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

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| **L.M., Appellant** | ) | |
| **and** | ) | **Docket No. 17-0815** |
| | ) | **Issued: August 24, 2017** |
| **U.S. POSTAL SERVICE, POST OFFICE, Saint Louis, MO, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On March 2, 2017 appellant filed a timely appeal from a February 7, 2017 merit decision of the Office of Workers' Compensation Programs[1] (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

### ***ISSUE***

The issue is whether appellant has met her burden of proof to establish a recurrence of medical treatment commencing July 25, 2016 due to her accepted May 5, 2012 federal employment injury.

[1] The Board notes that appellant submitted additional evidence after OWCP rendered its February 7, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and, therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

[2] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On May 11, 2012 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 5, 2012 she sustained tendinitis of the right ankle when she stepped on a gumball and twisted her right ankle. She stopped work on the date of injury.

In a May 7, 2012 emergency department report, Dr. Tara D. Schulte, an osteopath, reported that appellant injured herself at work more than two days prior when she sustained a slight roll of the right foot. Dr. Schulte noted that x-rays of the right ankle revealed no acute fracture or dislocation, normal bone texture and density, smooth articular surfaces, and no lytic or blastic lesions. She diagnosed right foot sprain.

The record reflects that appellant was released to full-time limited-duty work on May 11, 2012. Appellant subsequently sought treatment with Dr. Heather Gjorgjievski, Board-certified in family medicine, who diagnosed right ankle sprain, provided appellant with a right leg brace, and released her to work on June 1, 2012. In a June 1, 2012 medical report, Dr. Gjorgjievski noted that appellant was not working because light duty was unavailable. Her condition had improved though she still experienced occasional aching in the right ankle. Physical examination findings revealed no deformity, no ankle swelling, full range of motion, negative drawer test, no instability, no tenderness, and equal single leg stance bilaterally. Dr. Gjorgjievski diagnosed right sprain/strain of ankle improved and reported that appellant could return to regular-duty work without restrictions

On June 2, 2012 appellant returned to full-time regular-duty work.

By decision dated November 1, 2012, OWCP accepted the claim for right ankle sprain

On September 20, 2016 appellant filed a recurrence of disability claim (Form CA-2a) alleging a recurrence of medical treatment beginning on July 25, 2016. She reported that she was required to wear a brace around her right ankle after receiving therapy which caused increased pain and swelling of the right leg. Appellant did not stop work.

By letter dated September 27, 2016, the employing establishment controverted appellant's recurrence claim indicating that there was no medical evidence to support that the recurrence occurred while in the performance of duty on July 25, 2016. It explained that appellant was not working on the day of her recurrence, noting that her last day worked before the alleged recurrence was July 23, 2016 and she was off on annual leave from July 24 through July 28, 2016

By letter dated October 17, 2016, OWCP informed appellant that the evidence of record was insufficient to support her recurrence claim. Appellant was advised of the medical and factual evidence needed and provided a questionnaire for completion. She was afforded 30 days to submit the necessary evidence.

In a July 25, 2016 medical report, Dr. John B. Weltmer Jr., a Board-certified orthopedic surgeon, reported that appellant had an injury to her right ankle back in March 2013 and was still having persistent pain and tenderness in the lateral aspect of her ankle. He explained that she had a fall on the job back in March 2013 and injured her ankle after stepping on a gumball,

noting no further treatment since 2013. Dr. Weltmer also noted that she was a postal worker who had a walking route of eight hours per day. Physical examination findings revealed tenderness with swelling while weight-bearing x-rays revealed negative findings. Dr. Weltmer noted that the right ankle was clinically stable to stress with peroneal tendinitis without subluxation. He diagnosed right peroneal tendinitis and recommended a magnetic resonance imaging (MRI) scan of the right leg

In an August 12, 2016 diagnostic report, Dr. Amir Momtahen, a Board-certified radiologist, reported that a right leg MRI scan revealed findings compatible with tenosynovitis of the posterior tibialis tendon without evidence of tear and minimal tibiotalar joint effusion

In an August 22, 2016 medical report, Dr. Weltmer reported that appellant complained of right proximal leg pain with radiation down to her calf. He noted that her MRI scan showed that she did not have any peroneal tendinitis, but did have some fluid on the posterior tibialis tendon. However, the posterior tibialis tendon was not sore on examination. Dr. Weltmer further noted that the right ankle MRI scan revealed some posterior tibialis tendinitis with some ankle synovitis, but was otherwise remarkable.

