

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

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**J.F., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
CUSTOMS & BORDER PROTECTION,  
Pembroke Pines, FL, Employer**  
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**Docket No. 16-1915  
Issued: March 10, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 29, 2016 appellant filed a timely appeal from an August 24, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant has established a recurrence commencing January 25, 2016 causally related to his accepted March 26, 2012 employment injury.

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<sup>1</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its August 24, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On March 27, 2012 appellant, then a 30-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on March 26, 2012 he sustained a fracture to his right tibia when he was attempting to apprehend “illegal aliens” and fell off a deer-proof fence. He sought treatment with Dr. Daniel C. Valdez, a Board-certified orthopedic surgeon, and Dr. John V. Puig, Board-certified in family and sports medicine. Following his injury appellant worked light duty.

By decision dated August 26, 2012, OWCP accepted the claim for lateral malleolus fracture of right ankle, right sprain of ankle deltoid ligament, right sprain of ankle other specified sites, other enthesopathy of right ankle and tarsus, and right ankle and foot effusion of joint.<sup>3</sup>

On December 10, 2012 appellant received a schedule award for five percent permanent impairment of the right lower extremity. The date of maximum medical improvement was noted as August 8, 2012.

In a February 13, 2013 work capacity evaluation form (Form OWCP-5c), Dr. Puig reported that appellant was capable of performing his usual job and released him to regular duty.

On January 25, 2016 appellant filed a recurrence claim (Form CA-2a). He did not indicate whether his recurrence was due to need for further medical treatment or wage loss. Appellant reported that, after the March 26, 2012 employment injury, he was on light duty performing administrative duties for several weeks. He reported that the pain and discomfort from the original injury never went away and he had no prior issues with his right ankle prior to the work-related fracture. Appellant noted that he was working in a full-time capacity with no restrictions as of his recurrence.

By letter dated February 22, 2016, OWCP informed appellant that the evidence of record was insufficient to support his recurrence claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to submit the necessary evidence. He did not respond and no further evidence was received.

By decision dated March 23, 2016, OWCP denied appellant’s recurrence claim as the medical evidence failed to establish that his need for additional medical treatment beginning January 25, 2016 was due to a material change/worsening of his accepted work-related condition, without intervening cause.

On June 29, 2016 appellant requested reconsideration of OWCP’s decision.

In support of his claim, appellant submitted a June 10, 2016 diagnostic report from Dr. Richard Anguiano, a Board-certified radiologist. Dr. Anguiano reported that a magnetic resonance imaging (MRI) scan of the right ankle revealed subchondral cysts along the anterior lateral aspect of the talar dome. He noted that the overlying cortex and cartilage appeared to be

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<sup>3</sup> Appellant filed a claim for a schedule award (Form CA-7) on October 24, 2012. By decision dated December 10, 2012, OWCP granted a schedule award for five percent permanent impairment.

intact. Dr. Anguiano further reported mild subchondral edema along the interior lateral talus and the anterior aspect of the posterior facet joint, likely degenerative. He noted comparison with the April 4, 2012 MRI scan of the right ankle.

By decision dated August 24, 2016, OWCP affirmed the March 23, 2016 decision finding that the medical evidence failed to establish that appellant had sustained a recurrence beginning January 25, 2016 due to a material change/worsening of his accepted work-related conditions.<sup>4</sup>

### **LEGAL PRECEDENT**

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. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.<sup>5</sup>

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet her burden.<sup>6</sup>

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 resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>7</sup>

An employee 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 he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to

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<sup>4</sup> The Board notes that the record includes an August 3, 2016 OWCP decision which denied modification of the March 23, 2016 denial of the claim. OWCP's August 24, 2016 decision however related that it superseded the August 3, 2016 decision without further explanation.

<sup>5</sup> 20 C.F.R. § 10.5(y). *M.O.*, Docket No. 16-1242 (issued November 28, 2016).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

<sup>7</sup> 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

the employment injury, and supports that conclusion with medical reasoning.<sup>8</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>9</sup>

### ANALYSIS

OWCP accepted appellant's claim for lateral malleolus fracture of right ankle, right sprain of ankle deltoid ligament, right sprain of ankle other specified sites, other enthesopathy of right ankle and tarsus, and right ankle and foot effusion of joint. Following his injury, appellant returned to light-duty work. He was released to full duty without restrictions on February 13, 2013.

While appellant did not clearly indicate on his January 25, 2016 notice of recurrence whether he was seeking further medical treatment or wage-loss benefits, insofar as appellant is attributing his recurrence to a need for medical treatment, he has the burden of proof to provide medical evidence to establish that his current right ankle injury is due to his accepted work-related conditions and required further medical treatment.<sup>10</sup>

The only medical evidence received in support of appellant's claim was Dr. Anguiano's June 10, 2016 diagnostic report documenting results of the right ankle MRI scan. Dr. Anguiano compared the current MRI scan to the prior April 4, 2012 report, noting that the overlying cortex and cartilage appeared to be intact. He noted subchondral cysts along the anterior lateral aspect of the talar dome, he failed to provide any opinion that appellant's current condition was causally related to his accepted conditions.<sup>11</sup> Dr. Anguiano further indicated that the mild subchondral edema along the interior lateral talus and anterior aspect of the posterior facet joint was likely degenerative. He did not provide adequate bridging evidence to show a spontaneous worsening of the accepted conditions, or that he required further medical treatment.<sup>12</sup> It remains unclear if the subchondral edema was caused by the March 26, 2012 employment injury or a result of an unrelated preexisting degenerative condition.<sup>13</sup> Thus, Dr. Anguiano's opinion is insufficiently rationalized to establish appellant's claim for a recurrence.<sup>14</sup>

While it is unclear from the record whether appellant stopped work as of the date of his alleged recurrence, for each period of disability claimed, the employee must establish that he was disabled for work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to

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<sup>8</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>9</sup> *Mary A. Ceglia*, Docket No. 04-113 (issued July 22, 2004).

<sup>10</sup> *Supra* note 5.

<sup>11</sup> *Cecilia M. Corley*, 56 ECAB 662 (2005).

<sup>12</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>13</sup> *R.E.*, Docket No. 14-868 (issued September 24, 2014).

<sup>14</sup> *L.G.*, Docket No. 11-142 (issued August 12, 2011).

compensation. Dr. Anguiano did not find appellant disabled beginning January 25, 2016 as a result of his accepted work-related injury.<sup>15</sup>

As appellant has not submitted any medical evidence showing that he sustained a recurrence of disability or a recurrence of his medical condition due to his accepted employment injury, the Board finds that he has not met his burden of proof.<sup>16</sup>

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 did not meet his burden of proof to establish a recurrence commencing January 25, 2016 causally related to his accepted March 26, 2012 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

<sup>16</sup> *L.L.*, Docket No. 13-2146 (issued March 12, 2014). *See also William A. Archer* 55 ECAB 674, 679 (2004).