

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

S.C., Appellant)	
)	
and)	Docket No. 14-233
)	Issued: May 20, 2014
U.S. POSTAL SERVICE, POST OFFICE,)	
Nashville, TN, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 2, 2013 appellant filed a timely appeal from a May 16, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding her wage-loss claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained a recurrence of total disability for the period September 24, 2004 through June 27, 2006 causally related to her accepted employment injuries.

FACTUAL HISTORY

On August 28, 1998 appellant, then a 40-year-old data collection technician, filed an occupational disease claim alleging that she had sustained a bilateral foot condition due to factors of her federal employment. She had been employed as a data collection technician since October 1, 1983. In May 1999, appellant was officially reassigned to a distribution clerk

¹ 5 U.S.C. § 8101 *et seq.*

position. The employing establishment provided her modified work and she continued to work in the distribution clerk position until February 11, 2000, when she stopped work. On February 14, 2000 appellant underwent a nonwork-related gynecologic surgery and was disabled from work for a short period of time as a result of that surgical procedure. On May 31, 2000 she resigned from the employing establishment. In August 2001, appellant filed a traumatic injury claim alleging that on February 11, 2000 she hurt her back when she picked up some letters which had fallen on the floor. She additionally stated that she sat on a stool which had no back support. OWCP adjudicated this claim under file number xxxxxx454. That claim is before the Board under Docket No. 13-1681.

In July 2002, OWCP accepted appellant's 1998 claim for the conditions of bilateral plantar fasciitis and heel spurs. By decision dated November 18, 2002, it granted her a schedule award for 19 percent permanent impairment to each leg, for the period August 19, 2002 to September 23, 2004. Appellant was determined to have reached maximum medical improvement on August 19, 2002.

On June 27, 2006 appellant filed a Form CA-7 claiming wage-loss compensation for the period September 24, 2004 through June 27, 2006. In a July 12, 2006 letter, the employing establishment stated that she retired on May 31, 2000 and her resignation was not related to her on-the-job injury. It advised that it had accommodated appellant during her February 2000 surgery. The employing establishment also noted that while her physician had given return to work restrictions on August 19, 2002 no job offer was given as she no longer worked for them.

On September 19, 2006 OWCP advised appellant that medical evidence was needed to support that her medical condition was related to the original work injury or factors of her federal employment. Appellant was advised of the requirements for a recurrence of disability due to the accepted work injury and accorded 30 days to provide the requested evidence. No additional evidence was received.

By decision dated November 15, 2006, OWCP denied appellant's claim for compensation on the basis that the evidence of record failed to establish that she was totally disabled from all work as a result of the accepted conditions under this case.

On May 11, 2007 appellant requested reconsideration. In support of her request, she submitted a December 18, 2006 magnetic resonance imaging (MRI) scan of the left knee.

In a March 13, 2007 report, Dr. James B. Talmage, a Board-certified orthopedic surgeon, at the request of the Division of Vocational Rehabilitation performed a vocational rehabilitation evaluation. He noted appellant's medical problems with her feet, back pain, left knee, irritable bowel syndrome and stress incontinence and that she stated that none of her medical problems improved since she retired on disability. Dr. Talmage reviewed the medical records and provided examination findings. He opined that she did not have any serious pathology and that she was capable of either sedentary or light-duty work. Dr. Talmage suggested a psychiatric consultation prior to investing financially in her vocational rehabilitation.

In an April 25, 2007 physical capacity worksheet, Dr. Roger Zwemer, a Board-certified orthopedic surgeon, diagnosed degenerative disc disease and plantar fasciitis. He opined that appellant was able to work an eight-hour day with restrictions.

By decision dated May 30, 2007, OWCP denied modification of its prior decision.

On August 6, 2007 OWCP received appellant's July 30, 2007 request for reconsideration. The relevant medical evidence submitted included August 4, 2005 chiropractic notes. In a July 11, 2007 letter, Dr. Zwemer opined that she could do desk-type work, secretary-type work or sedentary-type work as long as she could alter her positions.

By decision dated November 5, 2007, OWCP denied modification of its prior decision.

In an October 5, 2008 letter, appellant requested reconsideration. She indicated that, in his August 4, 2005 report, Dr. Luby Chambul, her chiropractor, noted that her feet and back problems may be related.² Appellant argued that this was a consequential injury as her feet were affecting her back. She argued that her medical condition was permanent and disabling. Appellant also stated that she had suffered financial hardship and stress related to this injury.

