



## **FACTUAL HISTORY**

On January 29, 2010 appellant, then a 44-year-old mail processing clerk, filed a traumatic injury claim alleging that on January 27, 2010 she sustained an injury to her left knee in the performance of duty. She stopped work on January 28, 2010. OWCP accepted the claim for a sprain of the left ankle and knee.<sup>2</sup>

On June 14, 2010 appellant accepted a sedentary position as a full-time modified mail processing clerk. On September 9, 2010 she accepted a position as a modified manual clerk with restrictions against lifting over 25 pounds.

On October 18, 2010 OWCP referred appellant to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated November 5, 2010, Dr. Askin reviewed her history of injury and complaints of continued left knee and ankle pain. He discussed appellant's history of total knee replacements in March 2009 and prior left ankle surgery. On examination Dr. Askin found bilateral knee effusions without crepitation and bilateral pes planus. He determined that appellant's accepted work injury had resolved and that any continued problem was related to her morbid obesity. Dr. Askin concluded that she had no disability due to the accepted employment injury but was vulnerable to reinjury due to her prior history of surgery and obesity.

In a report dated November 18, 2010, Dr. Frank Killian, an attending podiatrist, diagnosed talipes valgus, ankle valgus, tendinitis, subtalar arthritis, and pain of the left ankle and foot with walking. He noted that appellant returned to work in January 2010 following a subtalar joint arthroereisis. Dr. Killian stated, "At that time, [appellant] had an accident, slipped and reinjured the foot. She has had pain and disability since. [Appellant] is working on a limited basis but notes that overall she is really struggling due to pain, swelling and general inability to walk or stand on the left side." He recommended a possible surgical reconstruction.

On November 22, 2010 Dr. Killian related that appellant "has suffered an injury to her left foot and ankle that is creating significant disability and inability for her to stand, walk or work. I have required that she stop work of any kind effective from November 22, 2010 until January 14, 2011."

In a decision dated December 9, 2010, OWCP denied appellant's claim for compensation finding that the opinion of Dr. Askin represented the weight of the medical evidence and established that she had no further employment-related disability. On September 12, 2011 it vacated its December 9, 2010 decision after finding that it had not provided her with the requisite 30 days for further development of her claim.

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<sup>2</sup> By decision dated June 14, 2010, OWCP denied appellant's claim after finding that the medical evidence did not establish that she sustained an injury causally related to the January 27, 2010 employment incident. On August 23, 2010 following a preliminary review an OWCP hearing representative reversed the June 14, 2010 decision and accepted the claim for a left knee sprain and a left ankle sprain.

On December 8, 2011 appellant filed a recurrence of disability on November 19, 2010 causally related to her January 27, 2010 employment injury. She related that she was performing sedentary employment at the time she stopped work on November 20, 2010.

In an accompanying statement, appellant described her modified employment duties and the need to walk during assignments. She worked in a building over 400,000 square feet and stated, "As I walked to these multiple assignments throughout the building my injuries were aggravated and I was taken out of work on November 22, 2010 making my last day of work November 19, 2010." Appellant attributed her recurrence of disability to excessive standing and walking.

On November 14, 2011 Dr. Killian diagnosed arthritis of the left ankle and foot and found that appellant was disabled from work until February 14, 2012.

In a report dated January 2, 2012, Dr. Killian noted that appellant told him in May 2010 that she "had fallen and reinjured her foot on January 27, 2010 after I had released her to return back to work status post her initial injury." He diagnosed talipes valgus and left foot arthritis. Dr. Killian indicated that on January 10, 2011 he performed a reconstruction of the rear foot "with medial calcaneal displacement osteotomy, Achilles tendon lengthening and medial column fusion." He asserted that appellant was totally disabled through November 14, 2011.<sup>3</sup>

On January 3, 2012 appellant related that she did not sustain a new injury on November 19, 2010 but instead her initial injuries worsened. She maintained that walking around the building performing her modified duties aggravated her knee and ankle condition. Appellant indicated that she underwent additional left ankle surgery on November 10, 2011.

By decision dated March 29, 2012, OWCP found that appellant failed to establish that she sustained a recurrence of disability on November 19, 2010 causally related to her January 27, 2010 employment injury.

