



## ISSUE

The issue is whether appellant has established a recurrence of total disability commencing August 5, 2016 causally related to her accepted June 26, 2015 employment injury.

## FACTUAL HISTORY

On June 26, 2015 appellant, then a 41-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she was injured when she tripped and fell on a curb while in the performance of her federal employment duties. OWCP accepted the claim for left ankle sprain and abrasion or friction of face, neck and scalp without infection. Appellant stopped work on June 26, 2015 and received intermittent wage-loss compensation on the supplemental rolls from August 11, 2015 through June 24, 2016.<sup>4</sup>

On June 21, 2016 Dr. Alicia A. Baker, an osteopath and Board-certified family practitioner, indicated that appellant's left ankle condition had resolved and that she could return to work without restrictions.<sup>5</sup> She held appellant off work due to a nonwork-related crushing injury to the right index finger appellant experienced while at home on June 12, 2016. Appellant returned to work on July 18, 2016. She resigned from the employing establishment on August 5, 2016.

On August 12, 2016 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of disability commencing August 5, 2016. In an August 15, 2016 letter, she stated that she returned to work on July 18, 2016. Appellant indicated that her left ankle had some swelling with progressive inability to bear weight after July 22, 2016, when she was instructed to deliver the mail without assists from her trainer vehicle. The left ankle symptoms recurred on July 23, 2016, after she had loaded her vehicle and delivered mail to cluster boxes; on July 27, 2016, after she spent two hours casing mail; on July 30, 2016, after she delivered mail for approximately two hours; and on August 5, 2016, after she cased mail for approximately three hours and loaded and delivered the mail. Appellant alleged that she resigned from her position on August 5, 2016 due to her left ankle injury.

In an undated statement received August 25, 2016, appellant's manager controverted the recurrence claim.<sup>6</sup> He indicated that appellant was given a predisciplinary interview on July 15, 2016 for failing to be in regular attendance from June 21 to July 15, 2016. The manager further indicated that during the period July 18 through August 3, 2016, appellant worked 46.25 hours and always had assistance. On August 4, 2016 a second performance disciplinary interview took place. Appellant was provided a rural carrier associate for both August 4 and 5, 2016 to train and work with her all day. She was also informed that she would be on her own for the first time on

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<sup>4</sup> Appellant worked once a week, usually for eight hours, on Saturdays. She had only been employed 13 days before her injury.

<sup>5</sup> Dr. Baker stated that the magnetic resonance imaging (MRI) scan of the ankle was reported as normal. While the electromyogram (EMG) was positive for neuropathy, Dr. Baker indicated that appellant denied any neuropathy-type symptoms. She further indicated that the EMG did not show any evidence of nerve damage which would affect the ankle strength.

<sup>6</sup> The signature of appellant's manager is illegible.

August 6, 2016. The manager denied that appellant mentioned that she had a recurrence of her previous injury when she resigned on August 5, 2016.

On August 26, 2016 OWCP received an August 10, 2016 report from Dr. Richard Deerhake, a Board-certified orthopedic surgeon and OWCP referral physician. Dr. Deerhake reviewed the medical record and the statement of accepted facts, and reported examination findings. He opined that appellant's conditions related to the head and neck due to the work injury had resolved. Dr. Deerhake indicated that appellant continued to have left ankle pain over the anterior talofibular ligament. He diagnosed ankle sprain and anterior talofibular ligament sprain in the left ankle and recommended that she consult with a foot and ankle specialist to determine the appropriate care. Dr. Deerhake opined that appellant was able to work with restrictions. A completed work capacity evaluation (OWCP-5c) was provided.

By development letter dated September 1, 2016, OWCP advised appellant that, as she had returned to work on July 18, 2016 in a full-time capacity and worked until August 5, 2016, it appeared that she was claiming disability due to a material change/worsening of her accepted work-related conditions. It informed her of the evidence needed to establish her claim, including a comprehensive, narrative medical report from her treating physician which contained a medical explanation as to the relationship between her disability and her original injury. Appellant was afforded 30 days to submit additional evidence and respond to its questionnaire.

On October 3, 2016 OWCP received copies of evidence previously of record. In a June 27, 2016 letter, appellant noted that she was placed in a walking cast three different times since her June 26, 2015 work injury. She also indicated that she fell on June 16, 2016 when her left ankle twisted inward.

Appellant also submitted additional claims for compensation (Form CA-7) for wage loss for the period August 6, 2016 and continuing.

In an October 11, 2016 letter, OWCP again advised appellant of the evidence needed to support her claim for recurrence. Appellant was afforded 30 days to submit the requested information.

OWCP received additional claims for compensation (Form CA-7) for wage loss effective October 1, 2016, and continuing.<sup>7</sup> No new evidence was received.

By decision dated November 23, 2016, OWCP denied appellant's recurrence claim commencing August 5, 2016. It found that the factual and medical evidence of record failed to show that she suffered a recurrence of disability. OWCP noted that, while Dr. Deerhake had indicated in his second opinion report that appellant had swelling above the ankles, it was not clear if the reported swelling was from new occupational factors or a residual of the accepted work trauma. Appellant was advised that she could file an occupational disease claim (Form CA-2) if

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<sup>7</sup> In an October 25, 2016 letter, OWCP advised appellant of the evidence needed to establish disability during the period claimed and afforded her 30 days to submit the requested evidence.

she felt that she suffered a new medical condition or an aggravation of preexisting medical condition due to new occupational work factors.

