

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

E.D., Appellant)	
)	
and)	Docket No. 21-1368
)	Issued: September 7, 2023
U.S. POSTAL SERVICE, MONTEREY PARK)	
POST OFFICE, Monterey Park, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 13, 2021 appellant filed a timely appeal from a July 9, 2021 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 to consider the merits of this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability from July 18 through November 6, 2013, and from June 14, 2014 through May 2015 causally related to his accepted August 1, 2002 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the July 9, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

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

On December 10, 2002 appellant, then a 46-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a bilateral Achilles tendon condition as a result of delivering mail to business offices and private homes while in the performance of duty. He noted that he first became aware of his condition on August 1, 2002 and of its relationship to his federal employment on December 4, 2002. OWCP accepted the claim for bilateral calcaneus spurs.

Appellant underwent OWCP-authorized resection of the fractured bone and multiple bone fragments, posterior of the left calcaneus, and repair of Achilles tendon of the left ankle on July 16, 2003 and resection of the bone posterior right calcaneus, and repair of Achilles tendon of the right ankle with removal of a calcified bone on March 3, 2004. OWCP paid him wage-loss compensation on the supplemental rolls, effective December 4, 2002, and on the periodic rolls effective May 10, 2009.

OWCP subsequently expanded the acceptance of appellant's claim to include bilateral Achilles tendinitis, sprain of bilateral shoulder, upper arm, and rotator cuff, bilateral shoulder impingement. Appellant underwent OWCP-authorized right and left shoulder open subacromial decompression with open rotator cuff repair on March 26, 2009 and October 26, 2010, respectively.

On March 25, 2013 appellant returned to modified-duty work as a customer care agent. The physical requirements of the position included lifting 15 to 20 pounds for two hours, standing and walking up to three hours, pushing/pulling 2 to 3 pounds up to three hours, reaching above the shoulder up to one hour and use of a platform, and no repetitive bending or stooping. Appellant received wage-loss compensation on the supplemental rolls from March 10 until July 15, 2013. OWCP paid him schedule award compensation from November 7, 2013 until June 13, 2014, and then again from May 27 until September 24, 2016. It resumed payment of intermittent wage-loss compensation on the supplemental rolls from July 26, 2017 and on the periodic rolls as of April 29, 2018.

In a July 11, 2013 progress report, Dr. Brad Katzman, a podiatrist, diagnosed left posterior heel spur, fasciitis on the left, post cerebral vascular accident (CVA), and ankle tendinosis. He recommended surgical resection and noted that appellant could not return to work until after the recommended surgery.

In a primary treating physician's progress report dated July 15, 2013, Dr. Scott Goldman, a Board-certified orthopedic surgeon, noted appellant's accepted conditions. Additionally, he provided an assessment of painful lower back and left hip conditions as a consequence of abnormal gait pattern due to weakness and pain in the Achilles tendon. Dr. Goldman advised that appellant was temporarily totally disabled from work.

³ *Order Remanding Case*, Docket No. 20-0620 (issued November 18, 2020).

On August 31, 2013 appellant filed a notice of recurrence (Form CA-2a) claiming disability from work commencing July 15, 2013 when he experienced pain in his right knee, left hip, and lower back due to his accepted employment injuries.

OWCP continued to receive medical evidence from Dr. Goldman. In primary treating physician's progress reports dated August 20, September 19, October 25, November 18, and December 16 and 17, 2013, Dr. Goldman again provided assessments of the accepted condition of bilateral shoulder rotator cuff injury with impingement, and painful lower back and left hip conditions as a compensatory consequence of abnormal gait pattern due to weakness and pain in the Achilles tendon. He also provided assessments of improving bilateral Achilles tendon repair. Dr. Goldman continued to advise that appellant was either temporarily partially disabled or temporarily totally disabled from work. In his December 17, 2013 report, he opined that appellant's bilateral shoulder and bilateral Achilles conditions were the direct result of repetitive trauma from performing his duties for the employing establishment. Dr. Goldman related that appellant's initial injury occurred in 2002, since then he had exacerbations of the condition affecting both shoulders and both Achilles tendons, requiring ongoing treatment.

In a duty status report (Form CA-17) dated September 27, 2013, Dr. Goldman indicated that appellant's diagnoses of bilateral shoulder impingement and bilateral Achilles tendinitis were due to the accepted August 1, 2002 employment injury and that he was temporarily totally disabled from work.