In a report dated March 21, 2012, received by OWCP on April 2, 2012, Dr. Killian described his treatment of appellant beginning May 17, 2010. He discussed her history of a January 27, 2010 work injury. Dr. Killian related that appellant was disabled from work beginning November 19, 2010 and noted that he performed additional surgery after she failed to respond to conservative care. He found continuing "ankle instability, talipes valgus, medial arch collapse, posterior tibial tendon dysfunction and degenerative arthritis." Dr. Killian opined that standing on a concrete floor at work "will further exacerbate her symptoms and cause progression of the arthritis and ankle/foot deformities that she presently has and I have advised her to remain out of work for this reason."

On April 2, 2012 appellant, through her attorney, requested a telephone hearing before an OWCP hearing representative.<sup>4</sup>

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<sup>3</sup> On February 6, 2012 Dr. Killian related that she was unable to work or perform the activities of daily living.

<sup>4</sup> In a note dated April 17, 2012, Dr. Killian found that appellant was unable to work.

In a report dated July 11, 2012, Dr. Killian related that he was treating appellant for left foot and ankle talipes valgus, equinas, tibial tendinitis and generalized arthritis. He stated, "I would [like to] certify that in my medical opinion, to a reasonable degree of medical certainty, [appellant's] injuries were exacerbated by the injury that she sustained at work [o]n January 27, 2010 and further aggravated by the continued standing and walking that she was required to do while continuing working from February 2 to November 19, 2010." Dr. Killian advised that appellant was unable to work beginning November 19, 2010 "due to the same injury that required her to be out of work from January 28 until February 2, 2010. [Appellant] ultimately required surgical efforts to attempt to reconstruct her foot and repair her injuries [o]n January 10, 2011." Dr. Killian found that she was disabled from employment in any position that required ambulation or standing for prolonged periods.

At the telephone hearing, held on July 16, 2012, appellant related that her work duties when she resumed employment aggravated her injury. The hearing representative advised that it might constitute a new claim if additional work factors caused her condition. Appellant's attorney indicated that her condition may be an occupational disease rather than a recurrence of disability.<sup>5</sup>

By decision dated October 16, 2012, an OWCP hearing representative affirmed the March 29, 2012 decision. She found that appellant had not submitted rationalized evidence supporting that she sustained an employment-related recurrence of disability on January 27, 2010.

On appeal appellant noted that OWCP's hearing representative failed to determine whether she sustained an occupational disease. She maintained that standing and walking between her assignments caused her condition.

### **LEGAL PRECEDENT**

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>6</sup>

OWCP regulations provide that 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

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<sup>5</sup> On August 1, 2012 the employing establishment challenged appellant's contentions that she walked and stood extensively in her workday and did work outside of her restrictions. It further noted that she had preexisting knee and ankle conditions.

<sup>6</sup> *Richard A. Neidert*, 57 ECAB 474 (2006); *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

the work environment that caused the illness.<sup>7</sup> 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, (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.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant sustained a left knee and ankle sprain due to a January 27, 2010 employment injury. She stopped work on January 28, 2010 and returned to limited-duty employment in June 2010. Appellant stopped work on November 19, 2010 and filed a notice of recurrence of disability.

Appellant has not alleged a change in the nature and extent of her light-duty job requirements. Instead, she attributed the recurrence of disability to extensive standing and walking performing her limited-duty employment. A recurrence of disability, however, does not include disability resulting from exposure to new work factors, even if it involves the same part of the body previously injured.<sup>9</sup> Appellant must provide medical evidence to establish that she was disabled due to a spontaneous worsening of her accepted work-related condition.<sup>10</sup>

On November 18, 2010 Dr. Killian discussed appellant's history of a subtalar joint arthroeresis. After returning to work following the arthroeresis, she slipped in January 2010 and reinjured her foot. Dr. Killian found that appellant was working limited duty but continued to experience pain and swelling. On November 22, 2010 Dr. Killian asserted that her left foot and ankle injury was causing disability and opined that she should remain off work beginning that date. He did not, however, specify the date of the left foot and ankle injury or specifically attribute any disability to the January 27, 2010 employment injury. Consequently, Dr. Killian's opinion is insufficient to establish that appellant sustained a work-related recurrence of disability.

