

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

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<b>M.D., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 17-1489</b>
	)	<b>Issued: June 13, 2018</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Cincinnati, OH, Employer</b>	)	
_____	)	

*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On June 26, 2017 appellant filed a timely appeal from an April 21, 2017 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a recurrence of disability commencing January 23, 2017, causally related to his accepted December 14, 2013 employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant submitted new evidence with his appeal following the April 21, 2017 decision. However, since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board is precluded from considering this additional evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

## **FACTUAL HISTORY**

On February 17, 2014 appellant, then a 50-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained “compartment syndrome,” which he attributed to walking on a daily basis. He identified December 14, 2013 as the date he first became aware of his condition and its relation to his federal employment. It was also the date that appellant stopped work.

On March 18, 2014 Dr. Ronald G. Hess, a Board-certified orthopedic surgeon, performed a right lower extremity fasciotomy.

On April 11, 2014 OWCP accepted appellant’s occupational disease claim for unspecified right leg and knee sprain and right lower extremity traumatic compartment syndrome. It also retroactively authorized appellant’s March 18, 2014 surgery. Appellant received wage-loss compensation for temporary total disability, and OWCP placed him on the periodic compensation rolls, effective June 1, 2014.

Dr. Durbin released appellant to resume his regular duties, effective November 1, 2014.

On January 25, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging that, on January 23, 2017, he sustained a recurrence of disability of his December 14, 2013 occupational injury. He alleged that his current condition was caused by repetitive motion and that his legs got inflamed by stressful walking. On the reverse side of the claim form the employing establishment confirmed that, following the original injury, appellant returned to full duty on November 1, 2014.

By development letter dated February 3, 2017, OWCP advised appellant that, to establish his recurrence claim, he must show a worsening of his original injury without an intervening injury or new exposure such that he was no longer able to work. It requested that he respond to specific questions regarding the January 23, 2017 date of alleged recurrence and submit medical evidence, which established how he was unable to work during his claimed period as a result of his accepted injury. Appellant was afforded 30 days to submit additional evidence.

In a February 2, 2017 report, Dr. Hess related that appellant was examined for swelling in his right lower extremity. He indicated that a Doppler study showed a “partially occluded gastroc vein.” Dr. Hess reviewed appellant’s history and noted that appellant underwent right lower leg compartment release surgery. Upon physical examination of appellant’s right leg, he observed no tenderness, instability, or deformity. Range of motion was unremarkable. Dr. Hess diagnosed partially occluded vein in the gastrocnemius.

By decision dated April 21, 2017, OWCP denied appellant’s claim for a recurrence of disability. It found that the medical evidence submitted failed to establish that appellant’s accepted right leg condition had worsened to the extent that he was disabled from work beginning January 23, 2017.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>4</sup> For each period of disability claimed, an employee has the burden of proof to establish a causal relationship between his or her recurrence of disability and his or her accepted employment injury.<sup>5</sup>

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.<sup>6</sup> This term also means an inability to work 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 such that they exceed the employee's physical limitations.<sup>7</sup>

Whether a particular injury causes an employee to become disabled from work and the duration of that disability are medical issues that must be proven by a preponderance of reliable, probative, and substantial medical opinion evidence.<sup>8</sup> Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee's disability from his or her particular work.<sup>9</sup> For each period of disability claimed, the employee must establish that he or she was disabled from work as a result of the accepted employment 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.<sup>10</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>6</sup> 20 C.F.R. § 10.5(x).

<sup>7</sup> *Id.*

<sup>8</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>9</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>10</sup> *Amelia S. Jefferson*, *supra* note 8.

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability commencing January 23, 2017 as a result of a spontaneous change or worsening of his accepted right leg condition.

The only medical evidence submitted in support of appellant's recurrence claim was a February 2, 2017 report by Dr. Hess. Dr. Hess related appellant's complaints of right lower extremity swelling and indicated that a Doppler study showed a "partially occluded gastroc vein." He provided physical examination findings and diagnosed partially occluded vein in the gastrocnemius. Dr. Hess did not, however, provide any opinion on the cause of appellant's current right leg condition nor on appellant's inability to work. As he did not address the relevant issue of disability from employment, Dr. Hess' report is of diminished probative value and is insufficient to establish appellant's recurrence claim.<sup>11</sup>

The Board finds that the medical evidence submitted is insufficient to establish that appellant was unable to work beginning on January 23, 2017 due to a spontaneous change or worsening of his accepted right lower extremity 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 has not met his burden of proof to establish a recurrence of disability commencing January 23, 2017, causally related to his December 14, 2013 employment injury.

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<sup>11</sup> See *William A. Archer, supra* note 8 (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2018  
Washington, DC

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

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

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