

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

R.R., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
FACILITIES ENGINEERING COMMAND,
San Diego, CA, Employer**

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**Docket No. 09-688
Issued: September 21, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 16, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 24 and December 17, 2008 merit decisions denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability commencing June 10, 2008 due to his May 5, 2000 employment injury.

FACTUAL HISTORY

The Office accepted that on May 5, 2000 appellant, then a 56-year-old tire repairer, sustained a right foot contusion when a forklift ran over his right foot. In reports dated in May and June 2000, an attending physician noted the improvement in appellant's right foot condition.¹ The

¹ Appellant returned to his regular work after performing light-duty work for a period.

results of May 8, 2000 x-ray testing of appellant's right foot showed irregularity of the shape of the proximal phalanx second toe with no definite similar changes seen at the second metatarsal head, a finding which suggested an old trauma. There was narrowing of this joint space with irregularity of the articular surfaces of the proximal phalanx of the metatarsal head, a finding which represented early changes of osteoarthritis and perhaps an old trauma. The results of April 25, 2001 x-ray testing showed changes in appellant's right foot compatible with osteoarthritis.²

On June 16, 2008 appellant filed a claim alleging that he sustained a recurrence of disability on June 10, 2008 due to his May 5, 2000 injury.

In a June 10, 2008 report, Dr. Anthony Rabaiotti, an attending podiatrist, indicated that appellant reported sustaining a crush injury of his right foot when a forklift ran over it in 2000. He diagnosed severe traumatic arthritis of the right foot and crush injury of the right foot. The findings of April 28, 2008 x-ray testing of appellant's right foot revealed mal-alignment and sagging of the tarsal bones which might represent an old Lisfranc injury or evolving Charcot condition, vascular calcifications and significant degenerative changes and subluxation of the metatarsophalangeal joint of the second toe.³

In a July 24, 2008 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to show that he sustained a recurrence of disability on or after June 10, 2008 due to his May 5, 2000 employment injury.

Appellant requested reconsideration of his claim, contending that he sustained a dislocation on May 5, 2000 in addition to a contusion. In a December 17, 2008 decision, the Office affirmed its July 24, 2008 decision.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.⁴ This burden includes the necessity of 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 rationale.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

² Appellant retired from the employing establishment in August 2007.

³ In a June 23, 2008 letter, the Office advised appellant that he had 30 days to submit additional evidence. Appellant submitted a statement in which he indicated that he had right foot problems since May 5, 2000.

⁴ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁵ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

ANALYSIS

The Office accepted that on May 5, 2000 appellant sustained a right foot contusion when a forklift ran over his right foot.⁷ On June 16, 2008 appellant filed a claim alleging that he sustained a recurrence of disability on June 10, 2008 due to his May 5, 2000 injury. The Board finds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after June 10, 2008 due to his May 5, 2000 employment injury.

In a June 10, 2008 report, Dr. Rabaiotti, an attending podiatrist, indicated that appellant reported sustaining a crush injury of his right foot when a forklift ran over his foot in 2000. He diagnosed severe traumatic arthritis of the right foot and crush injury of the right foot. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.⁸ Dr. Rabaiotti did not provide an opinion that appellant sustained a recurrence of disability on June 10, 2008 due to his May 5, 2000 injury. The findings of April 28, 2008 x-ray testing of appellant's right foot revealed that he had osteoarthritis of his right foot among other conditions. This x-ray testing report did not address any cause for the conditions found. Appellant argued that he sustained a dislocation on May 5, 2000 in addition to a contusion, but the record does not contain medical evidence supporting this assertion.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁹ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.¹⁰

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after June 10, 2008 due to his May 5, 2000 employment injury.

⁷ Appellant returned to his regular work after performing light-duty work for a period.

⁸ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that 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).

⁹ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

¹⁰ On appeal to the Board, appellant argued that he submitted sufficient medical evidence to show that he sustained a recurrence of disability on or after June 10, 2008 due to his May 5, 2000 employment injury. For the reasons explained above, this evidence was not sufficient to establish appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' December 17 and July 24, 2008 decision are affirmed.

Issued: September 21, 2009
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