On November 14, 2011 Dr. Killian diagnosed left foot and ankle arthritis and advised that appellant was disabled until February 14, 2012. He did not address the cause of the diagnosed condition or disability. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>11</sup>

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<sup>7</sup> 20 C.F.R. § 10.5(x).

<sup>8</sup> *Id.*

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3b(2) (May 1997). Appellant may file an occupational disease claim if she believes that new work factors caused her disability from employment.

<sup>10</sup> See *Jackie D. West*, *supra* note 6.

<sup>11</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

In a report dated January 2, 2012, Dr. Killian discussed appellant's history of reinjuring her foot on January 27, 2010 after she returned to work after a prior injury. He diagnosed talipes valgus and left foot arthritis. Dr. Killian indicated that he treated appellant conservatively but she failed to respond; consequently, he found her totally disabled beginning November 22, 2010. On January 10, 2011 he performed a rear foot reconstruction. Dr. Killian found that appellant was totally disabled from employment. He did not, however, explain how the January 27, 2010 work injury resulted in disability from her limited-duty employment beginning November 22, 2010. A physician must provide an opinion on whether the employment injury caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rationale.<sup>12</sup>

On March 21, 2012 Dr. Killian indicated that on May 17, 2010 appellant advised him that she had sustained an injury on January 27, 2010 at work. He treated her conservatively and then performed surgery. Dr. Killian found that she was disabled from employment on November 19, 2010. He reviewed her current findings of "ankle instability, talipes valgus, medial arch collapse, posterior tibial tendon dysfunction and degenerative arthritis." Dr. Killian found that standing and walking at work would aggravate her symptoms and cause her arthritis to progress; as a result, he found that she should remain off work. OWCP, however, accepted only a left knee and ankle sprain due to her January 27, 2010 employment injury. Where appellant claims that a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>13</sup> Dr. Killian did not specifically address whether the diagnosed conditions resulted from or were aggravated by the January 27, 2010 employment injury and thus his opinion is of little probative value. Additionally, he found that appellant should remain off work to prevent future injury; however, the possibility of a future injury does not form the basis for the payment of compensation under FECA.<sup>14</sup>

In a report dated July 11, 2012, Dr. Killian diagnosed left foot and ankle talipes valgus, equinus, tibial tendinitis and generalized arthritis. He advised that the diagnosed conditions were aggravated by appellant's January 27, 2010 work injury and by standing and walking at work from February 2 to November 19, 2010. Dr. Killian found that she was disabled as of November 19, 2010 due to her January 27, 2010 work injury and that she required surgery for her injuries. Dr. Killian attributed appellant's recurrence of disability, in part, to standing and walking at work from February 2 to November 19, 2010. As discussed, however, a recurrence of disability is a work stoppage 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>15</sup> To the extent that he found that appellant's condition was aggravated by employment duties, any disability resulting from the alleged

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<sup>12</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>13</sup> *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>14</sup> *Andy J. Paloukos*, 54 ECAB 712 (2003).

<sup>15</sup> 20 C.F.R. § 10.5(x).

aggravation would be considered a new injury and not a recurrence as defined by the regulations. As noted, OWCP has not accepted left foot and ankle talipes valgus, equinas, tibial tendinitis or generalized arthritis as employment related and there is insufficient reasoned medical evidence supporting such a conclusion.<sup>16</sup> Appellant has not submitted sufficient medical evidence to establish that she sustained an employment-related recurrence of disability on January 27, 2010; consequently, she has not met her burden of proof.

OWCP referred appellant to Dr. Askin for a second opinion examination. On November 5, 2010 Dr. Askin found that her injuries from the January 27, 2010 work injury had resolved and that her continued problems resulted from her prior surgery and morbid obesity. He determined that appellant had no further disability due to her January 27, 2010 employment injury.

On appeal appellant argues that OWCP erred in failing to consider whether she sustained an occupational disease and asserts that she stood and walked for prolonged periods while performing her limited duty. She may, however, elect to file a new claim for an occupational disease if she believes new work factors caused or aggravated a diagnosed condition.

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established a recurrence of disability on November 19, 2010 causally related to her January 27, 2010 employment injury.

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<sup>16</sup> See *Jaja K. Asaramo, supra* note 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2013  
Washington, DC

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

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

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