

FACTUAL HISTORY

On July 10, 2008 appellant, then a 48-year-old nurse, filed an occupational disease claim (Form CA-2) as of November 1, 2006. She alleged foot and lumbar conditions caused by walking and running as part of her work as a nurse in a medical-surgical unit. Appellant stopped work on January 31, 2008 and returned to light-duty work on March 4, 2008. On October 6, 2008 OWCP accepted her claim for bilateral foot strain and paid compensation benefits. On December 30, 2009 OWCP expanded its acceptance to include lumbar sprain.

By letter to appellant dated May 2, 2012, the employing establishment noted that on or about May 20, 2012 she had accepted a limited-duty position as a staff nurse II at the Women's Health Clinic. Appellant was to work a shift no longer than eight hours, Monday through Friday. The offer of employment and its acceptance were confirmed by the employing establishment in a letter to OWCP dated August 2, 2012.

On January 5, 2015 appellant filed a claim for compensation (Form CA-7) for a period commencing April 4, 2013. She claimed a recurrence of her earlier accepted condition. Appellant explained that she was unfairly terminated on April 3, 2013 from her limited-duty position as a staff nurse at the employing establishment in Las Vegas, Nevada. OWCP received a letter dated April 4, 2013, which related that the employing establishment terminated appellant's appointment as a registered nurse because she failed to present a registered nurse license as a condition of continued employment. The letter explained that a valid, current license was a condition of appellant's employment and noted that appellant's license had expired April 3, 2013.

OWCP sent appellant a letter dated January 15, 2015 advising her of the factual and medical evidence needed to establish her claim for recurrence. The letter noted that appellant's claim had been accepted for sprain of the metatarsophalangeal region in both feet, plantar fibromatosis of the right foot, and lumbar sprain. The letter advised appellant it was her burden to offer factual and medical evidence to demonstrate a recurrence of disability and identify the type of evidence needed to establish her recurrence claim. Appellant was afforded 30 days in which to respond.

To support her claim, appellant submitted reports prepared by Dr. Anthony Borgia,² a Board-certified podiatrist, dated February 4 and December 6, 2013, and May 19, 2014. In his February 2013 report, Dr. Borgia noted a history, reported appellant's medications and unrelated health problems, diagnosed a number of foot conditions, and recorded and evaluated appellant's treatment with orthotics, bracing, and medications. He noted that appellant fell in June 2012 and hurt her left foot. Dr. Borgia also noted a lifting injury at work which caused immediate back pain. In his December 6, 2013 follow-up report, he noted that appellant fell while on vacation. Appellant had pain walking, but it was "tolerable." She also had back pain. Appellant visited the doctor for night splints and orthotic modifications. Dr. Borgia noted weakness in muscles in both feet, tightness in the calf muscles, and some limitation of motion in one ankle. He found chronic tendinosis, secondary to "remote injury" and exacerbated by hereditary factors.

² Dr. Borgia is referred to as "Dr. Borgie" in OWCP's development letter dated January 15, 2015.

Dr. Borgia's final report listed certain medical supplies, but did not relate findings from an examination of appellant.

Appellant also submitted a work capacity form with an illegible signature dated April 4, 2013 which noted that appellant was at maximum medical improvement (MMI) and could work eight hours with restrictions.

Appellant submitted additional evidence in support of her claim. A report dated July 20, 2012 from Dr. Borgia diagnosed a contusion left foot with a possible fracture, pain resulting from an injury on June 28, 2012, and right foot tendinitis. Dr. Borgia identified other conditions including a congenital valgus deformity of both feet with a September 14, 2010 onset. Appellant submitted the July 27, 2012 magnetic resonance imaging scans of the right foot and left foot.³ In the February 4, 2013 report, Dr. Borgia noted appellant's conditions and medications without significant changes. He noted appellant's status and treatment on May 19, 2014 without discussion.

Appellant submitted a report by Dr. R.D. Prabhu, an internist, dated February 27, 2015 which discusses only personal medical conditions irrelevant to the work injury or claim of recurrence.

Appellant also submitted the previously noted letter from the employing establishment dated April 4, 2013 which terminated her employment because her license as a registered nurse had lapsed. She submitted a statement dated April 6, 2015 in which she responded to an OWCP questionnaire mailed to her along with the January 15, 2015 development letter.

By decision dated June 5, 2015, OWCP denied appellant's claim for recurrence of disability as the medical evidence of record is insufficient to establish a material worsening of her employment injuries.

LEGAL PRECEDENT

A recurrence of disability is defined as the 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.⁴ The term also means the 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. The Board has held that when a claimant stops work for reasons unrelated to the accepted work injury there is no disability within the meaning of FECA.⁵

³ The record contains two reports of that date and appellant had MRI examinations of the right foot and the left foot. OWCP's decision does not specify which reports appellant submitted.

⁴ 20 C.F.R. 10.5(x); *Cecelia M. Corley*, 56 ECAB 662 (2005); *Bryant F. Blackmon*, 56 ECAB 752 (2005).

⁵ *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

A claimant who claims a recurrence of disability has the burden of proof to establish by the weight of substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the employment injury. This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the original compensable condition. Moreover, the physician's conclusion must be supported by sound medical reasoning.⁶

ANALYSIS

Appellant requested that OWCP accept her claim for a recurrence of her disability commencing April 4, 2013, the date of her termination from her light-duty job as a nurse with the employing establishment. OWCP denied her request by decision of June 5, 2015. The Board finds that appellant has not established that she sustained a recurrence of disability.

Appellant was terminated from her light-duty employment as a nurse on April 3, 2013. According to the employing establishment's letter of April 4, 2013, appellant was terminated because her license as a registered nurse had lapsed and she was unable to perform her job duties without that credential. She acknowledges the fact that her license lapsed in her statements to OWCP and in her appeal to the Board. Appellant has not submitted any evidence to establish that the lapse of her license was due to her accepted employment injury. The legal precedent makes clear that if a claimant is terminated from employment for reasons unrelated to his or her medical condition, a recurrence of disability is not established. Therefore, the Board concludes that appellant's termination from employment was not related to her accepted employment injuries.⁷

The medical evidence of record does not contain a medical opinion based on substantial, reliable, and probative evidence sufficient to establish that appellant's medical condition changed as a result of the work injury. The medical reports, treatment notes, and other records discuss appellant's condition, note her progress, and chart her medications. However, there is no evidence of a spontaneous change in appellant's medical condition related to her original injury without an intervening cause. There is no medical evidence to substantiate that appellant was disabled after April 4, 2013 due to her accepted injury. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁸ Appellant, therefore, has not met her burden of proof to establish a recurrence of disability causally related to her accepted injury.

⁶ *D.W.*, Docket No. 11-1144 (issued July 19, 2012); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁷ The Board explicitly does not reach the question of whether appellant's termination was correct under the employment rules and procedures of the employing establishment. The Board lacks jurisdiction to consider or rule on this question.

⁸ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

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 failed to meet her burden of proof to establish a recurrence of disability beginning April 4, 2013, causally related to her accepted July 10, 2008 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board