In support of her request, appellant submitted numerous documents unrelated to the recurrence issue. OWCP also received a June 10, 2008 report from Myra Johnson Hale, a licensed clinical social worker, which related appellant's condition of major depression and generalized anxiety disorder to problems that she incurred while processing her workers' compensation claim.

By decision dated January 8, 2009, OWCP denied modification of its prior decision.

On July 1, 2009 OWCP received a request for reconsideration. In a June 26, 2009 letter, appellant stated that her heel spurs still existed and raised arguments pertaining to the second opinion examination provided by Dr. Susan Pick, a Board-certified orthopedic surgeon and OWCP referral physician, whom she acknowledged failed to mention the dates of September 24, 2004 through June 27, 2006. She also stated that she did not voluntarily leave the employing establishment, but had left for medical reasons due to worsening conditions and total disability.

Dr. Pick also submitted an April 1, 2009 chiropractic recommendation for care regarding appellant's foot conditions; appellant's May 17, 2009 letter addressed to Dr. Pick disagreeing with her findings and her May 19, 2009 letter addressed to OWCP disagreeing with Dr. Pick's findings.

In an April 7, 2009 report, Dr. Pick, provided an assessment of complaints of bilateral foot pain and heel pain. She opined that appellant's work-related plantar fasciitis condition resolved with no disabling residuals and that she would be able to work a sitting position with alternative sitting and standing. No discussion was provided regarding disability for the period of September 24, 2004 to June 27, 2006.

In a May 19, 2009 report, Dr. Donald M. Arms, a Board-certified orthopedic surgeon, provided an assessment of polyarticular osteoarthritis, neck and back arthritis, hammertoe deformities and midfoot arthritis.

² In his report, Dr. Chambul diagnosed low back pain and plantar fasciitis. He opined that appellant's foot pain may be related to back pain.

By decision dated July 28, 2009, OWCP denied modification of its prior decision.

By decision dated September 30, 2009, OWCP terminated appellant's medical benefits for her accepted bilateral foot conditions, effective September 30, 2009. Determinative weight was accorded to the April 7, 2009 report of Dr. Pick, a Board-certified orthopedic surgeon and OWCP referral physician, who determined that appellant no longer had any residuals as a result of her July 27, 1997 employment injury.

On July 13, 2010 OWCP received appellant's July 3, 2010 request for reconsideration. In letters dated July 3 and 13, 2010, appellant expressed her disagreement regarding the termination of her medical benefits of September 30, 2009 and raised arguments regarding the findings and opinions of the second opinion physician, Dr. Pick. She also alleged that her stress condition developed from the overpayment actions taken in her case and as a consequence of her job-related medical conditions. Appellant stated that her heel spurs continued to exist and that she had to wear special shoes.

By decision dated September 7, 2010, OWCP denied modification of its prior decision.

On August 15, 2011 OWCP received appellant's August 9, 2011 request for reconsideration. In support of her reconsideration request, appellant submitted several statements dated August 5, 2011 relating to issues pertaining to her retirement and the termination of her benefits.

In a December 15, 2004 report, Dr. John W. Lamb, M.D., noted the history of injury concerning appellant's feet conditions as reported. Examination findings of appellant's feet were provided and a prescription given for extra depth shoes, molded longitudinal arch supports and medial metatarsal pads. Dr. Lamb encouraged appellant to continue activities as tolerated and instructed to return on an as needed basis.

By decision dated November 21, 2011, OWCP denied modification of its prior decision.

On February 21, 2012 OWCP received appellant's February 14, 2012 request for reconsideration. In a February 14, 2012 letter, appellant contended that the medical evidence supported that she had total disability because of her feet since February 11, 2000 and that she had consequential injuries to her back, varicose veins and stress hypertension. The following documents were received in support of her request for reconsideration: letters from appellant dated July 18, 2003, February 17, 2004 and September 26, 2011; a June 26, 2003 letter from Aetna, denying outpatient surgery for sclerotherapy; medical reports from Dr. Lois Wagstrom, a Board-certified plastic surgeon, from 1993 through 1998; and a May 23, 2003 report from Dr. John E. Keyser, III, a Board-certified general surgeon.

