

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

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 consistent walking on concrete floors while in the performance of duty. 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 appellant intermittent wage-loss compensation on the supplemental rolls commencing July 12, 2016.

In a letter dated June 26, 2018, C.D., a human resource management specialist, indicated that appellant was offered an offer of modified assignment as a retail analyst on April 14, 2018 that required eight hours of sitting at a computer and watching cameras. She noted that the employing establishment released her from the assignment on June 8, 2018 as she was not performing the work. C.D. indicated that she spoke to appellant and instructed her to return to her original modified assignment; however, appellant responded that she did not like the supervisor and that management needed to find her another job that allowed her to sit for eight hours per day. She noted that appellant complained about her ankle/foot, even though appellant was on a detail that allowed her to sit for eight hours per day.

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

In a July 17, 2018 report, Dr. Blanken noted that appellant was performing manual activities at work, such as pushing and pulling carts, and she developed pain around the posterior tibialis tendon resulting in knee pain due to compensation. He diagnosed posterior tibial tendinitis, left leg, as an established problem, improved, and plantar fascial fibromatosis, established problem, improved. Dr. Blanken advised that appellant's job duties were probably not good for her, as her foot condition has worsened. He also related that appellant needed a sit down job as she would not be able to tolerate this type of activity much longer. Dr. Blanken opined that she had reagravated the posterior tibial tendon and she would need 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.⁴ He indicated that appellant 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 was currently walking four hours a 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. Appellant noted that she had posterior tibial tendinitis, flare ups of her ankle, and pain in her foot. She indicated that she was sent home on July 18, 2018.

By 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 appellant 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. It also included a list of questions. Appellant was afforded 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, appellant indicated that her detail was withdrawn due to her medical condition. In a July 30, 2018 statement, she indicated that her accepted January 21, 2016 injury had not resolved and she also indicated that she had posterior tibial tendinitis.

In an August 1, 2018 statement, appellant indicated that she did not feel that she was 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 report, Dr. Blanken noted that appellant picked up a new ankle brace and had an ongoing condition of posterior tibialis tendinitis along with plantar fasciitis in fasciosis of the left lower extremity incurred from her injury. Dr. Blanken opined that it was possible that two different problems could arise from the same injury. He noted that the injury to the Achilles tendon was "for the most part resolved;" however, appellant was not allowed to wear her CAM boot at work, thus, potentially causing further damage. Dr. Blanken diagnosed posterior tibial tendinitis, left leg, and plantar fascial fibromatosis. He 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." Dr. Blanken recommended an ankle brace and advised that appellant may not be able to drive with the device.

⁴ The report contained an additional illegible diagnosis.

By letter dated 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 ability to work.

In a September 25, 2018 report, Dr. Blanken noted that appellant stopped work on July 17, 2018. Dr. Blanken related that he informed appellant that while plantar fasciitis and fasciosis 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 disease of her posterior tibialis tendon with continued pain, which corresponded to posterior tibialis dysfunction in tendinitis along with tendinosis. He diagnosed posterior tibial tendinitis, and plantar fascial fibromatosis.

Dr. Blanken also completed a Form CA-17 on September 25, 2018 limiting appellant to no more than four hours of standing and walking, kneeling, bending, stooping, and driving a vehicle, in an eight-hour day. Dr. Blanken provided a separate disability certificate, advising that appellant 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 treatment. He examined appellant and found that appellant had full range of motion of the ankle, full subtalar range of motion, 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 the medical records supported that it had resolved, and 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 last several months, because her exposure was minimal, as she was on restricted duty. He opined that her 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 appellant was capable of performing her modified job offer from December 21, 2017. However, he indicated that she 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 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 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 appellant was not taken off work due to her plantar fibromatosis, but due to her posterior tibial tendinitis, which was a separate condition. OWCP found that appellant 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 & 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.

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.⁵ 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.⁶

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.⁷ 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.⁸

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.

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

⁶ *Id.*

⁷ *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁸ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

The Board initially notes that appellant's modified light-duty position has not been withdrawn. Rather, appellant's detail was terminated for cause due to her failure to perform the duties of the position.⁹ Following the termination of her detail, appellant did not initially return to her modified light-duty position because of a dispute with her supervisor. The remaining issue is, therefore, whether the medical evidence of record demonstrates a worsening of appellant's accepted left foot plantar fascial fibromatosis such that she could not perform her modified limited-duty position.¹⁰

Dr. Blanken provided three reports dated July 17, 2018. He noted that appellant was experiencing severe pain due to a posterior tibial tendinitis injury; however, this was not an accepted condition in this claim. Dr. Blanken did not provide an explanation, supported by objective medical evidence that appellant's accepted condition had suddenly worsened to the extent that she could no longer perform the duties of her modified-duty position.¹¹ Additionally, he stated that appellant was doing manual activities at work such as pushing and pulling carts; however, the Board notes that the record reflects that appellant was engaged in sedentary activities. The Board has explained that medical conclusions based on inaccurate or incomplete histories are of little probative value.¹² Therefore, Dr. Blanken's opinion is of diminished probative value.

In reports dated August 2 and September 25, 2018, Dr. Blanken diagnosed an ongoing condition of posterior tibialis tendinitis along with plantar fasciitis in fasciosis of the left lower extremity. These reports are speculative. The Board has long held that medical opinions that are speculative or equivocal in character have little probative value.¹³ Furthermore, even if appellant did sustain both conditions, Dr. Blanken still did not explain how objective findings of appellant's accepted condition would preclude her performance of her modified employment duties.¹⁴

Second opinion physician Dr. Hanley, in his October 4, 2018 report, concluded that appellant did not require medical treatment for her January 21, 2016 employment injury, and she had no physical limitations, restrictions, or disability related to the accepted injury. He also explained that plantar fasciitis did not lead to posterior tibial tendinitis. As Dr. Hanley reviewed the medical record and supported his conclusion with medical rationale, the Board finds that his report represents the weight of the medical evidence regarding appellant's claim for total disability.¹⁵

⁹ *Supra* note 5.

¹⁰ *K.P.*, Docket No. 19-1811 (issued May 12, 2020).

¹¹ *R.L.*, Docket No. 19-0444 (issued July 29, 2019); *J.L.*, Docket No. 15-1951 (issued May 16, 2016).

¹² *See M.L.*, Docket No. 06-0835 (issued October 27, 2006).

¹³ The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *see Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹⁴ *S.K.*, Docket No. 19-0272 (issued July 21, 2020).

¹⁵ *See C.S.*, Docket No. 18-0712 (issued January 24, 2019).

As none of the medical evidence of record contains a rationalized medical explanation establishing a recurrence of disability, commencing July 18, 2018, causally related to the accepted January 21, 2016 employment injury, the Board finds that appellant has not met her 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(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.

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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