United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 16-0440**
	)	**Issued: July 26, 2016**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, New Cumberland, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 11, 2016 appellant filed a timely appeal of a September 17, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 commencing April 20, 2015, causally related to his February 15, 2013 injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted new evidence with his appeal to the Board. The Board, however, cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1); *see Steven S. Saleh*, 55 ECAB 169 (2003).

FACTUAL HISTORY

OWCP accepted that on February 15, 2013 appellant, then a 28-year-old, materials handler, twisted his right ankle when stepping off of a crane while in the performance of duty. February 15, 2013 right ankle x-rays showed extensive soft tissue swelling over the right lateral malleolus but no acute fracture. OWCP accepted right ankle sprain.

On June 24, 2013 appellant's physician, Dr. Robert Kaneda, an orthopedic surgeon and osteopath, released him from care to be seen on an as needed basis. Appellant returned to regular duty that day.[3]

On June 12, 2015 appellant filed a claim for a recurrence of disability (Form CA-2a) commencing April 20, 2015. He explained that he had "constant overwhelming pain in his right ankle when lifting, squatting, and prolonged walking." Appellant indicated that he was on light duty with restricted hours and that the recurrence occurred while he was leaning forward, holding 35 to 40 pounds of material. He related this to his original injury because his original injury still existed and was permanent. Appellant returned to work on June 8, 2015. The employing establishment indicated that it had accommodated him after the original injury and noted multiple incidents where he had injured himself outside work. OWCP received additional medical evidence.

In a September 16, 2014 report, Dr. Robert A. Gallo, a Board-certified orthopedic surgeon, determined that appellant had been experiencing right foot and ankle pain ongoing since February 15, 2013 due to a work accident.

In a January 14, 2015 report, Dr. David S. Todoroff, a podiatrist, noted that appellant presented for right ankle pain, discomfort, and burning which had been present for several years. He related that it "occurred suddenly following a work injury" and the symptoms worsened since the onset. Dr. Todoroff advised that appellant reported his symptoms as a moderate burning and shooting pain. Appellant indicated that it radiated through the calf, occurred constantly, and was aggravated with activity, excessive use, standing and weight bearing. Dr. Todoroff examined appellant and diagnosed: mononeuritis lower limb, other, tenosynovitis foot and ankle, arthropathy unspecified ankle and foot; enthesosoapthy ankle and tarsus other; pain in the limb.

OWCP received several reports from Dr. Elizabeth A. Hinton, a podiatrist. In a March 13, 2015 report, Dr. Hinton noted that appellant presented with severe right ankle pain. She advised that his pain was present for several years and occurred suddenly after a work

[3] On June 21, 2013 OWCP accepted appellant's claim for a recurrence for additional medical care based on April 16, 2013 emergency room notes. Appellant received intermittent wage-loss benefits for physical therapy appointments from April 7 to July 13, 2013. (CQ) On January 30, 2014 he had right ankle arthroscopic reconstructive ligament surgery. However, an OWCP medical adviser opined that it was not medically necessary or related to the work injury and in a March 13, 2014 decision, OWCP denied a recurrence claim and authorization for surgery. On September 8, 2014 it denied appellant's claim for compensation from January 7 through June 12, 2014. On December 29, 2014 an OWCP hearing representative affirmed the March 13, 2014 decision. On April 24, 2015 appellant's then counsel requested reconsideration of the December 29, 2014 decision. On May 14, 2015 OWCP denied modification of the prior decision. It noted that if medical evidence indicated that there was a change in appellant's job duties around August 6, 2013 which caused a change in his medical condition, appellant could file a new occupational disease claim. The periods adjudicated in these OWCP decisions are not before the Board on the present appeal.

injury. Appellant related that his pain was aggravated by activity, standing, and weight bearing. Dr. Hinton noted that January 2014 nerve conduction velocity (NCV) studies showed nerve damage in the ankle. Appellant reported that the ankle pain became "much worse in the past two weeks due to shoveling snow." Dr. Hinton diagnosed mononeuritis lower limb, foot and ankle tenosynovitis, unspecified ankle and foot arthropathy, enthesosoapthy ankle and tarsus, and limb pain. In a March 27, 2015 report, she saw appellant and again noted that the ankle pain became "much worse in the past two weeks due to shoveling snow." Dr. Hinton advised that treatment options were discussed and medication was prescribed. She recommended light duty.

In an April 23, 2015 report, Dr. Hinton noted that appellant was seen for a right ankle injury sustained in 2013. She advised that it was a permanent injury that caused permanent pain. Dr. Hinton noted that appellant was being seen by a pain management clinic and occasionally might have a flare up that required him to be off his feet. On April 27, 2015 she noted seeing appellant for right ankle pain and discomfort and burning. Dr. Hinton indicated that the pain had been present for several years and his symptoms were worsening. The symptoms included moderate burning, sharp and shooting pain. Appellant related that it radiated up the calf constantly, and was aggravated by activity, excessive use, standing and weight bearing. Dr. Hinton noted that appellant was mowing the grass over the weekend and now had severe right ankle pain. Findings included a normal gait, no swelling in the feet, and moderate right subtalar joint tenderness. Dr. Hinton diagnosed arthropathy unspecified of the ankle and foot, tenosynovitis of the foot and ankle, enthesopathy of the ankle and tarsus unspecified, tarsal tunnel syndrome and pain in the limb. She noted that appellant was advised to discuss a new brace for the right ankle.