In a January 23, 2004 letter, Dr. David M. Vanderpool, a Board-certified general surgeon, noted that he saw appellant on September 22, 2003 for problems related to varicose veins and venous hypertension. He indicated that she had those veins present for many years and has had previous right leg vein stripping. Dr. Vanderpool stated that the September 22, 2003 venous Doppler of appellant's bilateral lower extremities showed venous hypertension and she underwent an endovenous laser ablation of those varicose veins on October 30, 2003 and underwent sclerotherapy on December 1, 2003. He stated that varicose veins could be linked to heredity, prolonged standing or sitting, excessive weight and pregnancy and opined that it was

hard to say that any such activity caused her varicose veins. Medical reports dated September 22, October 30 and December 1, 2003 were received along with a September 22, 2003 copy of bilateral duplex venous Doppler examination of the lower extremity with compression.

In a May 18, 2007 letter, Dr. Linda Foster advised that appellant suffers from depression and anxiety which she relates to her injury. She noted that appellant was extremely frustrated with her unresolved worker' compensation issues, that she continues to suffer physically as a result of her injury and that she feels helpless and frustrated in dealing with the worker' compensation legal issues which contributed to her depression and anxiety. Dr. Foster opined that appellant's depression and anxiety were due to her work-related injury, which she sustained on July 27, 1997 for reasons mentioned above.

In an October 6, 2011 report, Dr. John G. Keating, a Board-certified orthopedic surgeon, noted the history of injury as reported by appellant, who stated that the problem with her feet was caused by her job, which required her to stand and walk extensively and it was aggravated by the fact that she was given a broken barstool to sit on, which caused her to stand more than she sat. Appellant also felt that, if she had gotten an office job, it would have helped her resolve this foot problem. Dr. Keating noted that her second area of complaint was her lower back. He reported that "[appellant] states that on February 11, 2000 she hurt her back when she twisted and bent over to pick up a letter that had fallen behind a cage. Three days later, appellant had 'female surgery' to see if her back pain was caused by abdominal pathology and it was not." Dr. Keating noted that appellant saw many physicians over the years who have opined that the problems with her feet caused the back issues. He also noted that she stated severe varicosities developed in 1979, while she was pregnant. Although she underwent a venous stripping procedure, appellant opined that the prolonged standing she was required to do in her job exacerbated the varicose veins. Dr. Keating noted his findings on examination a review of x-rays of the back and bilateral feet. He noted that appellant asked him to opine on a number of specific questions, to which he answered "no," "yes" or "disagree." No opinion on total disability from employment for the period claimed was provided.

By decision dated March 21, 2012, OWCP denied modification of its prior decisions on the basis that none of the arguments or medical evidence submitted was sufficient to support total disability for employment during the period September 24, 2004 through June 27, 2006.

On August 15, 2012 OWCP received appellant's August 8, 2012 request for reconsideration. In an August 11, 2012 statement, appellant contended that no limited duty was offered to her and, therefore, she is entitled to compensation. She also requested that her claim be expanded to include conditions of back injury, stress, depression and varicose veins. Appellant also alleged that an offer of suitable work was never made and she should be awarded compensation due to a withdrawal of limited duty. In a December 5, 2012 telephone call report, she explained that she worked limited duty from August 1998 to February 2000. When appellant asked for permanent limited duty, the employing establishment stated that there was no work for her in data collection and moved her back to the floor, where she initially was injured.

On April 10, 2012 Dr. Keating reiterated his responses by referring to his October 6, 2011 report with regard to appellant's questions. In an April 10, 2012 attending physicians

report, he found that she was able to resume light work on May 30, 2000 and referenced his earlier report of October 6, 2011.

In a May 9, 2012 report, Dr. Arms provided assessments of: bilateral plantar fasciitis, bilateral foot arthritis, bilateral hammertoes, multiple hammertoes and left acromioclavicular (AC) joint arthropathy and shoulder impingement.

By decision dated December 19, 2012, OWCP denied modification of its prior decisions.

On February 15, 2013 OWCP received appellant's February 11, 2013 request for reconsideration. Evidence submitted in support of the reconsideration request includes: a September 30, 1998 limited-duty job offer; appellant's letters of May 7, 1999 and February 11, 2013, a December 30, 1999 USPS's request for medical information; December 17, 1999 work restrictions provided by Dr. Rosen; and a March 1, 2000 physical therapy patient questionnaire. Duplicate copies of evidence already in the case record was also received.

