

on January 19, 1988 and returned to work on February 23, 1988. Appellant underwent an open reduction and internal fixation of the fracture in January 1988 and a revision of the fusion of her right ankle in September 1993.¹

On July 13, 2005 appellant informed the Office that she was experiencing problems related to her work injury. She requested an appointment with a physician. In a September 23, 2005 response, the Office instructed appellant to file a notice of recurrence of disability (Form CA-2a). The Office noted that she had not submitted evidence showing that she received medical treatment for her injury following September 4, 2002.

On May 15, 2006 appellant filed a notice of recurrence of disability commencing June 15, 2005 causally related to her January 19, 1988 employment injury. She indicated that she had retired from employment. Appellant asserted that she had limited mobility which grew worse every year.

By letter dated September 13, 2006, the Office requested that appellant submit additional factual and medical information, including a rationalized report from an attending physician addressing the cause of her current condition and its relationship to her January 19, 1988 work injury. On September 19, 2006 appellant related that her injury had no cure and worsened with time. She questioned why the Office had no medical evidence subsequent to 1992.² Appellant submitted a September 22, 2006 report from Dr. Andrew V. Panagos, a Board-certified psychiatrist, who evaluated appellant for complaints of low back pain, anterior thigh discomfort and occasional pain radiating from the left leg into the calf. He noted her history of a right ankle fusion. Dr. Panagos diagnosed left hip arthritic changes and lumbar spondylosis.

By decision dated October 16, 2006, the Office found that appellant had not established an employment-related recurrence of disability. The Office determined that she had not submitted any supporting medical evidence.

On January 27, 2007 appellant requested reconsideration. She indicated that she was submitting medical reports from December 2006 as well as prior evidence of record.³ By decision dated May 15, 2007, the Office denied modification of its October 16, 2006 decision. The Office evaluated Dr. Panagos' September 22, 2006 report and found that it was insufficient to show that appellant had any condition or disability due to her work injury.

LEGAL PRECEDENT

When an appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.

¹ By decision dated March 19, 1988, the Office granted appellant a schedule award for a 35 percent permanent impairment of the right leg.

² In its development letter, the Office inaccurately indicated that it had not received medical evidence since 1992 instead of 2002.

³ The Office did not receive medical reports from December 2006.

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 causally related to the employment injury and supports this conclusion with sound medical reasoning.⁴

Section 10.5(x) of the Office's regulations provides in pertinent part:

"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."⁵

Section 10.5(y) of the Office regulations states:

"Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage."⁶

ANALYSIS

The Office accepted that appellant sustained a right ankle fracture on January 19, 1988 when she slipped and fell on ice. Appellant stopped work on January 19, 1988 and returned to work on February 23, 1988. She underwent an open reduction and internal fixation of her ankle fracture at the time of injury. On September 3, 1993 she had a revision of the right ankle fusion.

On July 13, 2005 appellant informed the Office that she required further medical treatment for her accepted injury. On May 15, 2006 she filed a notice of recurrence of disability commencing June 15, 2005 due to her January 19, 1988 work injury. Appellant had retired from employment.

The Board finds that appellant has not established a recurrence of disability or a recurrence of a medical condition. The only medical evidence of record subsequent to June 15, 2005 is a report from Dr. Panagos dated September 22, 2006. Dr. Panagos discussed appellant's complaints of low back pain, anterior thigh discomfort and occasional pain radiating from the left leg into the calf. He diagnosed left hip arthritic changes and lumbar spondylosis. As Dr. Panagos did not provide any opinion on whether appellant required either further medical treatment or had any disability due to her January 19, 1988 right ankle injury, his opinion is of diminished probative value.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed condition and her

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁵ 20 C.F.R. § 10.5(x).

⁶ 20 C.F.R. § 10.5(y).

employment.⁷ Appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.⁸ Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.⁹

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability or a recurrence of a medical condition causally related to her January 19, 1988 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 15, 2007 is affirmed.

Issued: July 17, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

⁷ *Patricia J. Glenn*, 53 ECAB 159 (2001).

⁸ *Robert Broome*, 55 ECAB 339 (2004).

⁹ Appellant submitted new medical evidence subsequent to the Office's decision. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128.