In a September 29, 2016 medical report, Dr. Weltmer reported that appellant complained of continued severe right leg pain despite her right leg MRI scan revealing essentially normal findings.

In a November 8, 2016 report, Dr. Ravindra V. Shitut, a Board-certified orthopedic and spine surgeon, reported that appellant was a mail carrier who walked eight miles per day delivering mail. Appellant reported that in 2012, approximately four years prior, she fractured her ankle while working which was treated by a brace and subsequently healed. More recently in the last few months, she complained of pain and numbness in the right leg and foot which she believed was related to the right ankle fracture from four years ago. Dr. Shitut noted Dr. Weltmer's evaluation of essentially normal right ankle findings and that appellant had been referred for evaluation of the back. He noted that appellant denied any back pain and only complained of pain involving the right mid leg down to the foot. Dr. Shitut noted that lumbar x-rays revealed a very minute degenerative spondylolisthesis of L4 over L5. He explained that it was unclear what was causing appellant's symptoms and recommended further testing

In a December 2, 2016 medical report, Dr. Shitut noted that nerve conduction studies were reported to be marginally abnormal and did not show any evidence of common peroneal nerve palsy. As such, he speculated that there was a good chance appellant's pain was coming from right L5 radiculopathy and scheduled a lumbar spine MRI scan. Dr. Shitut diagnosed L4-5 spinal stenosis with radiculopathy associated with degenerative spondylolisthesis. Appellant was provided with limited-duty work restrictions.

On December 13, 2016 appellant responded to OWCP's development questionnaire (Form OWCP-20) and explained that she continued to have persistent pain, tenderness, and swelling in her right ankle and leg. She reported that Dr. Gjorgjievski prescribed a leg brace which she had been wearing since she was released to work on June 1, 2012. Appellant noted that her need for additional medical care was related to her original injury because the swelling

in her right ankle worsened and moved up to her leg from having to walk over five miles per day. She reported no other injuries since the original work-related injury.

By decision dated February 7, 2017, OWCP denied appellant's recurrence claim, finding that the medical evidence failed to establish that her need for additional medical treatment was due to a material change/worsening of her accepted work-related condition.

## ***LEGAL PRECEDENT***

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.[3] Continuous treatment for the original condition or injury is not considered a recurrence of a medical treatment nor is an examination without treatment.[4] As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.[5] It is the employee's burden of proof to establish that the claimed recurrence is causally related to the original injury.[6]

If the employee claims that a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.[7] To establish causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[8] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] A physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

[3] 20 C.F.R. § 10.5(y).

[4] *Id.*

[5] *Id.* at § 10.5(x).

[6] *Id.* at § 10.104. *See also Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *K.H.*, Docket No. 16-0776 (issued October 9, 2016).

[7] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[8] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[9] *Elizabeth Stanislav*, 49 ECAB 540, 41 (1998).

[10] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

## ***ANALYSIS***

OWCP accepted appellant's claim for right ankle sprain due to her May 5, 2012 employment injury. Appellant was released to full-duty work without restrictions on June 1, 2012.

Appellant attributes her need for medical treatment commencing July 25, 2016 to a change in the nature and extent of her employment-related right ankle condition, requiring further medical treatment. She, therefore, has the burden of proof to provide medical evidence to establish that her current right ankle condition causally related to her accepted work-related condition.[11]

The Board finds that appellant has not established a recurrence of medical treatment on or after July 25, 2016 causally related to her accepted May 5, 2012 work injury.

