

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

A.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sharon, PA, Employer**

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**Docket No. 12-759
Issued: October 26, 2012**

Appearances:

*Jason S. Lomax, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 22, 2012 appellant, through his attorney, filed a timely appeal from a December 23, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 commencing February 1, 2011 causally related to his accepted May 27, 2010 employment injury.

On appeal, appellant's counsel contends that OWCP erred in its consideration of a physician's report and is contrary to the facts and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 27, 2010 appellant, then a 22-year-old carrier, injured his right leg and left hand when running away from a dog while delivering mail. OWCP accepted the claim for right ankle sprain and left fifth finger sprain.

On February 14 and March 1, 2011 Dr. Todd Schwartz, a treating osteopath, diagnosed right posterior tibialis tendinopathy. He listed physical findings and noted that appellant had aggravated his right ankle tendinopathy approximately two weeks prior. Dr. Todd reported no abnormalities were seen on an x-ray study. He related that appellant had been unable to perform his normal activities due to the persistent pain and difficulty walking.

In a March 10, 2011 magnetic resonance imaging (MRI) scan, Dr. Steven H. Kalchman, a Board-certified radiologist, diagnosed degenerative cystic changes which did not appear to represent a significant tear or significant tendinopathy.

On April 18, 2011 appellant filed a claim for a recurrence of disability beginning February 1, 2011 due to his accepted May 27, 2010 employment injury. He noted that he had been on light duty until returning to full duty on December 27, 2010. Appellant stated that he saw his physician on January 31, 2011 who took him off work.

By letter dated April 28, 2011, OWCP informed appellant that the evidence was insufficient to establish his recurrence claim. Appellant was advised as to the definition of a recurrence and the evidence needed to support his claim. He was given 30 days to provide the requested information.

By decision dated June 1, 2011, OWCP denied appellant's claim. It found that he failed to submit any medical evidence to support a recurrence of disability.

On June 7, 2011 counsel requested an oral hearing before an OWCP hearing representative, which was held on September 26, 2011.

In a November 8, 2011 report, Dr. Schwartz noted the history of appellant's employment injury, provided physical findings and addressed the medical treatment provided. He related that appellant had significant improvement when seen on December 20, 2010, but was seen on February 14, 2011 for a reagravation of his ankle condition. Dr. Schwartz related that appellant was diagnosed with right posterior tibialis tendinopathy on February 14 and March 1, 2011. He opined that appellant's right ankle and foot sprain developed into posterior tibial tendinopathy.

By decision dated December 23, 2011, OWCP's hearing representative affirmed the June 1, 2011 decision.²

² OWCP's hearing representative instructed appellant to file an occupational disease claim if he attributed his condition to new employment factors following his return to full duty.

LEGAL PRECEDENT

A recurrence of disability is the 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, which caused the illness. The 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 (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 an assignment are altered so that they exceed his or her established physical limitations.³

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.⁴ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁵ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁶ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁷

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on February 1, 2011. OWCP accepted his claim for right ankle sprain and left fifth finger sprain. Following his injury, appellant performed light-duty work until returning to full duty on December 27, 2010. On April 18, 2011 he filed a recurrence claim, contending that he sustained disability on February 1, 2011 due to his accepted condition. The Board finds that appellant failed to submit sufficient rationalized medical evidence to establish that his disability was causally related to the right ankle sprain or left fifth finger sprain.

Appellant submitted progress notes dated February 14 and March 1, 2011 and a November 8, 2011 report from Dr. Schwartz, who diagnosed posterior tendinopathy. Dr. Schwartz reported that appellant had aggravated his right ankle tendinopathy approximately two weeks prior to February 14, 2011. He did not further explain how such aggravation related to the accepted conditions or to work appellant performed. On November 18, 2011 Dr. Schwartz opined that appellant's right ankle and foot sprain developed into posterior tibial tendinopathy.

³ 20 C.F.R. § 10.5(x).

⁴ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁵ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁶ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

The Board notes that OWCP has not accepted the condition of posterior tibial tendinopathy.⁸ Dr. Schwartz provided insufficient rationale addressing how accepted right ankle and foot sprain developed into posterior tibial tendinopathy. The Board has held that opinions unsupported by rationale are of diminished probative value.⁹ Furthermore, Dr. Schwartz's February 14, 2011 progress note attributed appellant's recurrence to an aggravation of right ankle tendinopathy two weeks prior. It appears that this would implicate the work appellant performed following his return to full duty as a causal factor.

The MRI scans do not contain an opinion as to the cause of appellant's condition. They are of diminished probative value and are insufficient to establish appellant's claim.¹⁰ The Board finds that the medical evidence of record does not establish that appellant sustained a recurrence of disability and OWCP properly denied his claim.

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.

On appeal, counsel contends that OWCP erred in its interpretation of the law, facts and evaluation of Dr. Schwartz's opinions. The Board finds that the reports of Dr. Schwartz do not adequately address the issue of causal relation.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability commencing February 1, 2011 causally related to the accepted May 27, 2010 employment injury.

⁸ *Charles W. Downey*, 54 ECAB 421 (2003); *Alice J. Tysinger*, 51 ECAB 638 (2000) (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).

⁹ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *Mary E. Marshall*, 56 ECAB 420, 427 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 23, 2011 is affirmed.

Issued: October 26, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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