

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

E.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bad Axe, MI, Employer**

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**Docket No. 15-555
Issued: May 21, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 12, 2015 appellant filed a timely appeal from a December 11, 2014 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 over the merits of this case.²

ISSUE

The issue is whether appellant has established a recurrence of disability on October 29, 2013 causally related to his January 29, 2013 employment injury.

On appeal, appellant contends that the medical evidence establishes that he was diagnosed with a long-term condition which was accepted by OWCP and that he was subsequently treated for this same condition while performing the same tasks for the same employing establishment at the time of his alleged recurrence of disability.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant has submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

OWCP accepted that on January 29, 2013 appellant, then a 46-year-old mailman, sustained temporary aggravation of right plantar fibromatosis when at work he jumped from a snowbank to the road and landed on his right foot. He stopped work on February 1, 2013 and returned to full-duty work on March 18, 2013. On August 8, 2013 OWCP accepted that appellant sustained a recurrence of disability from May 7 to 28, 2013 due to his January 29, 2013 employment injury.

On October 30, 2013 appellant filed a claim alleging a recurrence of disability on October 29, 2013. He indicated that he never healed from his accepted employment injury. Appellant related that he had aches and pain in his foot, ankle, calf, and knee. While working, he experienced pain with each step. Appellant also experienced tingling, prickling, numbness, and throbbing. In recent weeks, his pain had become unbearable which caused him to limp and an inability to work. On the claim form, the employing establishment stated that it did not make any accommodations or adjustments in appellant's regular duties due to an injury-related limitation.

By letter dated November 22, 2013, OWCP informed appellant that the evidence was insufficient to establish his recurrence claim. Appellant was advised as to the definition of a recurrence and was allotted 30 days to submit the evidence required to establish his claim.

In an undated statement, appellant related that, since his return to work following his January 29, 2013 employment injury, he had not fully recovered from this injury. His symptoms of pain or discomfort worsened each day, culminating in debilitating pain on October 29, 2013. Appellant noted his physician's request for authorization for in-shoe orthotics and his telephone conversations with OWCP regarding this matter. He described his normal work activities as a letter carrier which required him to be on his feet about 99 percent of the day and 60 to 90 minutes a day carrying the weight of the mail load, and sorting and bundling mail, loading the bundles, trays, tubs, and parcels into a long-life vehicle. Appellant delivered mail by foot up to 13 miles a day, 6½ to 7 hours a day.

In an October 29, 2013 duty status report (Form CA-17), Dr. Thomas K. Ernst, an attending Board-certified podiatrist, stated that appellant's symptoms were consistent with his employment-related plantar fasciitis. He advised that appellant was not able to perform his regular work.

In a January 31, 2014 decision, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish a recurrence of disability due to a material change or worsening of his January 29, 2013 work injury on October 29, 2013.

In an appeal request form postmarked May 14, 2014, appellant requested a review of the written record by an OWCP hearing representative.

In a November 12, 2013 prescription, Dr. Ernst released appellant to return to work without restrictions on November 13, 2013.

In a May 6, 2014 letter, Dr. Ernst noted his February 2013 diagnosis of plantar fasciitis and appellant's medical treatment. He also noted that appellant eventually became completely asymptomatic and returned to his regular work duties. Dr. Ernst indicated that he evaluated

appellant again on October 29, 2013 regarding a flare-up of his condition. He listed appellant's medical treatment.

In a May 30, 2014 decision, OWCP denied appellant's request for a review of the written record. It found that his request was untimely because OWCP's last merit decision was issued on January 31, 2014 and his request for a review of the written record was postmarked on May 14, 2014. Since appellant's request was after 30 days, he was not, as a matter of right, entitled to a review of the written record. OWCP considered his request for a review of the written record, and exercising its discretion, determined that the issue in this case could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered establishing that he sustained a recurrence of his January 29, 2013 employment injury.

