanent work restrictions. The record supports that the employer made available appropriate modifications to her workstation and light-duty work that was consistent with appellant's restrictions.

In support of her claim for a recurrence of disability, appellant provided reports from Dr. Rice who provided impressions of degenerative spondylolisthesis at L5-S1, degenerative changes at L4-5, acquired spondylolisthesis and lumbar canal stenosis and held her off work commencing December 30, 2009. Dr. Rice however did not provide rationale explaining why appellant's disability beginning December 29, 2009 was due to a spontaneous change in her accepted conditions of aggravation of degenerative disc disease and/or thoracic strain/lumbar strain. The diagnoses provided, spondylolisthesis and lumbar canal stenosis, are not accepted conditions.⁸ While Dr. Rice opined in his May 24, 2010 letter that appellant's ongoing problems with her back and leg appeared to stem from the accepted 2004 work injury, this opinion is

⁶ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ *Maurissa Mack*, 50 ECAB 498 (1999).

⁸ For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship. *G.A.*, Docket No. 09-2153 (issued June 10, 2010).

equivocal in nature⁹ and does not state that the accepted aggravation has worsened or address the natural progression of appellant's preexisting degenerative disc disease. Moreover, Dr. Rice opined, in his March 5, 2010 report, appellant's degenerative spondylolisthesis and other pain symptoms were associated with the work-related aggravation to her underlying degenerative condition. However, appellant's claim was not accepted for the underlying condition which preexisted the work injury; rather, it was only accepted for aggravation of degenerative disc disease and/or thoracic strain/lumbar strain. Dr. Rice has offered no medical explanation as to how these additional diagnoses resulted from the accepted conditions of aggravation of degenerative disc disease and/or thoracic strain/lumbar strain that occurred May 27, 2004. Thus, his opinion is insufficient to establish appellant's recurrence claim.

The records from Dr. Flanagan and Dr. Locklear reflect that appellant was being treated for and held off work as a result of her left Achilles tendinitis, which is not an accepted condition of her claim. Both Dr. Flanagan and Dr. Locklear opined that her left Achilles tendinitis was originally caused by the May 27, 2004 parking lot fall when her left ankle twisted outward and caused her to fall. They attributed the development of appellant's left Achilles tendinitis to her abnormal gait and weight shifting from leg to leg for her accepted lumbar condition. A review of the medical record does not clearly denote when her abnormal gait and ambulatory unsteadiness first started. In any event, neither physician provided a reasoned opinion explaining how appellant's disability beginning December 30, 2009 was due to a spontaneous change in one of her accepted conditions. In his March 9, 2010 letter, Dr. Flanagan advised that she was unable to work from February 24 until October 7, 2009 due to pain and swelling of her left Achilles tendinitis; however, this period of disability predates the claimed recurrence. Dr. Locklear opined that appellant continually reaggravated her left Achilles tendinitis since her May 27, 2004 work injury, as a result of her L5-S1 spondylolisthesis and lumbar radiculopathy, but offered no opinion or otherwise explained why she could not perform her sedentary position beginning December 29, 2009. Thus, the reports from Drs. Flanagan and Locklear are insufficient to establish her recurrence claim and they generally relate disability to a condition not accepted as employment related and do not otherwise provide medical rationale explaining how the disability is related to a spontaneous change in an accepted condition.¹⁰

Therefore, the Board finds that the medical evidence of record does not establish that appellant experienced a spontaneous change in her accepted conditions that caused total disability beginning December 29, 2009. The medical reports submitted by her do not contain a rationalized opinion to explain why she could no longer perform the duties of her sedentary position and why any such disability or continuing condition would be due to the accepted conditions without an intervening injury or new exposure. As appellant has not submitted any

⁹ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

¹⁰ Regarding nonaccepted conditions such as a left Achilles tendon condition, the Board does not have jurisdiction to consider whether this is employment related as OWCP has not issued a decision adjudicating this matter. See 20 C.F.R. § 501.2(c). However, as noted *infra*, OWCP's hearing representative's December 30, 2009 decision found that the medical evidence supported a possible consequential condition and indicated that OWCP should further develop this aspect of the claim by obtaining an opinion from OWCP's medical adviser. The Board notes that the record before the Board does not indicate that OWCP has yet developed this aspect of the claim consistent with the instructions of the hearing representative.

medical evidence establishing that she sustained a recurrence of disability due to her accepted employment injury, she has not met her burden of proof.

CONCLUSION

The Board finds appellant did not establish that she sustained a recurrence of total disability beginning December 29, 2009 causally related to her accepted employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 29, 2010 is affirmed.

Issued: August 2, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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