OWCP, by decision dated January 17, 2014, denied appellant's claim for a recurrence of disability commencing July 18, 2013. It found that the medical evidence of record was insufficient to establish that he was disabled from work due to a material change or worsening of his accepted employment injuries.

On February 6, 2014 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received additional reports dated January 22, February 21, and March 21, 2014 from Dr. Goldman. Dr. Goldman diagnosed bilateral shoulder rotator cuff strain and the accepted condition of bilateral ankle Achilles tendinitis with inflammation and pain. He advised that appellant was temporarily partially disabled from work as of January 27, 2014 and could perform modified-duty work, six hours per day, as of that date.

In an April 18, 2014 report, Dr. Goldman restated his diagnoses of bilateral shoulder rotator cuff tendinitis and bilateral ankle Achilles tendinitis, and opined that appellant was temporarily partially disabled from work and could perform modified-duty work, six hours per day. He noted that appellant may need a stool to elevate his lower extremities.

In primary treating physician's progress reports and a Form CA-17 report dated April 18, June 9, July 11, August 1, 7, and 15, and September 8, 2014, Dr. Goldman reiterated his prior bilateral shoulder and bilateral ankle diagnoses, and provided an opinion on appellant's work capacity. On August 7, 2014 he advised that appellant had no disability and could return to full-duty work. In an August 15, 2014 report, Dr. Goldman noted that appellant had returned to

modified-duty work on July 27, 2014. He reported that appellant's left hip, back, and right knee pain had improved, but he remained symptomatic.

In progress reports dated January 30, February 24, April 21, June 23, and August 23, 2014, Dr. Katzman reiterated his diagnoses of left posterior heel spur, left fasciitis, CVA, and ankle tendinosis. He also diagnosed status post CVA. Dr. Katzman advised that appellant could not return to work until after surgery on his left heel.

Following a telephonic hearing held on August 8, 2014 appellant submitted additional medical evidence.

In an October 21, 2014 primary treating physician's progress report, Dr. Goldman continued to opine that appellant could perform modified-duty work, six hours per day.

By decision dated October 24, 2014, an OWCP hearing representative affirmed the January 17, 2014 decision, finding that the medical evidence submitted was insufficient to establish that appellant was disabled from work due to a material change or worsening of his accepted employment injuries.

In additional reports dated December 11, 2014 and March 2, 2015, Dr. Goldman restated his opinion on appellant's work capacity. In an industrial injury status report dated May 4, 2015, he placed appellant off work on that day.

Dr. Katzman, in progress reports dated December 4, 2014 and January 15, April 16, and May 28, 2015 reiterated that appellant could not return to work until he underwent left heel surgery.

On July 6, 2015 appellant, through his representative, requested reconsideration of the October 24, 2014 decision and submitted additional medical evidence.

In a June 8, 2015 report, Dr. Goldman noted that a question had been raised as to whether appellant was entitled to compensation for the period April 19 through June 13, 2014. He related that appellant sustained work-related bilateral shoulder and feet injuries. Dr. Goldman indicated that on April 18, 2014 he placed appellant on modified-duty work with restrictions of six-hour workdays and elevation of the lower extremities with a stool for the period April 19 through May 4, 2015 to reduce swelling, inflammation, and pain in the bilateral ankle Achilles tendons. He then indicated that these restrictions could not be accommodated by the employing establishment, and because appellant was unable to work, he was entitled to compensation for the noted period. Dr. Goldman further indicated that appellant had disabling bilateral shoulder conditions due to limited range of motion, tenderness, and swelling with weakness.

In subsequent primary treating physician's progress reports dated July 6, August 21, and September 22, 2015, Dr. Goldman restated his bilateral shoulder and bilateral ankle diagnoses. He opined that appellant was temporarily partially disabled from work as of July 18, 2013 and could perform modified-duty work six hours per day.

By decision dated October 8, 2015, OWCP denied expansion of appellant's claim to include additional diagnoses of his left hip, back, and right knee because the medical evidence of

record did not establish that these conditions were causally related to the accepted employment injury.

By decision dated October 20, 2015, OWCP denied modification of the October 24, 2014 decision, finding that the medical evidence submitted was insufficient to establish appellant's claim of a recurrence of disability commencing July 18, 2013.

Appellant continued to request reconsideration. OWCP issued nonmerit decisions denying his request for reconsideration.

