

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

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**J.B., Appellant**

**and**

**U.S. POSTAL SERVICE, BUFFALO  
PROCESSING & DISTRIBUTION CENTER,  
Buffalo, NY, Employer**

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**Docket No. 14-1474  
Issued: March 13, 2015**

*Appearances:*  
*David W. Covino, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On June 16, 2014 appellant, through his attorney, filed a timely appeal from a February 6, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 of proof to establish a recurrence of disability on February 2, 2013 due to his October 26, 2008 employment injury.

On appeal, appellant's attorney asserts that, because reflex sympathetic dystrophy (RSD) has now been accepted by OWCP, appellant is entitled to wage-loss compensation.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On October 26, 2008 appellant, then a 49-year-old tractor/trailer operator, sustained an employment-related fracture of his left ankle when he fell at work. He stopped work that day and on October 31, 2008 underwent open reduction internal fixation of the left ankle trimalleolar fracture. Appellant received continuation of pay and compensation and was placed on the periodic compensation rolls. On January 18, 2009 he was hospitalized with a left leg deep vein thrombosis (DVT). On February 12, 2009 OWCP accepted the conditions of left ankle fracture and DVT. Appellant returned to full duty with no restrictions on May 11, 2009.

On September 23, 2010 appellant was granted a schedule award for a 25 percent left lower extremity impairment, for a total of 72 weeks, to run from February 22 to July 10, 2010. At his request, his schedule award was paid in a lump sum. On February 3, 2011 appellant filed a recurrence claim, indicating that he stopped work on October 26, 2010 because he could not sit in the truck for longer than 30 minutes at a time without his leg becoming painful and swelling. OWCP accepted the October 26, 2010 recurrence. On March 10, 2011 appellant returned to full duty. In a May 5, 2011 decision, OWCP denied his claim for compensation because his schedule award compensation had not yet expired.

On February 8, 2012 appellant was granted a schedule award for an additional two percent left leg impairment, to run from October 21 to November 30, 2011.

On February 5, 2013 appellant filed a recurrence claim, stating that he stopped work on February 2, 2013 due to the October 26, 2008 employment injury and did not return. In a February 5, 2013 report, Dr. Michael P. Rade, a Board-certified surgeon, advised that appellant was seen for pain and swelling in his left calf. He noted that a Doppler study was negative for DVT and that there was no real left calf tenderness but swelling and venous stasis dermatitis. Dr. Rade diagnosed DVT and pain in limb and recommended baby aspirin, elevation, and warm soaks. In a February 5, 2013 report, Dr. Lorianne E. Avino, an osteopath, noted the negative Doppler study and examination findings of swelling and erythema of the left ankle. She diagnosed chronic pain syndrome. On February 11, 2013 Dr. Mary Alice Kelly, a Board-certified internist, noted the negative Doppler study, she diagnosed pain in soft tissues of limb and RSD. Regarding work she commented "may leave early and miss day every few weeks; has been off work since February 2<sup>nd</sup> for tests and doctor visits."

By letter dated March 8, 2013, OWCP informed appellant of the type of evidence needed to support his recurrence claim. In a March 13, 2013 questionnaire, appellant indicated that he was not on limited duty when he stopped work and that he did not return to work after the claimed recurrence because the pain and swelling got worse and was debilitating. He submitted additional medical evidence including February 20, 2013 correspondence in which Dr. Kelly noted the history of left ankle fracture and DVT. Dr. Kelly indicated that appellant had chronic left ankle and foot pain and swelling and that he required daily opioid pain medication. She advised that he had marked local tenderness over the left foot, ankle and Achilles tendon with noxious hypersensitivity to touch and swelling of the left ankle and distal leg with stasis changes of the skin. Dr. Kelly noted that appellant walked with a limp due to the ankle fracture and that he missed work at least one day every two weeks and had to leave early on occasion due to left leg pain. She diagnosed left ankle fracture, left ankle pain, left leg DVT, left leg postphlebotic syndrome with swelling, pain in soft tissues of the left leg, and left ankle and foot RSD.

A functional capacity evaluation (FCE) was performed on March 4, 2013. It indicated that appellant did not demonstrate the ability to perform the physical demands required of a truck driver/unloader but that he had the ability to perform sedentary work, with frequent changes in position, related to left leg discomfort. On March 5, 2013 Dr. Rade noted that appellant continued to have complaints of left ankle pain and swelling with negative calf tenderness on physical examination. On March 12, 2013 Dr. Jennifer Gurske-Deperio, a Board-certified orthopedic surgeon, noted the history of injury, subsequent surgery and DVT, and appellant's complaint of pain in the left lower extremity from the knee into the ankle with chronic swelling. Physical examination demonstrated diffuse hypersensitivity to touch of the left calf, shin, ankle, and foot. She diagnosed left leg complex regional pain syndrome, venous hypertension, and history of DVT. She indicated that appellant was working. In a treatment note dated March 19, 2013, Dr. Avino provided examination findings and diagnosed chronic pain syndrome. On April 15, 2013 Dr. Kelly reiterated her findings and conclusions.

