

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

K.F., Appellant)	
)	
and)	Docket No. 08-1188
)	Issued: October 14, 2008
U.S. POSTAL SERVICE, POST OFFICE, Lancaster, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 10, 2008 appellant filed a timely appeal from a January 25, 2008 merit decision of the Office of Workers' Compensation Programs' hearing representative, who affirmed the denial of appellant's recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this decision.

ISSUE

The issue is whether appellant sustained a recurrence of disability for the period June 10 to 15, 2007 due to his accepted employment condition.

FACTUAL HISTORY

On February 24, 2003 appellant, then a 46-year-old letter carrier, filed an occupational disease claim alleging that on December 21, 1999 he first realized his right great toe condition was employment related. The Office accepted the claim for right great toe degenerative joint disease and right hallux malleous and authorized wage-loss compensation for the period June 28

to August 13, 2003.¹ Appellant returned to light-duty work on August 14, 2003. On February 9, 2004 he was released to regular duty by Dr. Natalie Kaveh, a treating Board-certified physiatrist.

Appellant filed a claim for a recurrence of disability beginning April 28, 2005, which was denied by the Office in a decision dated January 4, 2006.

In a report dated September 15, 2006, Dr. Sharon Bangalan, a podiatrist, recommended modifications to appellant's job duties which minimized his ambulation and made his job more sedentary. On October 30, 2006 she noted that appellant wanted to pursue big toe joint fusion surgery and requested authorization to perform the surgery.

In a letter dated December 4, 2006, appellant noted that he had been trying to perform his usual work duties but had difficulty due to his toe osteoarthritis. He stated that his condition had been affected by the twisting, walking and changing temperatures of his job.

In a report dated January 9, 2007, Dr. G.B. Ha'Eri, a second opinion Board-certified orthopedic surgeon, reviewed the medical evidence, a statement of accepted facts and provided findings on physical examination. He concluded that appellant's accepted injury had resolved. Dr. Ha'Eri noted that appellant's original job duties of prolonged walking had aggravated the preexisting degenerative arthritis of the great right toe. As appellant's job duties had been modified under work restrictions provided by Dr. Bangalan, appellant did not currently have any residuals of his accepted condition.

On March 26, 2007 Dr. Bangalan agreed with Dr. Ha'Eri that appellant's arthritic 1st metatarsal-phalangeal joint was nonemployment related. He opined, however, that appellant's usual job duties could exacerbate the condition.²

On June 26, 2007 appellant filed a claim for wage-loss compensation for the period June 10 to 15, 2007. He noted that he used annual leave for the period June 11 to 14, 2007. In support of his claim, appellant submitted a blank attending physician's report (Form CA-5) and a time analysis form. He noted that June 10 and 15, 2007 were nonscheduled days and he used 24 hours of annual leave for June 11 to 14, 2007.³

By letter dated July 12, 2007, the Office informed appellant that the evidence of record was insufficient to support his recurrence claim and advised him as to the medical and factual evidence to submit. The Office allowed 30 days for a response. No material was forthcoming.

By decision dated September 17, 2007, the Office denied appellant's recurrence of disability claim.

¹ Appellant stopped work on June 17, 2003 and underwent surgery for right foot cheilectomy of the first metatarsal phalangeal joint on June 19, 2003.

² By letter dated December 7, 2007, the Office referred appellant for an impartial medical examination as it found a conflict in the medical opinion evidence between Dr. Ha'Eri and Dr. Bangalan as to whether appellant's preexisting arthritis had been permanently aggravated by his usual employment duties.

³ The Office notes the author date for the time analysis sheet as June 14, 2007, but there is no date on the form.

On October 8, 2007 appellant requested a review of the written record by an Office hearing representative.

By decision dated January 25, 2008, the Office hearing representative affirmed the September 17, 2007 decision, which denied appellant's claim for a recurrence of disability.⁴

LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as 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 If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.⁶

Under the Federal Employees' Compensation Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.⁷ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁸ Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁹ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁰

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is

⁴ The Board notes that, following the January 25, 2008 hearing representative's decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁵ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also* *R.S.*, 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007); *Phillip L. Barnes*, 55 ECAB 426 (2004).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997), *Donald T. Pippin*, 54 ECAB 631 (2003).

⁷ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁹ *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Manuel Garcia*, 37 ECAB 767 (1986).

claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.¹¹

ANALYSIS

Appellant's claim was accepted for right great toe degenerative joint disease and right hallux malleous. He returned to limited-duty work on August 14, 2003 and was released to regular-duty work on February 9, 2004 by Dr. Kaveh, a treating Board-certified physiatrist. Appellant filed a claim for wage-loss compensation beginning June 10, 2007, which the Office treated as a claim for a recurrence of disability. He did not submit any medical evidence regarding his recurrence of disability for the period June 10 to 15, 2007.

The only recent medical reports of record are reports dated September 15, 2006 and March 26, 2007 by Dr. Bangalan, a treating podiatrist, and a January 9, 2007 report by Dr. Ha'Eri, a second opinion Board-certified orthopedic surgeon. These are prior to the period of disability claimed. Dr. Bangalan recommended a more sedentary job for appellant on September 15, 2006. On March 26, 2007 she opined that appellant's usual job duties could exacerbate his preexisting arthritic first metatarsal-phalangeal joint. Dr. Ha'Eri opined that appellant's condition had resolved. Neither Dr. Bangalan nor Dr. Ha'Eri addressed the issue of disability beginning June 10, 2007 or disability for the period June 10 to 15, 2007.

The Board has held that reports containing no opinion as to the cause of appellant's claimed recurrence of disability are of little probative value.¹² Neither Dr. Ha'Eri nor Dr. Bangalan addressed appellant's disability for work as of June 10, 2007. Rather, Dr. Ha'Eri opined that appellant's condition had resolved as he was no longer performing the duties which had aggravated his preexisting arthritis condition. As noted, the Board will not require the Office to pay compensation for disability in the absence of probative medical evidence directly addressing the cause of the disability or the dates of disability for which compensation is claimed. Consequently, the reports by Dr. Ha'Eri and Dr. Bangalan do not establish employment-related disability for the claimed recurrence of disability beginning June 10, 2007.

The Board also notes that the record contains no evidence of a limited-duty job offer by the employing establishment beyond Dr. Bangalan's recommendation for a sedentary job for appellant and Dr. Ha'Eri's mention of a limited-duty job in his report. The Board finds there is no evidence in the record regarding a limited-duty job, a withdrawal of any such job or that appellant was unable to perform a sedentary limited-duty job. Appellant has failed to submit the necessary factual and medical evidence to establish his claim for recurrence of disability for the period June 10 to 15, 2007. The Office properly denied his claim.

¹¹ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006); *Michael E. Smith*, 50 ECAB 313 (1999)

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability for the period June 10 to 15, 2007 causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 25, 2008 is affirmed.

Issued: October 14, 2008
Washington, DC

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

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

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