

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

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<b>E.B., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 10-2072</b>
	)	<b>Issued: May 17, 2011</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Placerville, CA, Employer</b>	)	
	)	

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*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq.,* for the appellant  
*Office of Solicitor,* for the Director

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 10, 2010 appellant filed a timely appeal from a June 16, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability on October 15, 2008 causally related to her accepted February 17, 2007 employment injury.

**FACTUAL HISTORY**

Appellant, a 39-year-old rural carrier, injured her right foot while stepping out of her mail truck on February 17, 2007. She filed a claim for benefits on February 20, 2007, which the Office accepted for fifth metatarsal fracture of the right foot.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

On June 18, 2007 Dr. Antony R. Boody, appellant's attending Board-certified orthopedic surgeon, performed surgery to repair a nonunion fracture of the fifth metatarsal of her right foot. On December 19, 2007 he released appellant to light duty. Dr. Boody restricted her from working more than two days consecutively. He released her to full duty on August 7, 2008.

On June 29, 2009 appellant filed a Form CA-2a claim for recurrence of disability, alleging that she developed a plantar fasciitis condition on October 15, 2008 causally related to her February 17, 2007 employment injury. She stated on the form that her condition stemmed from prescription orthotics which affected her gait. Appellant asserted that she began to experience severe, sharp, constant pain along the arch of her foot up into her shin with sharp throbbing pain in both knees and hips. She did not stop work.

By letter dated July 23, 2009, the Office advised appellant that it required additional factual and medical evidence, to support her claim that her current condition/or disability as of October 15, 2008 was causally related to her accepted February 17, 2007 work injury. It asked her to submit a medical report containing a diagnosis of her claimed plantar fasciitis condition with an explanation of how the condition developed and whether it was causally related to the February 17, 2007 work injury. The Office asked appellant to submit the requested information within 30 days. Appellant did not respond to this request.

By decision dated November 18, 2009, the Office denied appellant's recurrence of disability claim. It found that she failed to submit medical evidence to support that the claimed disability of October 15, 2008 or that she sustained plantar fasciitis as a consequence of her accepted February 17, 2007 employment injury.

By letter dated November 25, 2009, appellant, through her attorney, requested an oral hearing, which was held on April 13, 2010. She reiterated at the hearing that she began to experience problems with her right foot after having orthotics inserted in her shoes. Appellant consulted a physician who told her that she developed plantar fasciitis from the inserts because they shifted the stress from the fifth metatarsal area of the foot to the inner arch, where the plantar fascia is located. She stated that she would submit a further report from her physician to the Office within 30 days. Appellant did not submit any additional medical evidence in support of her claim.

By decision dated June 16, 2010, an Office hearing representative affirmed the November 18, 2009 decision.

### **LEGAL PRECEDENT**

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.<sup>2</sup> A person 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 which she claims compensation is causally

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

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

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employees' own intentional conduct.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant failed to submit sufficient medical evidence providing a rationalized, probative opinion which related her claimed recurrence of disability as of October 15, 2008 to her accepted right foot condition. For this reason, appellant has not discharged her burden of proof to establish that she sustained a recurrence as a result of her accepted right foot condition.

Appellant has not alleged that she sustained a spontaneous change in her accepted condition of fifth metatarsal right foot, fracture. Rather she has alleged that this condition necessitated orthotics, which caused her plantar fasciitis condition. Appellant is essentially alleging a consequential injury. She did not submit a medical report from a physician which actually provides a diagnosis of plantar fasciitis or which addresses how her orthotic footwear caused this condition. Appellant therefore has not submitted sufficient evidence to establish that she sustained a plantar fasciitis condition consequential to her accepted February 17, 2007 fractured right foot injury. She has not discharged her burden of proof to establish that this condition was sustained in the performance of duty.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>6</sup> Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence. The Office advised appellant of the evidence required to establish her claim; however, she failed to submit

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<sup>3</sup> *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>5</sup> *S.S.*, 59 ECAB 315 (2008).

<sup>6</sup> *Id.*

such evidence. Consequently, appellant has not met her burden of proof in establishing that she sustained a plantar fasciitis condition as a consequence of her accepted right foot injury.<sup>7</sup>

The Board affirms the denial of appellant's claim for a recurrence of disability beginning October 15, 2008.

**CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a consequential plantar fasciitis condition in the performance of duty. The Board finds that she has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of October 15, 2008 causally related to her accepted right foot fracture.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 16, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 17, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> The Board notes that appellant did submit further evidence to the record after June 16, 2010. As this evidence was not before the Office at the time of its final decision, this evidence can not be reviewed by the Board on appeal. 20 C.F.R. § 501.2 (c)(1).