United States Department of Labor
Employees' Compensation Appeals Board

C.T., Appellant	)	
and	)	**Docket No. 11-2039**
	)	**Issued: April 18, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Henderson, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 13, 2011 appellant filed a timely appeal of the March 25, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for wage-loss compensation and the June 20, 2011 nonmerit decision denying his request for reconsideration. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant is entitled to wage-loss compensation for the period September 18 through November 5, 2010; and (2) whether OWCP properly refused to reopen his case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 66-year-old letter carrier, sustained a traumatic injury on April 2, 2009 when he took a bad step while delivering mail. OWCP accepted his claim for partial tear of the left posterior tibial muscle. Appellant returned to work on April 9, 2009 with restrictions precluding him from walking his route. He stopped working on April, 20, 2010 when light duty was no longer available.

On August 5, 2010 appellant's treating physician, Dr. Richard Bruch, a Board-certified orthopedic surgeon, diagnosed tear of the left posterior tibial muscle. He provided work restrictions which precluded walking more than two hours per day effective August 6, 2010, with sedentary work for eight hours per day. Beginning August 27, 2010, appellant was permitted to walk or stand four hours per day.

Appellant accepted a job offer dated August 20, 2010, effective August 9, 2010, as a "TE City Carrier." Duties included delivering mail on City 5 for 2 hours a day, and delivering mail on City 8, 9, 10, 11, 12 or 13 for 3 hours, 40 minutes per day. Physical requirements of the position included: walking (2 hours); driving (3 hours, 40 minutes); lifting up to 70 pounds intermittently (1 hour); and simple grasping and fine manipulation.

In an August 24, 2010 letter, the employing establishment stated that approximately an hour after accepting the August 20, 2010 modified job offer, appellant sustained a heart attack and was unable to work for approximately four weeks due to his heart condition.

In a September 15, 2010 report, Dr. Bruch diagnosed left posterior-tibial tendinitis and painful leg. On examination, there was no swelling, withdrawal or shininess in the left leg. Dr. Bruch indicated that appellant had suffered a heart attack on August 20, 2010 and had undergone heart catheterization and placement of a stint. He opined that appellant was not able to tolerate the duties of his current work contract, which required 2 hours of walking and 3 hours, 40 minutes of driving.

Appellant filed a claim for compensation for total disability beginning September 18 through November 5, 2010, stating that he had returned to work following release by his cardiologist, but was informed that no work was available within his restrictions.[2] The employing establishment challenged the claim, contending that he was out of work due to his heart condition.

In an October 28, 2010 report, Dr. Bruch diagnosed posterior-tibial tendon dysfunction. On examination, appellant was unable to perform single heel rise, but sensibility was good. Dr. Bruch noted that appellant had a bruise the size of a half dollar in the mid-portion of his left leg overlying the posterior-tibial muscle and tendon, which he sustained when "something struck this area." He stated that appellant was unable to walk for the two hours required by his light-duty job and was temporarily totally disabled.

[2] Appellant also filed a claim for compensation for the period August 21 through September 17, 2010. OWCP denied his claim in a November 12, 2010 decision. Appellant did not appeal this decision.

OWCP forwarded the case file to the district medical adviser for review and an opinion regarding the status of appellant's condition and work capacity. In a November 2, 2010 report, the district medical adviser recommended a second opinion examination to establish a more definitive diagnosis.

In a letter dated November 12, 2010, OWCP informed appellant that the evidence was insufficient to establish that his claimed disability was due to the accepted leg injury. It allowed him 30 days to provide medical evidence supporting his claim for disability.

On November 19, 2010 the employing establishment informed OWCP that the August 20, 2010 job offer remained available.

On December 9, 2010 Dr. Bruch found no evidence of bruising about the left leg. Pain was well localized just posterior to the tibia at the mid leg region near the musculotendinous junction of the posterior-tibial tendon and major calf muscles, which was anterior to the usual area where blood clots occur. Dr. Bruch diagnosed posterior tibial tendon dysfunction and opined that appellant was unable to work.

OWCP referred appellant to Dr. William Somers, a Board-certified orthopedic surgeon, for a second opinion examination and an opinion as to the extent of his disability and his work capacity.[3] In a December 13, 2010 report, Dr. Somers provided a history of injury and treatment and findings on examination. Appellant was tender about the left medial tibia six to eight inches proximal to the ankle, along the medial tibial border and into the soft tissues posterior to the tibia. There was no pitting edema in either leg. With plantar compression with the fist and percussion over the tibia six to eight inches proximal to the ankle produced pain. Medial and slightly posterior to this, the soft tissue was very tender and there was fusiform thickening in the tissues just medial and posterior to the tibia on the left, six to eight inches proximal to the ankle. Pulses were 2/4 in the right popliteus, dorsal pedal and posterior tibial. The palpation of the dorsal pedal and posterior tibial pulses were absent on the left. There was pain with plantar flexion and some pain produced with stretch of the posterior tibial musculature when standing.

Dr. Somers diagnosed: "likely plantaris tendon injury on April 2, 2009; likely posterior shin splints related to abnormal gait pattern related to the plantaris tendon injury dated April 2, 2009 likely vascular insufficiency, left leg, no evidence at this time for claudication or that this is causing his current problem." He opined that appellant's diagnosed conditions were directed related to his accepted injury. Dr. Somers stated that the bruising and swelling in the left leg indicated some acute injury related to the soft tissues, and the diminished pulses in the left foot and ankle suggested a vascular problem in the left leg, which he opined was not work related. He stated that the likely scenario was that "he had a plantaris tendon rupture, walked abnormally on this for some period of time and developed posterior shin splints related to this."