On September 22, 2014 appellant requested reconsideration of the January 31, 2014 decision. In an undated statement, he related, among other things, that he had been under the care of his physician since the winter of 2013 due to his accepted employment injury. Appellant further related that he returned to work without restrictions, but never fully healed from his injury which prompted the need for further medical care in the fall of 2013.

In a November 17, 2013 letter, Dr. Ernst provided a history of the treatment he provided to appellant commencing on February 5, 2013 following his January 29, 2013 employment injury. He reported findings on physical examination, diagnosed plantar fasciitis of the right foot, and listed work restrictions. Dr. Ernst opined that appellant aggravated his old condition by the degree and amount of walking required by his job as there was no incident of injury or trauma to the area. He placed him off work to rest the area and addressed his medical treatment.

In a December 11, 2014 decision, OWCP denied modification of the January 31, 2014 decision. It found that Dr. Ernst did not provide a firm and rationalized medical opinion to establish that appellant's claimed recurrence of disability on October 29, 2013 was due to a spontaneous and material worsening of his accepted January 29, 2013 employment-related condition.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations provide that 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³

OWCP procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁴

³ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(5) (June 2013).

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing 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 who supports that conclusion with sound medical reasoning.⁵ Where no such rationale is present, the medical evidence is of diminished probative value.⁶

ANALYSIS

OWCP accepted that appellant sustained a traumatic temporary aggravation of right plantar fibromatosis while in the performance of duty on January 29, 2013. Appellant stopped work on February 1, 2013 and returned to regular duty on March 18, 2013.

Appellant filed a recurrence of disability claim on October 30, 2013, alleging that on October 29, 2013 he became disabled due to his accepted January 29, 2013 work injury. The Board finds that he has failed to submit sufficient reasoned medical evidence to establish that his disability in October 2013 was causally related to his January 2013 employment injury.

Appellant submitted medical reports from his attending physician, Dr. Ernst. In an October 29, 2013 report, Dr. Ernst found that appellant had symptoms consistent with his accepted employment-related plantar fasciitis. He also found that appellant was unable to perform his regular work duties. Dr. Ernst's May 6, 2014 report noted appellant's treatment for a flare-up of his accepted right foot condition. He stated that appellant had eventually become completely asymptomatic and that appellant had returned to his regular work duties. Although Dr. Ernst supported that appellant had continuing symptoms and resultant disability, his reports did not specifically explain how any continuing disability or condition was causally related to the accepted January 29, 2013 employment injury. The Board has found that a medical opinion not based and not fortified by medical rationale is of diminished probative value.⁷

In a November 17, 2013 report, Dr. Ernst opined that appellant was unable to work due to an aggravation of his employment-related plantar fasciitis. He noted that the aggravation was caused by the degree and amount of walking required by his job. Dr. Ernst does not relate the worsening of appellant's condition and resulting disability on the claimed date to a spontaneous change in the accepted January 29, 2013 employment injury. Rather, he relates the worsening of his condition and the cause of disability to a work-related aggravation of his accepted employment-related injury, a new intervening cause. Thus, Dr. Ernst's report does not support appellant's claim of total disability on October 29, 2013 due to the accepted employment injury.⁸

Dr. Ernst's November 12, 2013 prescription returned appellant to work without restrictions on November 13, 2013. He does not support that appellant had residuals of his accepted work injury as he returned him to work.

⁵ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

⁶ *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

⁷ *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

⁸ *B.C.*, Docket No. 14-690 (August 27, 2014).

Accordingly, the Board finds that appellant has not met his burden of proof to establish recurrence of disability on October 29, 2013 caused or aggravated by the January 29, 2013 employment injury.

On appeal appellant contended that the medical evidence established that he was diagnosed with a long-term condition which was accepted by OWCP and that he was subsequently treated for this same condition while performing the same tasks for the same employing establishment at the time of his alleged recurrence of disability. However, as discussed above, the medical evidence does not establish that appellant was disabled from work on October 29, 2013 due to his accepted work injury.

Appellant may submit new evidence to OWCP with a written request for reconsideration 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 establish a recurrence of disability on October 29, 2013 causally related to his January 29, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board