On April 28, 2015 Dr. Terry Clarke, a podiatric surgeon and associate of Dr. Hinton, noted that appellant presented with severe right ankle pain. He advised that appellant's pain had been present for several years and occurred suddenly after a work injury. Appellant related that his pain was aggravated by activity, standing, and weight bearing. Dr. Clarke repeated appellant's prior history as stated in Dr. Hinton's reports, including that his ankle pain became much worse due to shoveling snow. Appellant related that on April 27, 2015, he was mowing grass and now had severe right ankle pain. Dr. Clarke examined appellant and diagnosed limb pain, unspecified arthropathy of the ankle and foot, ankle sprains and strains, and unspecified enthesopathy.

A May 19, 2015 magnetic resonance imaging (MRI) scan read by Dr. Joachim J. Huerter, a Board-certified diagnostic radiologist, revealed a focal area of narrow edema and bone marrow contusion in the medial aspect of the talus. There was no other abnormality.

In a June 8, 2015 report, Dr. Clarke repeated appellant's prior history of right ankle pain after a work injury and noted current complaints of ankle pain that interrupted his sleep the previous night. Appellant related that he walked a lot on the previous day and felt that this irritated his ankle. Dr. Clarke examined appellant and diagnosed foot and ankle tenosynovitis in addition to his prior diagnoses. He indicated that they discussed reducing appellant's hours at work until he could see another physician because of the pain.

In a June 16, 2015 note, Dr. Clarke requested that appellant be excused from work on June 9, 10 and 12, 2015, because he was unable to bear weight on the foot and ankle. He recommended light-duty restrictions and referenced that appellant was being seen for an ankle

surgery consultation on June 23, 2015. On June 24, 2015 Dr. Clarke noted appellant's history, provided results on examination and repeated the prior diagnoses.

In a June 23, 2015 report, Dr. Bradley Lamm, a podiatrist, noted appellant's history. He examined appellant and diagnosed right ankle pain following injury in 2013 and subsequent surgery in 2014, right ankle instability and weakness, and neuritis in the right sural nerve and intermediate dorsal cutaneous nerve.

OWCP advised appellant, by letter dated July 22, 2015, of the evidence needed to establish his claim for a recurrence and afforded him 30 days to submit the required evidence.

In a July 24, 2015 report, Dr. Clarke noted appellant's history. He explained that appellant had presented for follow up of his right ankle pain and that there were no changes in his symptoms rating his overall pain level at 7/10. Dr. Clarke opined that appellant had never fully recovered from the February 15, 2013 injury, which is why he sent appellant to a specialist. He repeated his previous diagnoses.

An August 28, 2015 right leg MRI scan read by Dr. Scott W. Wise, a Board-certified diagnostic radiologist, revealed a suspected tear of the anterior talofibular ligament, chronic-appearing sprain of the anterior tibiofibular ligament, and a mild decrease in bone bruises involving the medial aspect of the talus and lateral malleolus.

By decision dated September 17, 2015, OWCP denied appellant's claim for a recurrence of disability because the evidence was insufficient to establish a material change or worsening of his accepted work-related conditions.

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.[4]

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is causally 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]

ANALYSIS

OWCP accepted appellant's claim for sprain of the right ankle. Appellant returned to regular duty on June 24, 2013. He subsequently claimed a recurrence of total disability beginning April 20, 2015.

[4] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

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

The Board finds that appellant has failed to meet his burden of proof to establish a recurrence of disability. There is no rationalized medical opinion of record which sufficiently relates the current disability and medical condition to the February 15, 2013 accepted condition.

OWCP received a series of reports from Drs. Hinton and Clarke. On March 13, 2015 Dr. Hinton advised that appellant had severe right ankle pain that was present for several years after a work injury. She related that appellant reported that the ankle pain became "much worse in the past two weeks due to shoveling snow." Dr. Hinton diagnosed mononeuritis lower limb, foot and ankle tenosynovitis, unspecified ankle and foot arthropathy, enthesosoapthy ankle and tarsus, and limb pain. She saw appellant on April 23, 2015 and again noted that he was seen for a right ankle injury sustained in 2013 and advised that it was a permanent injury that caused permanent pain. Dr. Hinton advised that he might occasionally have a flare up that required him to be off his feet. On April 27, 2015 she advised that appellant was mowing the grass over the weekend and now had severe right ankle pain. Dr. Hinton examined him and diagnosed tarsal tunnel syndrome in addition to previous diagnoses. Dr. Clarke, on April 28, 2015, noted appellant's work injury history but also related the history of severe right ankle pain on April 27, 2015 after he mowed grass. On June 8, 2015 he noted that appellant had walked a lot on the previous day and felt that this irritated his ankle. Dr. Clarke diagnosed limb pain, ankle and foot arthropathy, ankle sprains and strains, tenosynovitis, and enthesopathy. On July 24, 2015 he stated that appellant had never recovered from his work injury but provided no rationalized opinion connecting the current conditions to the accepted right ankle sprain. Where an employee claims that a condition not accepted or approved by OWCP, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[6] Neither Dr. Hinton nor Dr. Clarke explained how these diagnosed conditions were related to the accepted right ankle sprain. Furthermore, the reports of Drs. Hinton and Clarke reflect intervening injuries associated with snow shoveling, grass cutting, and walking. Thus, these intervening injuries break the chain of causation and warrant against a finding of a spontaneous change in his accepted right ankle sprain.

Other medical reports of record are of limited probative value as they either predate the claimed recurrence of disability or do not specifically address how any disability beginning April 20, 2015 was due to a spontaneous change in the accepted right ankle sprain. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[7]

Accordingly, the Board finds that appellant has not met his burden of proof in this case as he has not submitted sufficiently reasoned medical opinion explaining why his claimed recurrence of disability beginning April 20, 2015 was caused or aggravated by the February 15, 2013 employment injury.

[6] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[7] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009).

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 established that he sustained a recurrence of disability commencing April 20, 2015 causally related to his February 15, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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