

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

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**T.B., Appellant** )

**and** )

**DEPARTMENT OF DEFENSE, DEFENSE** )  
**LOGISTICS AGENCY, Barstow, CA, Employer** )  
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**Docket No. 21-0480**  
**Issued: January 10, 2022**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 9, 2021 appellant, through counsel, filed a timely appeal from a December 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

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

<sup>3</sup> The Board notes that, following the December 10, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability for the period April 22, 2019 through October 13, 2020 causally related to her accepted January 3, 2017 employment injury.

## FACTUAL HISTORY

On January 4, 2017 appellant, then a 43-year-old materials handler/forklift operator, filed a traumatic injury claim (Form CA-1) alleging that on January 3, 2017 she lost her footing when stepping off a pallet and fell while in the performance of duty. She stopped work on the date of injury. OWCP accepted appellant's claim for strain of muscle, fascia, and tendon at neck level, sprains of unspecified ligaments of the right and left ankles. It subsequently accepted a left foot calcaneal spur and other acquired deformities of the left foot. Appellant returned to part-time modified-duty work on July 17, 2017. She underwent an OWCP-authorized right foot surgery on September 27, 2017. Appellant returned to full-time modified duty with restrictions on January 12, 2018 and resumed full-time regular duty on April 18, 2018.<sup>4</sup> OWCP paid appellant wage-loss compensation intermittently on its supplemental rolls and periodic rolls.

In an April 19, 2019 report, Dr. Tzu-Shang T. Liu, a Board-certified orthopedic surgeon, noted appellant was not working due to migraines.<sup>5</sup> He noted tenderness to palpation of various portions of her left foot, but indicated that there was a lack of correlation between the magnetic resonance imaging (MRI) scan findings and the clinical examination.<sup>6</sup> Dr. Liu diagnosed bilateral foot pain and left leg Achilles tendinitis. He placed appellant off work and referred her to a foot specialist.

On April 29, 2019 appellant filed a claim for compensation (Form CA-7) claiming disability for the period April 22 to May 3, 2019.

In a May 10, 2019 development letter, OWCP noted that it appeared appellant was claiming disability due to a material change/worsening of her accepted work-related conditions and that the evidence was insufficient to establish total disability. It advised her of the definition of recurrence of disability, of the type of medical and factual evidence needed, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

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<sup>4</sup> Appellant's treating physician Dr. Michael Fanous, a podiatrist, released appellant to full-duty work effective April 18, 2018.

<sup>5</sup> In a May 8, 2019 letter, the employing establishment indicated that appellant stopped work in October 2018 for a non-industrial migraine condition.

<sup>6</sup> An April 4, 2019 MRI scan of the right ankle showed "like resection of a Haglund's deformity" and resolved tendinopathy of the inferior Achilles tendon. Also seen was chronic Achilles tendon scarring and mild insertional hypertrophic overgrowth of the posterior calcaneus. The April 4, 2019 left ankle MRI scan showed prior surgery, healed prior fractures, a site of minimal Haglund's deformity, and acute Achilles tendinopathy.

OWCP received appellant's May 23, 2019 statement and work excuse notes dated June 13, July 8, and 10, 2019 from providers with illegible signatures.

In a June 7, 2019 report, Dr. Liu again noted "the lack of correlation between the MRI scan findings and clinical examination" and recommended appellant see a foot specialist. He held her off work until she was seen by that specialist.

Medical reports dated June 13, July 10, and September 19, 2019 signed by Martha Castillo were submitted along with an August 15, 2019 unsigned medical report.<sup>7</sup> These reports diagnosed bilateral ankle sprains based on examination findings, and provided work restrictions and treatment recommendations.

By decision dated September 27, 2019, OWCP denied appellant's claim for a recurrence of disability commencing April 22, 2019. It found that she had not submitted sufficient medical evidence from a physician to establish her claim for disability compensation based on a worsening of her accepted condition.<sup>8</sup>

On October 7, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on February 10, 2020.

OWCP subsequently received a January 30, 2019 work status note, wherein Dr. Liu opined that appellant could return to work with restrictions. In an April 19, 2019 work status note, Dr. Liu opined that appellant should remain off work until further notice.

In an October 15, 2019 report, Dr. Thomas P. Bravo, a Board-certified neurologist, indicated that he had been evaluating and treating appellant since April 22, 2019 for vestibular migraine. He opined that her return to regular work depended upon an improved disequilibrium and medical clearance from an ongoing workers' compensation case.

OWCP also received work excuse notes/release slips dated October 24, 2019 and January 9, 2020 from providers with illegible signatures. Also received were medical reports dated September 19 and November 21, 2019 and January 9 and February 20, 2020 signed by Ms. Castillo.

A medical note signed by Dr. Brad A. Katzman, a podiatrist, indicated that appellant reached maximum medical improvement (MMI) on November 21, 2019. In a February 20, 2020 release slip, Dr. Katzman opined that she could work with restrictions until April 3, 2020.

By decision dated March 12, 2020, the hearing representative affirmed OWCP's September 27, 2019 decision.

In March 12 and April 3, 2020 reports, Dr. Katzman noted that he had been treating appellant since January 13, 2019 for her January 3, 2017 employment injuries. He opined that, based on his evaluation and continued treatment, the acceptance of the claim should be expanded

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<sup>7</sup> Ms. Castillo's credentials are unknown.

