United States Department of Labor
Employees' Compensation Appeals Board

A.P., Appellant	)	
and	)	**Docket No. 12-1644**
	)	**Issued: February 19, 2013**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 30, 2012 appellant filed a timely appeal from a February 22, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his claim for a recurrence. 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.

ISSUE

The issue is whether appellant met his burden to establish that he sustained a recurrence of total disability commencing February 2, 2000 causally related to his October 15, 1998 employment injury.

On appeal, appellant contends that the employing establishment incorrectly filed paperwork for his retirement and he was not advised of his option to elect disability rather than retirement benefits. He argues that he should not be penalized for the mistake as he continues to receive medical care for his conditions which affect his activities of daily living.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on October 15, 1998 appellant, then a 67-year-old mechanical engineer, sustained right Achilles tendinitis in the performance of duty.

Appellant submitted reports by Dr. Carmine J. Ciccarelli, a Board-certified orthopedic surgeon, dated October 29, 2001 through October 20, 2005. On October 29, 2001 Dr. Ciccarelli found that appellant's pain was not from the plantar fasciitis and Achilles tendinitis, but was neuropathic pain. On March 4, 2004 he opined that appellant was disabled from work because of the severity of his foot neuropathy with the inability to stand for a significant length of time and the inability to know the position of the foot in space.

In a November 21, 2001 report, Dr. Michael M. Krinsky, a neurologist, diagnosed tarsal tunnel syndrome and possible Morton's neuroma.

Appellant underwent a right tarsal tunnel release on November 3, 2004.

On January 26, 2006 appellant filed a recurrence of disability claim. He reported that he was totally disabled as of February 2, 2001 and submitted an April 27, 2006 report by Dr. Ciccarelli who opined that appellant was unable to work in his permanent disability because of his inability to drive and ambulate.

In a February 7, 2006 letter, the employing establishment controverted the claim and advised that appellant stopped work on March 6, 2000, did not return. He used sick and annual leave during this absence and then retired on April 2, 2001.

On October 10, 2006 appellant filed a claim for a schedule award.

By decision dated February 9, 2007, OWCP denied the recurrence claim on the basis that the evidence was not sufficient to establish that appellant's disability commencing April 2, 2001 was causally related to the employment injury.

On February 15, 2007 appellant requested a hearing before an OWCP hearing representative. He submitted a fitness-for-duty examination dated December 7, 2000 and an April 5, 2007 report by Dr. Ciccarelli. Upon physical examination, Dr. Ciccarelli found no Tinel's over the tarsal nerve and no signs of synovitis of the foot. He found some mild compression over the heel, but otherwise good dorsiflexion, plantar flexion and eversion strength without pain or swelling. Dr. Ciccarelli opined that appellant was unable to work and would need a permanent disability due to the progression of his neuropathy.

By decision dated August 20, 2007, an OWCP hearing representative set aside the February 9, 2007 decision. The case was remanded for further development on whether to expand the acceptance of the claim and not as a recurrence based on a review of the case record conducted on August 20, 2007.

OWCP referred appellant for a second opinion examination by Dr. Balazs Somogyi, a Board-certified orthopedic surgeon. In a March 27, 2008 report, Dr. Somogyi diagnosed right tarsal tunnel syndrome, status post release of right tarsal tunnel syndrome, right paraesthesias

and dysesthesias and possible polyneuropathy of right lower extremity. He concluded that the tarsal tunnel syndrome was causally related to appellant's federal employment prior to the year 2000. Dr. Somogyi opined that appellant had an eight percent permanent impairment of the right lower extremity.

By decision dated April 30, 2008, OWCP accepted appellant's claim to include right tarsal tunnel syndrome.

On April 30, 2008 an OWCP medical adviser concurred with Dr. Somogyi's impairment rating. By decision dated May 13, 2008, OWCP granted appellant a schedule award for eight percent permanent impairment of the right lower extremity.

In a March 9, 2001 report, Dr. Nelza Rivera-Competiello, a Board-certified physical medicine and rehabilitation specialist, diagnosed tarsal tunnel syndrome and tibialis posterior tendinitis.

Appellant submitted reports from Dr. Ciccarelli dated March 4, 2004 through October 4, 2010. On November 29, 2004 Dr. Ciccarelli advised that appellant had good range of motion of the ankle and was to be ambulatory with a walker or cane. On April 7, 2005 he referred appellant back to Dr. Krinsky because of the continued symptoms in the leg, which he opined were definitely not related to his tarsal tunnel. On November 20, 2006 Dr. Ciccarelli diagnosed increasing weakness secondary to neuropathy and indicated that appellant complained of pain in his ankle secondary to falls while bathing. He recommended a hinged brace and adaptive devices to appellant's bathroom to prevent falls.

In an April 2, 2004 report, Dr. Michael S. Aronow, a Board-certified orthopedic surgeon, diagnosed right tarsal tunnel syndrome. On January 15, 2008 he indicated that most of appellant's symptoms appeared to be more in the area of the retrocalcaneal bursa greater than Achilles tendon and not so much in the tarsal tunnel.

In a December 1, 2005 report, Dr. Krinsky reviewed electromyogram (EMG) and nerve conduction studies and found that they were compatible with a mixed motor/sensory polyneuropathy with axonal and demyelinative changes. On June 20, 2006 he diagnosed peripheral neuropathy. On June 11, 2009 Dr. Krinsky indicated that appellant reported multiple symptoms that he had already been informed had nothing to do with the nervous system and still seemed confounded in affect and verbally as to why he had pain in his foot. He indicated that there was nothing more he could offer appellant from a neurological perspective and discharged him from active neurological care.

