

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability, commencing July 18, 2018, causally related to the accepted January 21, 2016 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 14, 2016 appellant, then a 45-year-old laborer custodian, filed an occupational disease claim (Form CA-2) alleging that she sustained plantar fasciitis due to factors of her federal employment, including constant walking on concrete floors. She noted that she first became aware of her condition on January 21, 2016 and related it to her federal employment on March 3, 2016. OWCP accepted the claim for plantar fascial fibromatosis of the left foot. Appellant did not initially stop work.

On June 23, 2016 appellant accepted a limited-duty assignment for eight hours per day. OWCP paid her intermittent wage-loss compensation on the supplemental rolls commencing July 12, 2016.

In a June 26, 2018 letter, C.D., a human resource management specialist, indicated that appellant was offered a detail as a retail analyst on April 14, 2018, that required eight hours of sitting at a computer and watching cameras. She noted that appellant was not performing the work required and was released from the detail. C.D. indicated that she spoke to appellant and instructed her to return to her modified-duty assignment; however, appellant responded that she did not like the supervisor and that she could not do the work, and that management needed to find her a nother job that allowed her to sit for eight hours per day. She noted that appellant complained about her ankle/foot, even though she was on a detail that allowed her to sit all day.

In a letter dated July 17, 2018, Dr. Steven S. Blanken, a podiatrist, noted that appellant was experiencing severe pain due to a posterior tibial tendinitis injury to her left foot. He related that the pain had worsened and advised that she would need to use a controlled ankle movement (CAM) boot for four to eight weeks.

In a July 17, 2018 progress report, Dr. Blanken noted that appellant was performing manual activities at work, such as pushing and pulling carts, and developed pain around the posterior tibialis tendon resulting in knee pain due to compensation. He diagnosed posterior tibial tendinitis, left leg, and plantar fascial fibromatosis. Dr. Blanken advised that appellant's job duties were probably not good for her, as her foot condition had worsened. He also related that she needed a sedentary position, as she would not be able to tolerate this type of activity much longer. Dr. Blanken opined that appellant had reagravated the posterior tibial tendon and she would need

³ Docket No. 19-1637 (issued February 25, 2021)

to use non-weight-bearing crutches and a CAM boot for at least four weeks. He recommended against prolonged standing, walking, climbing, stairclimbing, pushing, or pulling.

In a July 17, 2018 duty status report (Form CA-17), Dr. Blanken indicated that appellant had severe posterior tibial tendinitis. He advised that she was able to work an eight-hour workday; however, she was unable to stand, climb, kneel, bend, stoop, twist, pull, or push.

In statements dated July 10, 17, and 18, 2018, appellant indicated that she currently was walking four hours per day on a concrete floor to perform her work duties.

On July 18, 2018 appellant filed a notice of recurrence (Form CA-2a) claiming a recurrence of disability beginning July 18, 2018. She noted that she had posterior tibial tendinitis, flare-ups of her ankle, and pain in her foot. Appellant indicated that she was sent home on July 18, 2018.

In a development letter dated July 26, 2018, OWCP noted receipt of appellant's claim for a recurrence of disability due to a material change/worsening of the accepted work-related condition. It also noted that she returned to work on June 18, 2018, in a limited-duty capacity and continued working until July 17, 2018, when she stopped work. OWCP explained that it was unclear as to whether appellant's work stoppage was due to a recurrence of an accepted condition. It also explained that, if her disability was due to a new work-related injury or illness, a new claim would need to be filed/created, even if the new incident or exposure involved the same part of the body as previously affected. OWCP also included a list of questions. It afforded appellant 30 days to submit the necessary evidence.

In a July 27, 2018 statement, appellant noted that her detail was withdrawn due to her performance. In a subsequent statement of even date, she indicated that her detail was withdrawn due to her medical condition. In a July 30, 2018 statement, appellant indicated that her accepted January 21, 2016 employment injury had not resolved and that she also had posterior tibial tendinitis.

In an August 1, 2018 statement, appellant related that she was not qualified for the sedentary position and she was terminated due to work quality. She explained that she was given a CAM boot on July 17, 2018, and when she returned to the work, she was sent home, as she was not allowed to wear a medical device on the floor. Appellant alleged that she was not given a reasonable accommodation.

