

injuries of aggravation of major depression (single episode, moderate) and aggravation of generalized anxiety disorder. On March 9, 2006 appellant resigned from the employing establishment citing personal medical reasons.

On March 28, 2011 appellant filed a claim alleging a recurrence of disability on March 8, 2006 due to his accepted work injuries. He stated that he still had left foot and ankle pain which affected his emotional condition and prevented him from working. Appellant noted that he suffered a vehicular accident in December 1986 which caused him to go into a coma, but he asserted that he recovered from the accident and returned to work. He periodically worked for private employers over the years but was now unable to work.

Appellant submitted medical evidence in support of his recurrence of disability claim. In reports dated between October 2008 and mid-2011, Dr. Walter Afield, an attending Board-certified psychiatrist, discussed appellant's physical and mental condition and prescribed periodic foot massages. He stated that work factors had exacerbated appellant's mental health, noting that he had difficulty in dealing with the pain from his 1985 work injuries. Dr. Afield stated in an October 23, 2008 report that appellant had "never been the same" since his 1985 work injuries; but did not describe appellant's condition in significant detail.

In a brief April 7, 2011 note, Dr. Michel Gimeno, an attending Board-certified psychiatrist, stated that appellant "suffers from a bipolar affective disorder, anxiety and depression all of which are significantly exacerbated by his chronic left ankle pain. As a consequence [appellant] is permanently disabled from working." Appellant also submitted reports from attending physicians who treated his physical conditions, but the reports did not provide a rationalized medical opinion relating his claimed March 8, 2006 recurrence of disability to any work-related cause.

In a July 18, 2011 decision, OWCP denied appellant's claim for a March 8, 2006 recurrence of disability. It found that he had not submitted sufficient medical evidence to establish causal relation.

In a July 13, 2011 progress report, Dr. Afield stated that he had received some medical records to determine future treatment but was waiting for additional materials. On August 3, 2011 he noted that appellant had a "chronic pain problem" and discussed treatment by Dr. Gimeno. In an August 17, 2011 note, Dr. Afield stated that he had a variety of records dating back to appellant's 1986 vehicular accident. He reviewed records from St. Joseph's and Tampa General Hospital but considered the accident to be a "nonissue" because appellant recovered and did not suffer lasting results. Dr. Afield stated that appellant's emotional condition had declined in the last two years.

In a November 29, 2011 decision, OWCP affirmed the July 18, 2011 decision denying appellant's recurrence of disability claim.

Appellant resubmitted the April 7, 2011 note from Dr. Gimeno and submitted progress notes of Dr. Afield dated September 2011 to July 25, 2012. The newly submitted notes of Dr. Afield were similar to his previous notes of record. Dr. Afield indicated that appellant still

experienced pain from his 1985 work injuries which affected his emotional condition; however, Dr. Afield did not provide any additional explanation for his stated conclusion.

In an August 15, 2012 decision, OWCP denied medication of its July 18, 2011 decision.

Appellant submitted additional reports from Dr. Afield and Dr. Samy Bishai, an attending Board-certified orthopedic surgeon. The reports of Dr. Afield suggested that appellant was disabled for work-related reasons, but did not specify those reasons. The reports of Dr. Bishai, dated August 2012 to March 2013, did not implicate the February 12, 1985 work injury or any other work-related cause for appellant's present condition.

In an April 26, 2013 decision, OWCP affirmed its August 15, 2012 decision.

LEGAL PRECEDENT

An individual 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 compensation is claimed is causally related to the accepted injury.² 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 the employment injury and supports that conclusion with sound medical rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

ANALYSIS

OWCP accepted that on February 12, 1985 appellant sustained a left ankle sprain, permanent aggravation of left posterior talocalcaneal bar and left subluxation of talonavicular joint. His claim also accepted for consequential injuries of aggravation of major depression (single episode, moderate) and aggravation of generalized anxiety disorder. Appellant retired from the employing establishment on March 9, 2006 and periodically worked for private employers. On March 28, 2011 he filed a claim alleging a recurrence of total disability on March 8, 2006 due to his accepted work injuries. Appellant noted that he still had left foot and ankle pain which affected his emotional condition and prevented him from working.

The Board finds that appellant did not submit sufficient medical evidence to establish that a recurrence of disability on or after March 8, 2006 was due to his accepted work injuries.

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986). Under 20 C.F.R. § 10.5(x), a recurrence of disability is defined, in part, as “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.”

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

Appellant submitted numerous medical reports of Dr. Afield, an attending Board-certified psychiatrist, dated after his claimed recurrence of disability on March 8, 2006. Some of the reports of Dr. Afield, dated beginning in October 2008, suggest that appellant was disabled for work-related reasons, but the reports were vague in identifying those reasons. In the reports, Dr. Afield indicated that appellant continued to have pain from the 1985 work injuries which affected his emotional condition, but Dr. Afield did not describe appellant's physical condition in any great detail. His opinions on causal relationship lack sufficient detail and medical rationale to establish appellant's claim for recurrence of disability.

In a brief April 7, 2011 note, Dr. Gimeno, an attending Board-certified psychiatrist, indicated that appellant's bipolar, anxiety and depression conditions were all exacerbated by his left ankle pain and stated that, as a consequence, he was permanently disabled from working. On appeal, appellant alleged that OWCP did not adequately consider this note, but OWCP did in fact consider it and properly determined that it was of limited probative value on the relevant issue of this case due to its lack of detail and medical rationale.

Appellant also submitted reports from physicians who assessed his physical condition, including Dr. Bishai, an attending Board-certified orthopedic surgeon. The reports of Dr. Bishai and other physicians did not clearly implicate the 1985 work injuries or otherwise contain a rationalized medical opinion relating appellant's claimed March 8, 2006 recurrence of disability to any work-related cause.

For these reasons, appellant did not show that he sustained a recurrence of disability on or after March 9, 2006 due to his accepted work injuries. He 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 of proof to establish that he sustained a recurrence of disability on or after March 8, 2006 due to his accepted work injuries.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2014
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