<sup>8</sup> OWCP paid appropriate compensation for medical appointments for the accepted conditions.

to include a left foot calcaneal spur. Dr. Katzman resubmitted the February 20, 2020 report signed only by Ms. Castillo.

Release slips dated April 3, 2020, signed by a provider with an illegible signature, were submitted along with medical reports dated April 2, June 2, July 14, September 17, October 5, and October 10, 2020 signed by Ms. Castillo.

On September 14, 2020 appellant, through counsel, requested reconsideration. She also filed additional CA-7 forms claiming disability for periods commencing February 20, 2020.

On June 23, 2020 Dr. Katzman amended/signed the June 2, 2020 report, initially signed by Ms. Castillo. He noted the history of appellant's January 3, 2017 employment injury, left ankle MRI scan findings from April 4, 2019, prior x-ray findings, and physical examination findings. Dr. Katzman diagnosed bilateral sprains of unspecified ligaments of the right and left ankle and opined that appellant required a brace and surgical intervention for removal of Haglunds deformity with endoscopic gastrocnemius recession on the left foot. He further opined that appellant had reached MMI and may return to work with restrictions, continuing light duty. Dr. Katzman concluded that appellant could not resume her date-of-injury job, that she required restrictions, that her pain was directly related to the 2017 employment injury and that the constant increased weight bearing has caused increased symptoms and pain and development of a bone spur.

Medical reports dated August 13 and 27, 2020 from Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as OWCP district medical adviser (DMA), were also received. The DMA agreed with Dr. Katzman that appellant required surgical intervention and that the left bone spur was related to the accepted left ankle strain.

Appellant underwent OWCP-approved left foot surgery on October 14, 2020. OWCP paid appellant wage-loss compensation for temporary total disability commencing October 14, 2020.

By decision dated December 10, 2020, OWCP denied modification of its March 12, 2020 decision.

### **LEGAL PRECEDENT**

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>9</sup>

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a

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<sup>9</sup> 20 C.F.R. § 10.5(x); *D.B.*, Docket No. 21-0503 (issued August 24, 2021); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>10</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish 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 the employment injury, and supports that conclusion with medical reasoning.<sup>11</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability for the period April 22, 2019 through October 13, 2020 causally related to her accepted January 3, 2017 employment injury.

OWCP received several reports from Dr. Liu. In his April 19 and June 7, 2019 reports, Dr. Liu noted that there was a lack of correlation between appellant's MRI scan findings and her clinical examination. He diagnosed bilateral foot pain and left leg Achilles tendinitis and placed appellant off work, noting, in his June 7, 2019 report, that she was to stay off work until she saw a foot specialist. However, Dr. Liu failed to provide his own well-rationalized medical opinion as to why appellant was disabled and how appellant's disability was causally related to the accepted employment conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>13</sup> This evidence is, therefore, insufficient to establish appellant's recurrence claim.

In his October 15, 2019 report, Dr. Bravo indicated that he had been evaluating and treating appellant since April 22, 2019 for vestibular migraine and he related that appellant's return to regular work depended upon an improved disequilibrium. This report indicates that appellant had been disabled since April 22, 2019 due to migraines and resulting disequilibrium. Dr. Bravo's report does not address whether appellant was disabled due to the accepted conditions.<sup>14</sup> This report is, therefore, insufficient to establish appellant's recurrence claim.

In a June 2, 2020 report amended/signed on June 23, 2020, Dr. Katzman opined that appellant's pain was directly related to the employment injury and the constant increased weight

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<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

<sup>11</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

<sup>12</sup> *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

<sup>13</sup> *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *See id.*

bearing caused increased symptoms and the development of a bone spur. However, he failed to explain with medical rationale how appellant's disability, effective April 22, 2019, was related to the accepted conditions.<sup>15</sup> Dr. Katzman's opinion is conclusory in nature, as it does not contain an explanation of how appellant's accepted conditions, including the left foot bone spur caused disability.<sup>16</sup> His June 2, 2020 report is, therefore, insufficient to establish intermittent disability.

Dr. Katzman's March 12 and April 3, 2020 reports are of limited probative value as they do not address the recurrence of disability effective April 22, 2019.<sup>17</sup>

The medical reports dated June 13, 2019 through October 10, 2020 signed by Ms. Castillo are of no probative value to establish appellant's recurrence of disability claim as her credentials are unknown.<sup>18</sup>

Work excuse notes dated June 13, 2019 through April 20, 2020 from providers with illegible signatures are also of no probative value to establish appellant's claim. Reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.<sup>19</sup>

As appellant has not submitted rationalized medical evidence sufficient to establish a recurrence of disability for the period April 22, 2019 through October 13, 2020 causally related to her accepted January 3, 2017 employment injury, the Board finds that she has not met her burden of proof.

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.

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<sup>15</sup> *J.K.*, Docket No. 19-0462 (issued August 5, 2019).

<sup>16</sup> *See M.S.*, Docket No. 19-0189 (issued May 14, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *B.H.*, Docket No. 18-1219 (issued January 25, 2019); *Birger Areskog*, 30 ECAB 571 (1979).

<sup>17</sup> *See supra* note 13.

<sup>18</sup> *E.S.*, Docket No. 16-0267 (issued May 17, 2016); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

<sup>19</sup> *Id.*

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability for the period April 22, 2019 through October 13, 2020 causally related to her accepted January 3, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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