In an August 2, 2018 progress report, Dr. Blanken noted that appellant had acquired a new ankle brace. He also related that she had ongoing conditions of posterior tibialis tendinitis along with plantar fasciitis of the left lower extremity due to her employment injury. Dr. Blanken opined that it was possible that two different conditions could arise from the same injury. He noted that the injury to the Achilles tendon was "for the most part resolved." However, Dr. Blanken related that appellant was not allowed to wear her CAM boot at work, thus, potentially causing further damage. He diagnosed posterior tibial tendinitis, left leg, and plantar fascial fibromatosis. Dr. Blanken noted that the problem was established, stable, or improved.

In a separate report also dated August 2, 2018, Dr. Blanken explained that the posterior tibial tendinitis and tendinosis issues could be related to a single injury, and that he did not have

time to “keep on re-documenting the same thing over and over again.” He recommended an ankle brace and advised that appellant may not be able to drive with the device.

On September 13, 2018 OWCP referred appellant for a second opinion examination with Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, to determine the status of appellant’s work-related condition and her work capacity.

In a September 25, 2018 report, Dr. Blanken noted that appellant stopped work on July 17, 2018. He related that he informed her that, while plantar fasciitis and tibial tendinitis were separate conditions, “the plantar fascia, the posterior tibial tendon, and even the Achilles tendon can all be injured at the same time of an injury that causes sudden impact. They do not seem to understand that this can happen and are challenging the diagnosis.” Dr. Blanken also indicated that appellant had a posterior tibialis tendon condition with continued pain, which corresponded to posterior tibialis dysfunction in tendinitis along with tendinosis. He diagnosed posterior tibial tendinitis and plantar fascial fibromatosis.

On September 25, 2018 Dr. Blanken also completed a duty status report (Form CA-17) in which he limited appellant to no more than four hours of standing and walking, kneeling, bending, stooping, and driving a vehicle, in an eight-hour day. He provided a separate disability certificate, advising that she could return to work on September 26, 2018 with the restrictions noted in the duty status report.

In an October 4, 2018 report, Dr. Hanley noted appellant’s history of injury and medical treatment. He examined her and found that she had full range of motion (ROM) of the ankle, full subtalar ROM, and pain on eversion. Dr. Hanley explained that appellant had pain over the posterior tibial tendon, with an area of swelling along the course of the tendon. He also noted that there were no obvious clinical signs of active inflammatory condition in the plantar fascia on either side. Dr. Hanley diagnosed posterior tibial tendinitis without evidence of rupture and noted that there were no findings at present to suggest a clinically significant plantar fasciitis. He indicated that appellant was presently suffering from an acute posterior tibial tendinitis on the left. Dr. Hanley explained that the cause was not related to her work exposure over the prior several months, because her exposure was minimal as she was on restricted duty. He opined that appellant’s condition was “more of a reaction to her preexisting pes planus, which puts additional stress on the medial side of the foot.” Dr. Hanley also noted that she was capable of performing her modified job offer from December 21, 2017. However, he indicated that appellant would have a hard time recovering if she were to be on her feet the entire eight-hour day. Dr. Hanley explained that plantar fasciitis did not lead to posterior tibial tendinitis. He noted that the record revealed that appellant was released from care in mid-2017. Dr. Hanley advised that she should seek additional medical care. He completed a work capacity evaluation (Form OWCP-5c) and indicated that appellant was capable of working an eight-hour day, with a four-hour limitation on walking.

On October 12, 2018 appellant accepted a job offer for a modified-duty assignment, which required no more than four hours of walking, standing, bending, and stooping. She returned to full-time modified duty on October 14, 2018.

By decision dated October 15, 2018, OWCP denied appellant’s recurrence claim. It found that she was not taken off work due to her plantar fibromatosis, but due to her posterior tibial

tendinitis, which was a separate condition. It explained that Dr. Hanley determined that appellant's left posterior tibial tendinitis were not employment related. OWCP concluded that she was not disabled from work due to a material change/worsening of the accepted work-related condition.

On October 24, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on March 12, 2019. During the hearing, it was noted that the posterior tibial tendinitis was the subject of a separate claim, OWCP File No. xxxxxx935. Counsel requested that the claims be administratively combined.