By decision dated May 14, 2013, OWCP denied appellant's recurrence claim as the medical evidence did not establish work stoppage due to the accepted conditions of left ankle fracture and left DVT. Appellant requested reconsideration on May 30, 2013. In a May 28, 2013 treatment note, Dr. Avino diagnosed RSD secondary to left ankle injury. In reports dated May 30 and July 30, 2013, Dr. Kelly reiterated her diagnoses of pain in left ankle and foot, postphlebotic syndrome, pain in soft tissues of limb, and edema. Both physicians indicated that appellant could not work.

In a merit decision dated August 28, 2013, OWCP denied modification of the prior decision. On October 21, 2013 appellant, through his attorney, requested reconsideration. In an October 14, 2013 report, Dr. Avino advised that she had reviewed his medical records and repeated the history of left ankle fracture and subsequent DVT. She explained that RSD usually developed after a crush injury or fracture, noting that the pain felt by an RSD patient was typically out of proportion to the injury suffered. Dr. Avino concluded that, based on appellant's history, physical examination findings and his complaint, it was her medical opinion that he developed RSD as a consequence of the October 2008 left ankle fracture. She indicated that, clinically he continued to have severe ankle pain, swelling, erythema, edema, allodynia and hyperalgesia, all objective signs and symptoms of RSD, and that he had no other medical problems that could account for these signs and symptoms. On November 19, 2013 Dr. Avino indicated that appellant was to remain off work until January 2014.

On February 6, 2014 OWCP accepted the additional condition of RSD of the left lower limb. In a separate February 6, 2014 decision, it denied modification of its decision denying appellant's claim for a recurrence of disability finding the evidence submitted did not provide any findings or rationale to support a causal relationship between the claimed recurrence of disability and the accepted work injury.

### **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.”<sup>2</sup> An individual 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.<sup>3</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>4</sup>

### ANALYSIS

The Board finds that appellant failed to establish a recurrence of disability on February 2, 2013. OWCP initially accepted that he sustained a left ankle fracture and DVT. On February 6, 2014 it also accepted RSD. In a separate decision that day, OWCP denied appellant’s claim for a recurrence of disability on February 2, 2013.

In support of his recurrence claim, appellant submitted reports dated February 11 and 20, 2013 in which Dr. Kelly noted physical examination findings of marked local tenderness, hypersensitivity to touch, swelling and stasis changes in the left foot, and ankle. Dr. Kelly noted that appellant walked with a limp due to the ankle fracture and diagnosed RSD. She commented that appellant would have to leave work early and would miss days every few weeks due to pain. Beginning in May 2013, both Dr. Kelly and Dr. Avino advised that appellant could not work. In an October 14, 2013 report, Dr. Avino noted that appellant continued to have severe ankle pain, swelling, erythema, edema, allodynia and hyperalgesia, all objective signs and symptoms of RSD, and that he had no other medical problems which could account for these signs and symptoms. On November 19, 2013 she advised that he was to remain off work until January 2014. Neither physician, however, related the accepted conditions to appellant’s claimed recurrence of disability. There is no current medical evidence of record explaining how appellant’s disability beginning February 2, 2013 was causally related to the 2008 work injury.

A physician’s opinion on causal relationship between a claimant’s disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached.<sup>5</sup> Without medical reasoning showing that the conclusion reached is sound, logical, and rational, the opinions of Drs. Kelly, Avino, Gurske-Deperio, and Rade regarding appellant’s disability from work are of diminished probative value.<sup>6</sup>

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

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<sup>2</sup> 20 C.F.R. § 10.5(x); R.S., 58 ECAB 362 (2007).

<sup>3</sup> S.S, 59 ECAB 315 (2008).

<sup>4</sup> See *Ronald C. Hand*, 49 ECAB 113 (1997).

<sup>5</sup> *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

<sup>6</sup> See *E.A.*, 58 ECAB 677 (2007).

evidence that the disability for which he or she claims compensation is causally related to the accepted injury.<sup>7</sup> Appellant did not submit sufficient evidence to show that the claimed recurrence and disability were causally related to the October 26, 2008 employment injury.<sup>8</sup> Although OWCP expanded the claim to accept RSD this alone is insufficient to establish that any particular period of disability is due to this or any other accepted 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not establish a recurrence of disability on February 2, 2013.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2014 decision of the Office of Workers' Compensation Programs denying a recurrence of disability on February 2, 2013 is affirmed.

Issued: March 13, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> *Supra* note 4.

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