United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant **and** **DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, Sault Sainte Marie, MI, Employer**	))))))))	**Docket No. 13-1371** **Issued: October 24, 2013**

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 20, 2013 appellant filed timely appeals of December 11, 2012 and April 12, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of medical condition.

FACTUAL HISTORY

On September 28, 2007 appellant, then a 51-year-old lock and dam operator, injured her left ankle while she was pulling cables on the job. OWCP accepted her traumatic injury claim

[1] 5 U.S.C. § 8101 *et seq.*

for ruptured left tibial tendon.[2] Appellant returned to work with no restrictions on December 23, 2007.

On September 12, 2012 appellant filed a notice of recurrence, alleging that she experienced ongoing bilateral ankle symptoms. She specified that wearing a controlled ankle movement (CAM) boot following the September 28, 2007 work injury placed undue strain on her left foot. Appellant overcompensated for this pressure with her right foot, for which she previously underwent surgery in 1986. She did not stop work.

Dr. Jeffrey P. Dombroski, a Board-certified orthopedic surgeon, remarked in a January 10, 2012 report that a left-sided CAM boot likely precipitated appellant's right foot symptoms. In a January 20, 2012 report, he added that a right ankle magnetic resonance imaging (MRI) scan exhibited large osteochondral lesion of the talar dome.[3] In a March 29, 2012 report, Dr. Dombroski clarified that, while the CAM boot may have exacerbated appellant's preexisting right foot condition, this was "simply a hypothesis" based on a temporal connection.

In a September 13, 2012 report, Dr. Dombroski detailed that appellant previously underwent medial malleolar osteotomy and microfracture surgery in the 1980's for her right talar osteochondral lesion. As a result of using an Arizona ankle-foot orthosis (AFO) for several months, she developed right plantar fascia and heel pad pain as well as an altered gait. In addition, appellant overcompensated for this gait with her left foot, bringing about left medial ankle symptoms. On examination of the right foot, Dr. Dombroski observed posterior plantar heel pad tenderness, plantar fascia and calcaneus pain and limited ankle dorsiflexion. On examination of the left foot, he observed posterior tibial tendon swelling, increased abduction on weight bearing, hindfoot valgus and weakness to resisted inversion strength. Following bilateral foot x-rays, Dr. Dombroski diagnosed right osteochondral lesion of the talar dome, heel pad syndrome and plantar fasciitis and left posterior tibial tendon dysfunction.

OWCP informed appellant in an October 1, 2012 letter that additional evidence was needed to establish her claim for recurrence of medical condition. It gave her 30 days to submit a medical report from a physician explaining the connection between her present condition and the accepted September 28, 2007 work injury.

In a March 11, 2011 report, Dr. Steven E. Vorenkamp, a Board-certified orthopedic surgeon, reiterated appellant's account that the ruptured left tibial tendon forced her to rely on her opposite leg. On examination of the right foot, he observed significant pronation on weight bearing and medial malleolar tenderness. X-rays showed large anterior talar spur and medial malleolar screw. Dr. Vorenkamp opined, "Certainly the symptoms and history are consistent with overstress of the right posterior tibial tendon as a result of the left ankle injury, although not necessarily a direct cause."[4]

[2] OWCP also granted schedule awards for 17 percent permanent impairment of the left lower extremity.

[3] The case record contains a January 19, 2012 right ankle MRI scan obtained by Dr. Ralph J. Duman, a Board-certified diagnostic radiologist.

[4] Appellant also provided physical therapy records for the period September 13 to December 3, 2012.

By decision dated December 11, 2012, OWCP denied appellant's claim for recurrence of medical condition, finding the evidence insufficient to establish that her alleged need for further treatment was due to a worsening of her accepted condition.

Counsel requested a telephonic hearing, which was held on March 4, 2013. Appellant asserted that use of a right-sided Arizona AFO necessitated further medical treatment for the left foot.

On April 12, 2013 an OWCP hearing representative affirmed the December 11, 2012 decision.

LEGAL PRECEDENT

A recurrence of medical condition refers to a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original treatment or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.[5]

An employee who claims a recurrence of medical condition has the burden of proof to establish causal relationship by the weight of substantial, reliable and probative evidence. This burden 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 employee's need for additional medical care is causally related to the accepted injury and supports that conclusion with sound medical reasoning.[6]

ANALYSIS

OWCP accepted that appellant ruptured her left tibial tendon on September 28, 2007 while in the performance of duty. She returned to work with no restrictions on December 23, 2007. Almost five years later, appellant filed a claim for recurrence of medical condition and submitted medical evidence.

Medical evidence of bridging symptoms must demonstrate that the claimed recurrence was causally related to the accepted injury.[7] In a September 13, 2012 report, Dr. Dombroski related that appellant wore a right-sided Arizona AFO that altered her gait and forced her to overcompensate with her left foot.[8] He conducted a physical examination, obtained x-rays and diagnosed left posterior tibial tendon dysfunction, *inter alia*. However, Dr. Dombroski did not explain how appellant's need for additional medical care was causally related to the accepted

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[5] 20 C.F.R. § 10.5(y).

[6] *E.O.*, Docket No. 11-1099 (issued February 24, 2012); *J.B.*, Docket No. 11-1410 (issued January 5, 2012).

[7] *Ricky S. Storms*, 52 ECAB 349 (2001).

[8] Dr. Dombroski also noted that appellant developed right foot symptoms.

September 28, 2007 employment injury. Instead, he attributed the claimed recurrence to the orthotic treatment of a preexisting, nonindustrial right ankle condition.[9]

Dr. Vorenkamp stated in a March 11, 2011 report that appellant's history of injury and symptoms were "consistent with overstress of the right posterior tibial tendon as a result of the left ankle injury, although not necessarily a direct cause" while Dr. Dombroski found in a January 10, 2012 report that the left-sided CAM boot likely precipitated her chronic right foot symptoms.[10] Neither report was fortified with medical rationale.[11] In the absence of rationalized medical opinion evidence,[12] appellant did not meet her burden of proof.

Counsel argues on appeal that the April 12, 2013 decision was contrary to fact and law. The Board has already addressed the deficiencies of this claim.

Appellant may submit new evidence or argument as part of a formal 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 establish that she sustained a recurrence of medical condition.

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[9] *See J.K.*, Docket No. 10-1780 (issued May 11, 2011); *John R. Knox*, 42 ECAB 193 (1990) ("[o]nce the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable *so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensation injury....*"). (Emphasis added.)

[10] The Board notes Dr. Dombroski's comment in a subsequent March 29, 2012 report that his opinion was "simply a hypothesis" based on a temporal connection. A temporal relationship alone is insufficient to establish causal relationship. *Louis T. Blair*, 54 ECAB 348 (2003); *Thomas D. Petrylak*, 39 ECAB 276 (1987). *See also K.S.*, Docket No. 11-2071 (issued April 17, 2012); *Cleona M. Simmons*, 38 ECAB 814 (1987) (inconsistent records from the same physician lack probative value).

[11] *George Randolph Taylor*, 6 ECAB 986, 988 (1954). The Board points out that OWCP did not accept that appellant sustained a right lower extremity condition while in the performance of duty. *See A.K.*, Docket No. 12-742 (issued October 18, 2012) (an employee bears the burden of proof to establish causal relationship for conditions not accepted by OWCP as employment related).

[12] The Board notes that the physical therapy records lacked probative value because a physical therapist is not considered a physician under FECA. 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2013 and December 11, 2012 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 24, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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