On October 21, 2019 appellant requested reconsideration. He contended that he was totally disabled for work from July 2013 to January 2014, and partially disabled from January 2014 to May 2015, because the employing establishment failed to accommodate Dr. Goldman's medical restriction that he use a rest bar to elevate his feet, which resulted in the worsening of his accepted bilateral foot condition. Appellant noted that he had filed an Equal Employment Opportunity (EEO) complaint on September 26, 2013 regarding the employing establishment's refusal to allow him to use a rest bar for his foot, despite his physician's July 22, 2004 report. Dr. Goldman attached an August 29, 2019 settlement agreement from the EEO which related that appellant would receive \$20,000.00 as compensatory damages in settlement of his claim with the employing establishment. The agreement also noted that the agreement did not affect appellant's right to file claims for OWCP benefits. Appellant also attached a copy of Dr. Goldman's July 22, 2004, report which related that appellant could return to modified, sedentary work, while keeping the right and left legs elevated as needed.

OWCP continued to receive progress reports dated from August 21, 2018 through January 23, 2020 from appellant's treating physicians regarding appellant's current medical conditions and his work status.

OWCP also received visit notes dated June 3, 13, and 18, 2019 from Dr. Jan D. Tepper, a Board-certified orthopedist and podiatrist, who provided assessments of various bilateral ankle, bilateral foot, and left leg conditions.

By decision January 15, 2020, OWCP denied appellant's request for reconsideration of the October 20, 2015 decision finding that it was untimely filed and failed to demonstrate clear evidence of error.

On January 28, 2020 appellant, through his representative, appealed OWCP's January 15, 2020 decision to the Board.

Thereafter, OWCP received additional progress reports from Dr. Goldman, dated February 6, to November 11, 2020.

By order dated November 18, 2020,⁴ the Board set aside OWCP's January 15, 2020 decision, finding that the case was not in posture for decision. The Board found that OWCP had not considered all evidence properly submitted by appellant and received by OWCP before the

⁴ *Id.*

January 15, 2020 decision. The Board remanded the case to OWCP for consideration of all the evidence submitted at the time of its January 15, 2020 decision and, following this and other such further development as deemed necessary, issue an appropriate decision regarding appellant's recurrence claim.

OWCP subsequently received additional medical evidence. Primary treating physician's progress reports dated from November 11, 20, 2020 to March 30, 2021 related appellant's current diagnoses and appellant's work status.

OWCP, by decision dated April 16, 2021, denied modification of the October 20, 2015 decision, finding that the medical evidence of record was insufficient to establish a worsening of appellant's accepted conditions as of July 18, 2013.

On April 28, 2021 appellant requested reconsideration of the April 16, 2021 decision and submitted additional evidence.

In a March 17, 2016 patient letter, Dr. Ming T. Chong, a Board-certified internist and oncologist, noted that appellant was seen on January 11 and December 13, 2013 for right knee pain. He also noted that appellant had chronic Achilles tendinitis in both ankles and walked with an altered gait. Dr. Chong opined that appellant's right knee pain was caused by the altered gait, and, thus concluded that the condition should be allowed in his claim. In a separate patient letter of even date, he indicated that a screening test suggested that appellant might have moderate depression.

OWCP thereafter received additional progress reports from Dr. Goldman dated April 2 to June 21, 2021. Dr. Goldman continued to diagnose bilateral shoulder and bilateral ankle conditions, and opined that appellant was unable to work.

By decision dated July 9, 2021, OWCP denied modification of the April 16, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result

⁵ *Supra* note 1.

⁶ *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

of the accepted employment injury.⁸ 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 probative and reliable medical opinion evidence.⁹

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 that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the 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 his or her established physical limitations.¹⁰

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that, light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty requirements.¹¹

An employee who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and supports that conclusion with sound medical reasoning.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability from July 18 through November 6, 2013, and from June 14, 2014 through May 2015 causally related to his accepted August 1, 2002 employment injury.

On March 25, 2013 appellant returned to modified-duty work as a customer care agent. He stopped work on July 18, 2013 and alleged a recurrence of disability commencing that date. Appellant also clarified in his October 21, 2019 request for reconsideration that he was claiming

⁸ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁹ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ 20 C.F.R. § 10.5(x); *see D.T.*, Docket No. 19-1064 (issued February 20, 2020).

¹¹ *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *see R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹² *Id.*

partial disability from January 2014 to May 2015 because the employing establishment failed to accommodate Dr. Goldman's medical restriction that appellant use a rest bar to elevate his feet, which resulted in the worsening of his accepted bilateral foot condition.

