

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

S.G., Appellant

and

**U.S. POSTAL SERVICE, SANCHEZ ANNEX,
Santa Clara, CA, Employer**

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**Docket No. 16-0045
Issued: February 1, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 9, 2015 appellant filed a timely appeal from a September 16, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 a medical condition on June 18, 2015 causally related to his June 13, 2005 employment injury.

FACTUAL HISTORY

On November 14, 2005 appellant, then a 61-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on June 13, 2005 he experienced left foot and knee pain after a metal wheel on a gate rolled over his foot. OWCP accepted the claim for a

¹ 5 U.S.C. § 8101 *et seq.*

crush injury to the left foot, left knee and leg sprain/strain, left patella chondromalacia, an old bucket handle tear of the left medial meniscus, left tarsal tunnel syndrome, a closed fracture of the left calcaneus, tenosynovitis of the left foot and ankle, a left plantar nerve lesion, and left enthesopathy of the ankle and tarsus.

Appellant underwent a partial medial and lateral meniscectomy, a chondroplasty of the patellofemoral joint, and a synovectomy of the anterior compartment of the left knee on March 14, 2006. He also underwent left ankle surgeries on July 28, 2006 and September 17, 2007, and left ankle and foot surgery on October 17, 2011. Appellant resumed modified employment on February 27, 2012. He retired on July 31, 2013.

In a progress report dated September 17, 2013, Dr. Hector L. Cervantes, a podiatrist, found that appellant was status post foot surgery with edema, left ankle pain on ambulation, and a left neuritis and second neuroma. As a treatment plan, he recommended an examination, a soft case for the left foot and ankle to control his edema and pain, and orthotics. Dr. Cervantes found that appellant should return “PRN [per as needed].”²

On June 19, 2015 appellant filed a recurrence of a medical condition (Form CA-2a) on June 16, 2015 causally related to his June 13, 2005 employment injury. He asserted that he continued experiencing pain and swelling of the foot and ankle. Appellant indicated that he had retired and relocated to another state.

By letter dated July 24, 2015, OWCP requested that appellant submit additional factual and medical evidence supporting that he sustained a recurrence of his medical condition, including a detailed medical report addressing his current condition and its relationship to his accepted work injury. No evidence was received.

In a decision dated September 16, 2015, OWCP found that appellant had not established that he sustained an employment-related recurrence of a medical condition. It noted that he had not responded to its request for additional information. OWCP indicated that appellant last sought medical treatment for his accepted condition on September 17, 2013.

On appeal appellant argues that he relocated after his retirement, but was unable to get the necessary authorization from OWCP to obtain medical treatment in his new geographical area. He requests authorization to obtain further medical treatment for his accepted condition.

LEGAL PRECEDENT

Section 10.5(y) of OWCP’s regulation provides in pertinent part:

“Recurrence of medical condition means a documented need for further medical treatment after release from treatment of the accepted condition or injury when

² On May 21, 2014 Dr. Sofia M. Weigel, a Board-certified physiatrist and OWCP referral physician, evaluated appellant to determine whether he had a permanent impairment of the left lower extremity. She found that he reached maximum medical treatment on February 27, 2012 when he “completed treatment and returned to work.” By decision dated January 29, 2015, OWCP granted appellant a schedule award for 15 percent permanent impairment of the left lower extremity.

there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a ‘need for further medical treatment after release from treatment’ nor is an examination without treatment.³”

Regarding a recurrence of a medical condition. OWCP’s procedures state:

“After 90 days of Release from Medical Care (as computed from the date of last examination or the physician’s instructions to return PRN). The claimant is responsible for submitting an attending physician’s report which contains a description of current objective findings and provides medical rationale for the causal relationship between the claimant’s current condition(s) and the accepted condition(s).”⁴

ANALYSIS

OWCP accepted that on June 13, 2005 appellant sustained a crush injury to the left foot, a sprain/strain of the left knee and leg, left patella chondromalacia, an old bucket handle left medial meniscus tear, left tarsal tunnel syndrome, a closed fracture of the left calcaneus, left foot and ankle tenosynovitis, a left plantar nerve lesion, and left enthesopathy of the ankle and tarsus. He underwent left knee surgery on March 14, 2006, left ankle surgeries on July 28, 2006 and September 17, 2007, and left ankle and foot surgery on October 17, 2011. Appellant retired from the employing establishment on July 31, 2013.

On September 17, 2013 Dr. Cervantes diagnosed edema after foot surgery, left ankle pain with ambulation, neuritis, and a second neuroma. He recommended orthotics and a soft cast for the left foot and ankle to control pain and swelling. Dr. Cervantes found that appellant should return as needed. There is no evidence of record documenting that he received medical treatment for his accepted condition after September 17, 2013, the date Dr. Cervantes released him from care to return as needed. As more than 90 days has elapsed from appellant’s release from medical care, he must submit an attending physician’s report addressing the causal relationship between his current condition and his accepted work injury.⁵ He has the burden of proof to submit sufficient medical evidence to document the need for further medical treatment.⁶ By letter dated July 24, 2015, OWCP advised appellant of the evidence required to establish a recurrence of a medical condition and requested that he submit a comprehensive report discussing his current condition and its relationship to his work injury. Appellant did not, however, provide such evidence and thus failed to establish a need for continuing medical treatment.⁷

³ 20 C.F.R. § 10.5(y).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013).

⁵ *Id.*; see also *S.S.*, Docket No. 14-0211 (issued May 1, 2014).

⁶ See *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

⁷ See *J.F.*, 58 ECAB 331 (2006).

On appeal appellant asserts that OWCP failed to authorize medical treatment after he retired and relocated. He asks that it authorize additional medical treatment. As discussed, however, there is no indication that appellant was under medical care for his accepted condition within 90 days prior to his June 18, 2015 notice of recurrence of a medical condition. Therefore, he must submit a rationalized supporting causal relationship between his current condition and his employment injury.⁸ Appellant failed to submit such evidence and thus did not meet his burden of proof.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of a medical condition on June 18, 2015 causally related to his June 13, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2016
Washington, DC

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

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

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

⁸ See *supra* note 4; see also *L.G.*, Docket No. 14-1137 (issued November 14, 2014).