On November 28, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on June 8, 2017. During the hearing, appellant testified that she was released to work on approximately June 21, 2016 by Dr. Baker, but returned to work in July 18, 2016 because of some unrelated health issues. Appellant testified that in July 2016 and around Christmas time, she fell in her home when her left ankle gave out.

Counsel asserted that on November 14, 2016 he had requested to have the acceptance of the claim expanded to include a left anterior tibiofibular ligament sprain based on Dr. Deerhake's second opinion report.<sup>8</sup> He requested that the record be held open for 30 days to allow for the submission of additional supporting evidence that the fall at home was related to the June 26, 2015 work injury.

In a November 22, 2016 report, Dr. Timothy Perschke, a podiatrist, noted the history of appellant's June 26, 2015 work injury and that she wore a boot cast and attended physical therapy for two months. He indicated that she fell again in December 2015 and reinjured her left ankle. Appellant again wore a boot cast for treatment. Dr. Perschke indicated that appellant was no longer working as a mail carrier due to lupus. He provided a diagnosis of pain in left ankle and joints of left foot and sprain of tibiofibular ligament of left ankle.

In a May 16, 2017 note, Dr. Barker indicated that appellant reached maximum medical improvement.

By decision dated August 22, 2017, an OWCP hearing representative affirmed the November 23, 2016 decision. She found that appellant had an intervening injury to her left ankle at home in July 2016 and that the case record was void of medical opinion relating the fall to the June 26, 2015 work injury.

### **LEGAL PRECEDENT**

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>9</sup>

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the recurrence of disability is causally related to the original 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

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<sup>8</sup> The record is devoid of any such request.

<sup>9</sup> 20 C.F.R. § 10.5(y); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2.a (June 2013). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

causally related to the employment injury and supports this conclusion with sound medical reasoning.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has failed to establish a recurrence of total disability commencing on August 5, 2016 causally related to the accepted June 26, 2015 employment injury.

OWCP accepted that appellant sustained a left ankle sprain and an abrasion or friction of face, neck, and scalp without infection as a result of a June 26, 2015 employment injury. Dr. Baker released appellant from medical care for the accepted work-related medical conditions on June 21, 2016. However, he kept appellant out of work for a nonwork-related health issue. Appellant returned to work on July 18, 2016. She advised that she fell at her home on June 16, 2016 and in July 2016.<sup>11</sup> Appellant stopped work and resigned on August 5, 2016 alleging that she was unable to perform the job due to her left ankle condition. On August 12, 2016 she filed a recurrence claim alleging wage loss from work due to a change or worsening of her accepted work-related left ankle condition.

The record reflects that after her work release from Dr. Baker on June 21, 2016, appellant had an intervening injury when she fell at home. In her June 27, 2016 letter, appellant stated that she fell at home on June 16, 2016 when her left ankle twisted. In her testimony before OWCP's hearing representative, appellant stated that she fell at home in July 2016.

Dr. Baker had released appellant from care with no restrictions from her work-related left ankle sprain on June 21, 2016. He held appellant off work due to a nonwork-related finger crush injury she suffered at home on June 12, 2016. Appellant then suffered another fall in June/July 2016, indicating that her left ankle had given out while at home. There is no medical opinion relating appellant's June/July 2016 fall at home to her work-related ankle sprain, which Dr. Baker found resolved on June 21, 2016. Thus, the June/July 2016 fall at home is an intervening event such that the evidence does not support a finding that appellant's current condition is a spontaneous recurrence of her previous left ankle condition.<sup>12</sup>

In his August 10, 2016 report, Dr. Deerhake provided new diagnoses of ankle sprain and anterior talofibular ligament sprain in the left ankle. Likewise, in his November 22, 2016 report, Dr. Perschke provided a diagnosis of pain in left ankle and joints of left foot and sprain of tibiofibular ligament of left ankle. However, the Board notes that neither Dr. Deerhake nor Dr. Perschke provided an opinion as to the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>13</sup> Furthermore,

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<sup>10</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *Helen Holt*, 50 ECAB 279 (1999).

<sup>11</sup> It is unclear whether the falls were separate incidents.

<sup>12</sup> *See supra* note 9.

<sup>13</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

Dr. Perschke does not appear to have an accurate medical history as he did not report that appellant had a fall at home in June/July 2016. A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.<sup>14</sup> Therefore, the reports from Dr. Deerhake and Dr. Perschke are insufficient to establish appellant's recurrence claim.

Given the intervening June/July 2016 fall at home, this recurrence claim cannot be factually or medically established based on the claim form filed. OWCP previously advised appellant that she could file an occupational disease claim (Form CA-2) if she felt that she suffered a new medical condition or an aggravation of preexisting medical condition due to new occupational work factors.<sup>15</sup>

On appeal counsel contends that OWCP should have expanded the acceptance of the claim based on Dr. Deerhake's second opinion report prior to issuing its recurrence decision. However, as discussed above, the medical evidence of record does not support that the accepted June 26, 2015 employment injury caused any new diagnoses.

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 commencing August 5, 2016 due to her accepted June 26, 2015 employment injury.

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<sup>14</sup> See *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

<sup>15</sup> *S.S.*, Docket No. 16-0675 (issued July 15, 2016); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7b(1) (June 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 22, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2018  
Washington, DC

Patricia H. Fitzgerald, Deputy 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