In support of her claim, appellant submitted medical reports dated July 25 through September 29, 2016 from Dr. Weltmer. The Board notes that Dr. Weltmer's reports failed to provide a proper history of the May 5, 2012 work injury. Rather, Dr. Weltmer referenced a March 2013 right ankle injury with regard to complaints of persistent pain and tenderness in the lateral aspect of the ankle. The Board has previously explained that medical conclusions based on inaccurate or incomplete histories are of little probative value.[12] Furthermore, Dr. Weltmer noted that the findings of the August 12, 2016 right leg MRI scan did not correlate with appellant's complaints of pain. He noted that the right leg MRI scan revealed posterior tibialis tendinitis with some ankle synovitis, yet findings on physical examination revealed no soreness. Moreover, Dr. Weltmer could not determine the cause of appellant's symptoms as he noted complaints of severe leg pain despite essentially normal MRI scan findings. The Board notes that an increase in pain alone does not constitute objective evidence of disability.[13] Dr. Weltmer did not address whether appellant's posterior tibialis tendinitis was causally related to the accepted May 5, 2012 employment injury, nor did he provide adequate bridging evidence to show a worsening of the accepted right ankle sprain, requiring further medical treatment. For these reasons, Dr. Weltmer's reports do not provide support for a recurrence of medical treatment for the May 5, 2012 work injury.[14]

Dr. Shitut's November 8 and December 2, 2016 medical reports are also insufficient to establish appellant's recurrence claim. His November 8, 2012 report referenced a 2012 work-related right ankle injury, noting that appellant fractured her ankle and was treated by a brace until it subsequently healed. The Board notes that Dr. Shitut also did not have an accurate

[11] *D.L.*, Docket No. 13-1653 (issued November 22, 2013).

[12] *See M.L*, Docket No. 06-835 (issued October 27, 2016).

[13] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6.a(2) (June 2013).

[14] *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

history of injury as appellant was never diagnosed with right ankle fracture. Dr. Shitut's report is therefore also of limited probative value.[15]

The Board further notes that Dr. Shitut's reports provide no rationale explaining how or why appellant required continued treatment due to her original right ankle injury on or after July 25, 2016, nor did he establish that the claim should be expanded to include conditions.[16] Dr. Shitut failed to provide a firm medical diagnosis which could be related to the accepted May 5, 2012 right ankle sprain. He speculated that appellant's pain could be coming from right L5 radiculopathy and recommended further testing via lumbar spine MRI scan. As Dr. Shitut failed to present a clear indication of the diagnosed condition that was causing appellant's symptoms, his opinion is insufficient to support that appellant sustained a spontaneous worsening of her work-related condition.[17]

When seeking treatment for her injury in May 2012, both Dr. Schulte and Dr. Gjorgjievski diagnosed right ankle sprain. Moreover, a May 7, 2012 x-ray of the right ankle revealed no acute fracture or dislocation. Without an accurate history of injury, any opinion pertaining to a worsening of appellant's right ankle condition is of limited probative value.[18]

Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she required continued medical treatment due to her accepted May 5, 2012 right ankle sprain. As appellant has not submitted any medical evidence showing that she sustained a recurrence of medical treatment due to her accepted employment injury, the Board finds that she has not met her burden of proof.[19]

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 a recurrence of medical treatment commencing on July 25, 2016 causally related to her accepted May 5, 2012 employment injury.

[15] *Supra* note 8.

[16] For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such a relationship. *P.P.*, Docket No. 16-1232 (issued December 23, 2016). *See also P.O.*, Docket No. 14-1675 (issued December 3, 2015).

[17] *See Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

[18] *Supra* note 8.

[19] *L.L.*, Docket No. 13-2146 (issued March 12, 2014). *See also William A. Archer* 55 ECAB 674, 679 (2004).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 7, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2017
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