In support of his recurrence claim for the relevant periods, appellant submitted a series of reports from Dr. Goldman. In his July 15, 2013 report and in continuing reports through December 17, 2013, Dr. Goldman noted appellant's accepted conditions of bilateral shoulder rotator cuff injury and bilateral ankle Achilles tendinitis. He opined that appellant was temporarily totally disabled from work. Dr. Goldman, however, did not offer any medical rationale explaining why appellant was disabled due to the accepted medical conditions, nor did he address the specific time period claimed. The Board has held that medical evidence that does not offer an opinion that employee's condition or disability is causally related to the accepted employment injury is of no probative value on the issue of causal relationship.¹³ In these reports, Dr. Goldman also indicated that appellant had developed low back and left hip conditions as a consequence of his accepted injury. However, he did not provide medical rationale in support of his opinion that appellant's back and left hip conditions were a consequence of the accepted injury. OWCP denied further expansion of the claim by decision dated October 8, 2015. Consequently, these reports from Dr. Goldman are insufficient to meet appellant's burden of proof.

In progress reports during the relevant periods January 22, 2014 through May 4, 2015, Dr. Goldman diagnosed bilateral shoulder rotator cuff strain, and the accepted condition of bilateral ankle Achilles tendinitis with inflammation and pain. He advised that appellant was temporarily partially disabled from work as of January 27, 2014 and could perform modified-duty work, six hours per day, as of that date. In his April 18 and July 22, 2014 and June 8, 2015 reports, Dr. Goldman explained that appellant had a work restriction to use a stool to elevate appellant's lower extremities which the employing establishment failed to accommodate resulting in his disability from work. In his June 8, 2015 report, he indicated that the restriction was to reduce swelling, inflammation, and pain in the bilateral ankle Achilles tendons. Dr. Goldman, however, did not sufficiently explain with medical rationale how appellant's work restriction and disability were causally related to the accepted employment injury, nor did he address the specific time periods requested.¹⁴ The Board has held that a medical opinion not supported by medical rationale is of little probative value.¹⁵ Thus, for these reasons, Dr. Goldman's reports are insufficient to meet appellant's burden of proof.¹⁶

Dr. Katzman's progress reports dated July 11, 2013 through May 28, 2015 diagnosed left posterior heel spur, fasciitis on the left, CVA, and ankle tendinosis. He advised that appellant could not return to work until after a proposed left heel surgical resection. Dr. Katzman, however, did not address the cause of appellant's disability or its relationship to his August 1,

¹³ See *T.P.*, Docket No. 22-1335 (issued June 23, 2023); *T.M.*, Docket No. 21-1310 (issued March 7, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ See *K.B.*, Docket No. 18-0226 (issued August 6, 2018).

¹⁵ *Id.*

¹⁶ *L.V.*, Docket No. 19-1725 (issued April 5, 2021); *K.E.*, Docket No. 19-1922 (issued July 10, 2020).

2002 employment injury. As noted, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁷ The Board, therefore, finds that appellant has not met his burden of proof to establish his recurrence claim.¹⁸

Dr. Chong's March 17, 2016 reports noted that appellant suffered from the accepted condition of chronic bilateral ankle Achilles tendinitis and possibly moderate depression. Dr. Tepper's June 3, 13, and 18, 2019 visit notes provided assessments of various bilateral ankle, bilateral foot, and left leg conditions. Neither physician addressed whether appellant was disabled from work during the claimed period. As Dr. Chong and Dr. Tepper did not address the claimed periods of disability, their opinions are insufficient to establish his claim. In his remaining reports, Dr. Goldman addressed appellant's conditions after the claimed period of recurrent disability. He did not provide an opinion that appellant sustained a recurrence of disability commencing July 18, 2013, causally related to the accepted August 1, 2002 employment injury.

The remaining medical evidence of record did not address the relevant alleged periods of recurrence of disability. The Board has held that the medical evidence must directly address the dates of disability from work for which compensation is claimed.¹⁹

As appellant has not submitted rationalized medical evidence establishing a recurrence of disability from July 18 through November 6, 2013, and from June 14, 2014 through May 2015 causally related to the accepted August 1, 2002 employment injury, the Board finds that he has not met 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 total disability from July 18 through November 6, 2013, and from June 14, 2014 through May 2015 causally related to his accepted August 1, 2002 employment injury.

¹⁷ See *supra* note 13.

¹⁸ *L.V.*, *supra* note 16.

¹⁹ *Supra* note 8; *Fereidoon Kharabi*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board