In her 38 page letter of February 11, 2013, appellant pointed out several details in the December 19, 2012 decision, which have no effect on the current claim. She also raised several arguments. These include: that the submitted evidence was ignored; that she sustained other conditions, such as sexual harassment, resulting from hostile work environment, higher stress level, depression, high blood pressure; irritable bowel syndrome, etc., but decided not to file a claim as she did not want to be harassed as an injured worker; she developed numerous medical conditions as a result of her medications, exposure to work environment; she was not advised of suitable work or that preexisting conditions were not considered; no position was offered after February 11, 2000; she was not provided an election when the schedule award expired; she left work because of her lower back injury; and she disagreed with the termination of her benefits.

By decision dated May 16, 2013, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

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 the work environment that caused the illness.³ 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.⁴

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the

³ 20 C.F.R. § 10.5(x).

⁴ *Id.*

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 limited-duty work. 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 limited-duty job requirements.⁵

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁶

ANALYSIS

OWCP accepted that appellant sustained bilateral plantar fasciitis and heel spurs while in the performance of duty. In May 1999, after appellant filed her occupational disease claim, the employing establishment officially reassigned her from a data collection technician to a distribution clerk position, where she performed modified duties until February 11, 2000 when she stopped work. On February 14, 2000 she underwent a nonwork-related gynecologic surgery and was disabled from work for a short period of time as a result of that surgical procedure. On May 31, 2000 appellant resigned from the employing establishment. She claimed a recurrence of disability for the period commencing September 24, 2004. Appellant must demonstrate either that her conditions have changed such that she could not perform the activities required by her modified job or that the requirements of the modified job changed. The Board finds that the record contains no evidence that the limited light-duty job requirements were changed or withdrawn or that her employment-related conditions have changed such that they precluded her from performing limited light-duty work.

The Board notes that evidence received prior to September 2004 has no bearing on the present claim as it predates the claim for a recurrence of total disability commencing September 24, 2004 due to the accepted employment injuries. Likewise, all evidence and arguments pertaining to OWCP's overpayment and termination decisions, which do not address the claimed period of total disability due to the accepted work-related conditions, also are not relevant to this claim.

In a March 30, 2000 attending physicians report, Dr. Rosen opined that appellant was totally disabled from February 11, 2000 and continuing. Although he found that she was totally disabled, he did not explain how this total disability was causally related to the accepted bilateral foot conditions and whether she was totally disabled due to the accepted foot conditions during the period claimed. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷ Dr. Rosen did not provide an opinion addressing whether appellant sustained a recurrence of

⁵ *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ *James H. Botts*, 50 ECAB 265 (1999).

⁷ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *Michael E. Smith*, 50 ECAB 313 (1999).

total disability commencing September 24, 2004 causally related to the accepted employment injuries.

Dr. Talmage, in his March 13, 2007 report, opined that appellant did not have any serious pathology and that she was capable of either sedentary or light-duty work. Dr. Zwemer, in his April 25, 2007 report, diagnosed degenerative disc disease and plantar fasciitis. He opined that appellant could work an eight-hour day with restrictions and, in a July 11, 2007 letter, clarified she was capable of working sedentary-type work as long as she could alter her position. In her April 7, 2009 report, Dr. Pick opined that appellant's work-related plantar fasciitis condition resolved with no disabling residuals and that she could work in a sitting position with alternative sitting and standing. In reports dated May 19, 2009 and May 9, 2012, Dr. Arms provided various assessments concerning arthritis, conditions concerning appellant's feet and her left shoulder. In a December 15, 2004 report, Dr. Lamb provided examination findings of appellant's feet and encouraged her to continue activities as tolerated. None of these physicians found that appellant had sustained a recurrence of a total disability commencing September 24, 2004 causally related to her employment injuries.

In reports dated June 10, 2008 and May 18, 2007, Dr. Foster opined that appellant suffered from major depression and generalized anxiety disorder. While she indicates that appellant still suffers physically from her accepted condition, she also related appellant's condition of major depression and generalized anxiety disorder to problems that she incurred while processing her workers' compensation claim and unresolved workers' compensation issues. The handling of a workers' compensation claim is not related to job duties and is not considered a compensable work factor.⁸ Appellant's frustration over the processing of her claim, including any stress reaction occurred as a result, does not arise from a compensable work factor. In the absence of a compensable work factor substantiated by the record, the emotional reaction and any associated physical complaints are not compensable.⁹

The medical evidence from the American Vein Institute, Dr. Wagstrom, Dr. Vanderpool and Dr. Keyser discusses treatment of appellant's venous condition and does not offer any support for total disability due to the accepted condition for the period claimed. The physicians also do not provide an opinion regarding the causal relationship of the assessed conditions.