Appellant submitted a June 5, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine revealing L3-4 and L4-5 disc protrusions and foraminal stenosis.

In a June 15, 2010 report, Dr. Stephen R. Conway, a Board-certified neurologist, reviewed EMG and nerve conduction studies and found that the right lower extremity was normal with the exception of an absent medial plantar sensory response, though a left medial plantar response also could not be elicited. There was no electrodiagnostic evidence of a right lower extremity radiculopathy, plexopathy or mononeuropathy. Dr. Conway indicated that the absent plantar sensory responses were likely age-related findings. In a second June 15, 2010

report, he indicated that he did not believe that appellant had tarsal tunnel syndrome and could not explain the absent right ankle jerk except to invoke the possibility of lumbar root disease as the EMG did not localize to the sciatic nerve. Dr. Conway noted that the bilaterality of appellant's symptoms were also perplexing.

On October 26, 2011 appellant filed a notice of recurrence.

In a January 9, 2012 letter, OWCP requested additional factual and medical information and allotted 30 days for appellant to submit additional evidence and respond to its inquiries.

By decision dated February 22, 2012, OWCP denied appellant's claim on the basis that the medical evidence submitted was insufficient to establish that he sustained a recurrence of total disability causally related to his employment injury.

LEGAL PRECEDENT

A person seeking benefits under FECA[2] has the burden of establishing the essential elements of his or her claim. 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.[3] 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 he or she claims compensation is causally 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.[4] Where no such rationale is present, medical evidence is of diminished probative value.[5]

ANALYSIS

OWCP accepted appellant's claim for right Achilles tendinitis and right tarsal tunnel syndrome. The issue is whether appellant established that he was totally disabled commencing February 2, 2000 causally related to his October 15, 1998 employment injury.

In his reports, Dr. Ciccarelli found that appellant's pain was not from the plantar fasciitis and Achilles tendinitis, but neuropathic pain. On March 4, 2004 he opined that appellant was disabled from work because of the severity of his foot neuropathy with the inability to stand for a significant length of time and the inability to know the position of the foot in space. Approximately one year later, on April 7, 2005, Dr. Ciccarelli opined that appellant's continued

[2] 5 U.S.C. §§ 8101-8193.

[3] *See R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

[4] *See I.J.*, 59 ECAB 408 (2008); *Nicole Bruso*, 33 ECAB 1138, 1140 (1982).

[5] *See Ronald C. Hand*, 49 ECAB 113 (1997); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

symptoms were definitely not related to his tarsal tunnel. Another year later, on April 27, 2006 he opined that appellant was unable to work in his permanent disability because of his inability to drive and ambulate. On November 20, 2006 Dr. Ciccarelli diagnosed increasing weakness secondary to neuropathy and indicated that appellant complained of pain in his ankle secondary to falls while bathing. On April 5, 2007 he opined that appellant was unable to work and would need a permanent disability due to the progression of his neuropathy. The Board finds that Dr. Ciccarelli did not provide sufficient rationale explaining how appellant's employment duties resulted in a change in his employment-related conditions or why he was totally disabled for work. Therefore, his reports are insufficient to establish appellant's claim.

In his March 27, 2008 report, Dr. Somogyi diagnosed right tarsal tunnel syndrome and concluded that the tarsal tunnel syndrome was causally related to appellant's federal employment prior to the year 2000. However, he did not provide any rationale to show a spontaneous change in appellant's medical condition resulting from the October 15, 1998 employment injury. Therefore, Dr. Somogyi's report is insufficient to establish that appellant was disabled as a result of a recurrence.

The reports of Drs. Krinsky, Rivera-Competiello, Aronow and Conway provided firm diagnoses based on various diagnostic tests. However, due to the nature of their reports, they did not offer any opinion on causal relationship. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[6] Thus, these reports are insufficient to establish appellant's claim.

Similarly, the fitness-for-duty examination dated December 7, 2000 did not offer any opinion on causal relationship. Thus, appellant did not meet his burden of proof with this submission.

Appellant submitted a June 5, 2007 MRI scan of the lumbar spine revealing L3-4 and L4-5 disc protrusions and foraminal stenosis. OWCP did not accept a lumbar condition causally related to appellant's employment injury. The issue here is a recurrence of disability due to the accepted medical conditions. Thus, this medical report is immaterial in nature.

The Board finds that the evidence submitted by appellant does not provide adequate rationale to establish a spontaneous change in his medical condition which has resulted from the October 15, 1998 employment injury. Appellant did not meet his burden of proof to establish disability as a result of a recurrence.

On appeal, appellant contends that the employing establishment incorrectly filed paperwork for his retirement and he was not advised of his option to elect disability rather than retirement benefits. He argues that he should not be penalized for the mistake as he continues to receive medical care for his conditions which affect his activities of daily living. The Board only has jurisdiction to consider and decide appeals from final adverse decisions of OWCP[7] decided

[6] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

[7] *See* 20 C.F.R. §§ 501.2(c) and 501.3(a), respectively.

under FECA. In this case, the Board has jurisdiction over OWCP's final adverse decision dated February 22, 2012 which denied appellant's claim for a recurrence. The Board does not have jurisdiction over the election of benefits.

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.

CONCLUSION

The Board finds that appellant did not meet his burden to establish that he sustained a recurrence of total disability commencing February 2, 2000 causally related to his October 15, 1998 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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