By decision dated May 24, 2019, OWCP's hearing representative affirmed the October 15, 2018 decision, finding that the evidence of record was insufficient to establish that appellant sustained a recurrence of disability on July 18, 2018, due to the accepted plantar fasciitis condition.

On July 30, 2019 appellant, through counsel, filed a timely appeal from the May 24, 2019 decision. By decision dated February 25, 2021, the Board found that appellant had not met her burden of proof to establish a recurrence of disability, commencing July 18, 2018, causally related to the accepted January 21, 2016 employment injury.

On April 1, 2021 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In an October 1, 2019 report, Dr. Blanken noted that appellant was evaluated on that date for the same injury. In a January 11, 2021 report, he noted that she was evaluated for her foot condition and opined that she had chronic foot conditions resulting in severe pain with weight bearing. Dr. Blanken advised that appellant may need to limit her weight bearing from time to time depending on the severity of the pain.

In a March 11, 2021 report, Dr. Blanken advised that appellant was seen for a recurrence of two injuries to her left foot. He recommended very light work for three to four weeks and referred to her work restrictions provided on March 4, 2021.

Dr. Blanken noted in a March 12, 2021 report that appellant was provided with a work excuse on March 11, 2021. He further noted that he was providing an addendum to clarify the type of light-duty work she could perform. Dr. Blanken reported that appellant could continue to empty trash, clean, and sweep the restroom floors and work areas, and stock supplies weighing no more than 15 pounds. He explained that, due to her foot condition, it was medically necessary to limit pushing and pulling heavy carts more than 15 pounds, or the physical impact would cause her to have inflammation and strains to her foot and ankle and cause further aggravation. Dr. Blanken noted that it was his understanding that the carts required for appellant's duties weighed more than her restrictions and requested an accommodation or alternative to the carts.

By decision dated April 26, 2021, OWCP denied modification of the May 25, 2021 decision.

LEGAL PRECEDENT

A recurrence of disability means 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.⁴ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to 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 so that they exceed the established physical limitations.⁵

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁶ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning. Where no such rationale is present, the medical evidence is of diminished probative value.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing July 18, 2018, causally related to the accepted January 21, 2016 employment injury.

By decision dated February 25, 2021, the Board affirmed OWCP's May 24, 2019 decision, finding that none of the medical evidence contained a rationalized medical explanation establishing a recurrence of disability, commencing July 18, 2018, causally related to the accepted January 21, 2016 employment injury, which was accepted for plantar fascial fibromatosis. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under

⁴ 20 C.F.R. § 10.5(x); *S.W.*, Docket No. 18-1489 (issued June 25, 2019).

⁵ *Id.*

⁶ *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Terry A. Hedman*, 38 ECAB 222 (1986).

⁷ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

section 8128 of FECA.⁸ The Board, therefore, will not consider the evidence addressed in the prior appeal.⁹

Following OWCP's May 24, 2019 decision, OWCP received additional medical evidence from Dr. Blanken dated October 1, 2019 to March 12, 2021. This additional medical evidence, however, addressed appellant's conditions after the claimed period of recurrent disability. Dr. Blanken did not provide an opinion that appellant sustained a recurrence of disability commencing July 18, 2018, causally related to the accepted January 21, 2016 employment injury. The Board has held that the medical evidence must directly address the dates of disability from work for which compensation is claimed.¹⁰ The Board, therefore, finds that appellant has not met her burden of proof to establish her recurrence claim.¹¹

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 disability, commencing July 18, 2018, causally related to the accepted January 21, 2016 employment injury.

⁸ See *T.W.*, Docket No. 20-0836 (issued July 21, 2021); *E.H.*, Docket No. 19-1569 (issued April 2, 2020); *J.T.*, Docket No. 18-1757 (issued April 19, 2019); *S.S.*, Docket No. 17-1106 (issued June 5, 2018); *H.G.*, Docket No. 16-1191 (issued November 25, 2016).

⁹ *B.R.*, Docket No. 20-0050 (issued March 4, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹⁰ *J.B.*, Docket No. 18-1751; 19-0793 (issued May 6, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ *L.V.*, Docket No. 19-1725 (issued April 5, 2021).

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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