Dr. Somers opined that appellant was unable to perform normal work activities because he could not do the walking, and that further evaluation was necessary, including a new MRI scan of the left leg focusing primarily six to eight inches above the ankle joint, but covering the

[3] OWCP instructed Dr. Somers to refer appellant for a functional capacity evaluation if he believed he was unable to perform the duties of his position without restrictions.

entire region from the metaphysis proximal to metaphysis distal in the tibia. He also stated that appellant had never had directed treatment for shin splints and opined that a functional capacity evaluation at that time would be worthless.

By decision dated December 14, 2010, OWCP denied wage-loss compensation for the period September 18 through November 5, 2010, finding that the evidence was insufficient to establish a causal relationship between his claimed disability and the accepted injury.

On January 7, 2011 appellant requested a review of the written record. On December 13, 2010 his temporary appointment with the employing establishment expired. Appellant stated that his small bruise resulting from bumping into a coffee table prior to October 28, 2010 had nothing to do with his inability to walk.

In a decision dated March 25, 2011, the Branch of Hearings and Review affirmed the December 14, 2010 decision denying appellant's disability claim. OWCP's hearing representative found that the medical evidence established that appellant was capable of performing the duties of the modified position on August 20, 2010, but that he was disabled until September 22, 2010 due to his cardiac condition. He found that there was no evidence to support appellant's claim that the employing establishment did not allow him to work or that any disability was due to his accepted leg injury. Rather, the hearing representative found that he had experienced a new injury on October 28, 2010. He further determined that Dr. Somers' second opinion examination was equivocal, poorly reasoned and not contemporaneous with the claimed period of disability and, therefore, was insufficient to establish appellant's claim. The hearing representative modified OWCP's prior decision by granting compensation for four hours of medical appointments on October 28, November 1, 3 and 5, 2010.

On May 19, 2011 appellant requested reconsideration. He contended that he had never been treated for a bruised leg, which was a side effect of his heart medication. Appellant submitted reports dated March 17 to April 25, 2011 from Dr. Bruch, who reiterated his opinion that appellant was capable of sedentary work only, due to his accepted left leg condition. On April 25, 2011 Dr. Bruch stated that his prior treatment of appellant and restrictions provided were directly related to the original leg injury incurred on April 2, 2009.

By decision dated June 20, 2011, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted did not warrant further review of the merits.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[4] 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 reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such

[4] 20 C.F.R. § 10.5(x).

an assignment are altered so that they exceed his established physical limitations.[5] Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy his burden of proof by showing a change in the nature and extent of the injury-related condition such that he was no longer able to perform the light-duty assignment.[6]

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing that the recurrence of disability is causally related to the original injury.[7] This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.[8] The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[9]

ANALYSIS

In its March 25, 2011 decision, the Office of Hearings and Review approved appellant's claim for compensation for medical appointments on four separate days; however, it denied his claim for compensation for total disability from September 18 through November 5, 2010 on the grounds that the evidence was insufficient to establish that the claimed disability was due to his accepted leg injury. The Board finds that this case is not in posture for a decision.

On September 15, 2010 Dr. Bruch opined that appellant was not able to tolerate the duties of his light-duty job, which required 2 hours of walking and 3 hours, 40 minutes of driving. On October 28, 2010 he indicated that appellant was unable to walk for the two hours required by his light-duty job and opined that he was temporarily totally disabled. OWCP undertook development of the case by seeking an opinion from its medical adviser regarding the status of appellant's condition and work capacity. At the recommendation of the medical adviser, OWCP referred appellant to Dr. Somers for a second opinion examination as to the extent of his disability and his work capacity. The Board finds that Dr. Somers' report is not fully rationalized on the issues presented.

As OWCP's hearing representative found in his March 25, 2011 decision, Dr. Somers' December 13, 2010 report was equivocal and poorly reasoned. He failed to provide a definitive diagnosis, but opined that appellant had a "likely" plantaris tendon injury, "likely" posterior shin splints due to abnormal gait pattern related to the accepted injury, and "likely" left leg vascular insufficiency. Dr. Somer opined that appellant's diagnosed conditions were directly related to his accepted injury. He stated that the likely scenario was that appellant "had a plantaris tendon rupture, walked abnormally on this for some period of time and developed posterior shin splints

[5] *Id*.

[6] *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

[7] 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[8] *See Helen K. Holt, supra* note 7.

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

related to this." Dr. Somers opined that appellant was unable to perform work activities that involved walking. He failed, however to adequately explain whether the walking restriction was due to the accepted injury and, if so, whether the restriction was applicable to the claimed period of disability.[10] Instead, Dr. Somers recommended further evaluation, including a new MRI scan of the left leg. His recommendation for further studies is consistent with his failure to provide a definitive diagnosis or unequivocal opinion regarding appellant's work capacity. For these reasons, Dr. Somers' report is of limited probative value.

Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[11] It undertook development in this case by referring appellant to the DMA and, subsequently, to Dr. Somers for a second opinion on his work capacity related to his accepted condition. For reasons stated, Dr. Somers' report is of diminished probative value and is insufficient to resolve the issue in this case. Accordingly, the case is remanded to OWCP for further development. Once OWCP has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that this case is not in posture for a decision on the issue of appellant's total disability from September 18 through November 5, 2010.

[10] Medical conclusions unsupported by rationale are of little probative value. *Willa M. Frazier*, 55 ECAB 379 (2004).

[11] *Richard F. Williams*, 55 ECAB 343, 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed as to its approval of compensation for medical appointments on October 28, November 1, 3 and 5, 2010. The decision is set aside and the case is remanded for further action consistent with this decision on the issue of appellant's total disability during the period September 18 through November 5, 2010.[12]

Issued: April 18, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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

[12] Given the Board's ruling on the first issue, the second issue is moot.