Dr. Keating, in his October 6, 2012 report, fails to support that appellant was totally disabled from all employment for the period claimed. He noted her history of injury, as related by her but provided no objective evidence or medical rationale to support his opinion on the causal relationship of her feet, back or varicose vein issues. Dr. Keating merely responds to appellant's questions with single answers of "yes, no or disagree." While he reports her feet conditions are now into the disease phase, he offers no medical rationale on how or why this happened.

⁸ *David C. Lindsey, Jr.*, 56 ECAB 263, 270 (2005); *George A. Ross*, 43 ECAB 346 (1991). The handing of a compensation claim is an administrative function and is not compensable absent evidence of error or abuse by the employing establishment. No probative evidence of error or abuse was submitted.

⁹ *See Beverly R. Jones*, 55 ECAB 411 (2004). If a compensable work factor is established, then the medical evidence is examined to determine if there was diagnosed injury arising out of the employment. *Id.*

Appellant noted that Dr. Chambul opined in his August 4, 2005 report that her foot pain may be related to back pain. However, the August 4, 2005 report of Dr. Chambul, a chiropractor, is of no probative medical value as he does not diagnose spinal subluxation or document whether x-rays were taken.¹⁰

None of these physicians provided an opinion addressing whether appellant sustained a recurrence of total disability commencing September 24, 2004 due to the accepted employment injuries.¹¹

Numerous letters and decisions from OPM and Tennessee Department of Labor & Work Force Development indicated that appellant's disability was approved. However, the period of disability relevant to this claim was not discussed and it appears that her disability claim was approved for a back condition, a nonaccepted condition in this claim. Furthermore, decisions made by such tribunals are pursuant to different statutes that have varying standards for establishing disability and eligibility for benefits. The finding of those tribunals are not determinative of appellant's rights under FECA and do not establish that she sustained a recurrence of total disability commencing September 24, 2004 due to the accepted employment injury.¹²

Similarly, the diagnostic testing is insufficient to establish appellant's claim for a recurrence of total disability. This evidence does not contain any opinion addressing her disability for work during the claimed period due to the accepted injuries.¹³

Appellant has not met her burden of proof to establish a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the limited light-duty requirements which would prohibit her from performing the limited light-duty position.

On appeal and before OWCP appellant raised several arguments. She requested that both the current claim and claim number xxxxxx454 pertaining to her back be addressed together since they correlate and overlap. As previously noted, the issues under claim number xxxxxx454 are addressed separately in Docket No. 13-1681. Appellant argues that she suffered several consequential injuries as a result of her employment. She bears the burden of proof to establish causal relationship for those conditions not accepted by OWCP. For the reasons stated above, the medical evidence is insufficient to establish a consequential injury. Appellant raised arguments regarding job suitability, but this is moot as she resigned. She alleged that she should have been provided a suitable job after February 11, 2000. The record reflects that appellant performed light duty from August 1998 to February 2000 until she stopped work. She then

¹⁰ Section 8101(2) of FECA provides as follows: (2) "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹¹ See cases cited, *id.*

¹² See *Andrew Fullman*, 57 ECAB 574 (2006) (the Board found that the submission of a state unemployment compensation review board did not establish clear evidence that OWCP erred in denying appellant's claim).

¹³ *Id.*

opted to receive approved disability retirement under OPM. The record also reflects that appellant voluntarily resigned for the reasons listed on the PS Form 2574 dated May 31, 2000. The employing establishment did not have to offer her a job after her work stoppage and there is no evidence to support that she was reassigned prior to her work stoppage. As appellant resigned in May 2000, there was no reason for the employing establishment to offer a new job in 2004. There was also no reason for her to be provided with an election between FECA benefits and disability retirement benefits from OPM, after her schedule award expired.

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 has not met her burden of proof to establish that she sustained a recurrence of total disability commencing September 24, 2004 casually related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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