

FACTUAL HISTORY

On November 16, 2007 appellant, then a 38-year-old city carrier, filed a traumatic injury claim alleging on November 14, 2007 that he slipped and fell in the performance of duty sustaining a sprain and fracture of his right ankle. OWCP accepted this claim for dorsal talar fracture of the right foot. Appellant returned to light-duty work on November 20, 2007. On April 1, 2008 Dr. Jeffrey Frederick, a podiatrist, released appellant to return to a full-time walking route six hours a day. Beginning December 11, 2008, Dr. Frederick removed the restriction of working a six-hour day.

In a letter dated June 28, 2011, the employing establishment noted that appellant claimed disability from work from June 22 through 28, 2011. It directed him to file a claim for recurrence of disability. Dr. Frederick stated that appellant's accepted condition included not only the fracture of the tarsal area, but associated swelling, capsulitis and ankle joint instability. He opined that appellant's injury resulted in arthritis and capsulitis. Dr. Frederick completed a duty status report on April 28, 2011 and indicated that appellant could perform a full-time walking route. Appellant could sit four to six hours a day, stand for six hours a day and walk for six hours a day. Dr. Frederick did not provide restrictions on climbing, bending, stooping, twisting lifting, pulling or pushing. He indicated that appellant could perform simple grasping for six to eight hours, fine manipulation for six to eight hours, and drive a motor vehicle for one to eight hours a day. On June 24, 2011 Dr. Frederick evaluated appellant and opined that he was disabled from June 22 through 27, 2011 and could return to work with no restrictions on June 28, 2011. In a note dated September 22, 2011, he stated that appellant continued to have symptomatology and pathology from his right foot injury with no changes. Dr. Frederick stated, "[Appellant] continues to be able to work so many hours and it starts to hurt extensively for the patient." On October 25, 2011 he stated that appellant experienced right foot pain which was very sore due to increased activities. Dr. Frederick diagnosed right foot pain and directed appellant to return in one month due to the "severe pathology." He completed duty status reports on July 26, September 22, October 25 and November 22, 2011 and indicated that appellant could perform full-time duty with no additional restrictions.

Appellant filed a notice of recurrence of disability on November 27, 2011 and alleged that he stopped work on June 11, 2011 and returned to work on June 15, 2011. He stated that his hours were shortened to a four-to six-hour day and his job assignment for six months was to answer the telephone. Appellant also filed a claim for compensation requesting leave without pay from June 11 through November 26, 2011.

In a letter dated December 7, 2011, OWCP requested additional factual and medical evidence from appellant and allowed 30 days for a response. In notes dated November 22, 2011, Dr. Frederick stated that appellant reported pain in his right foot with no increase in activity. He viewed x-rays which demonstrated arthritic changes secondary to appellant's previous fracture. Dr. Frederick stated that appellant's right foot pain had become chronic due to the original injury with varying symptoms. He completed a duty status report consistent with his prior findings on December 20, 2011.

By decision dated January 26, 2012, OWCP denied appellant's claim for compensation benefits from June 11 through November 26, 2011. It found that the medical evidence from

Dr. Frederick did not support that appellant was disabled from performing his job duties during the period in question.

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 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.³ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing June 11, 2011 and his November 14, 2007 employment injury.⁴ This burden includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

Appellant sustained a right ankle fracture in the performance of duty. He returned to work on November 20, 2007 as a modified clerk. Dr. Frederick released appellant to full duty with restrictions performing a walking route in 2008. Appellant filed a recurrence of disability claim alleging that he was totally disabled beginning June 11, 2011 due to his accepted right ankle injury. In support of his claim, he submitted a note from Dr. Frederick finding appellant totally disabled from June 22 to 27, 2011. This is the only documentation supporting appellant's disability for work. This note does not explain how appellant's condition on June 22, 2011 was related to his accepted right ankle injury and does not support a recurrence of total disability. The remainder of the medical evidence from Dr. Frederick discusses appellant's right ankle pain, but does not support any period of disability for work. Without medical evidence addressing the specific period of disability alleged and providing medical opinion evidence that the disability is related to the accepted employment injury, appellant has failed to meet his burden of proof in establishing a recurrence of disability.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

³ 20 C.F.R. § 10.5(x).

⁴ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁵ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

CONCLUSION

The Board finds that appellant did not submit the necessary medical opinion evidence to establish a recurrence of disability beginning June 11, 2011.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board