

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

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N.S., Appellant	)	
	)	
and	)	<b>Docket No. 23-0343</b>
	)	<b>Issued: August 14, 2023</b>
U.S. POSTAL SERVICE, MERRIFIELD POST	)	
OFFICE, Merrifield, VA, Employer	)	
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*Appearances:* *Case Submitted on the Record*  
Wayne Johnson, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 10, 2023 appellant, through counsel, filed a timely appeal from a July 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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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> The Board notes that a December 21, 2022 decision is also within the Board's jurisdiction. However, appellant, through counsel, has only sought appeal from the July 14, 2022 decision. Thus, the December 21, 2022 decision is not properly before the Board and will not be addressed in this decision. *See* 20 C.F.R. § 501.3.

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a recurrence of disability, commencing December 2, 2020, causally related to her accepted January 17, 2019 employment injury.

## **FACTUAL HISTORY**

On January 24, 2019 appellant, then a 27-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 17, 2019 she sustained an injury to her left ankle when she twisted her left ankle descending steps on her delivery route and fell to the ground while in the performance of duty. She stopped work on January 17, 2019. OWCP accepted appellant's claim for left ankle sprain and tarsal tunnel syndrome of the left foot. It paid her wage-loss compensation on the supplemental rolls, effective March 5, 2019, and on the periodic rolls, effective February 2, 2020.

An October 24, 2019 magnetic resonance imaging (MRI) scan of appellant's left ankle revealed trace fluid in the tibiotalar and subtalar joints with no significant tear or sprain of the ligaments of the ankle and no acute displaced fracture or dislocation.

On March 11, 2020 Dr. Jay D. Ryan, a podiatrist, performed OWCP-authorized left ankle surgery, including anterior ankle arthroscopy with debridement of synovitic tissue, posterior ankle arthroscopy with debridement of synovitic tissue, and excision of os trigonum.

On September 25, 2020 OWCP referred appellant and the case record, including a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination and evaluation with Dr. Chester DiLallo, a Board-certified orthopedic surgeon. It requested that he provide an opinion on her employment-related condition and her ability to work.

In an October 27, 2020 report, Dr. DiLallo discussed appellant's factual and medical history and reported the findings of his physical examination. He diagnosed neurapraxia of the left ankle posterior tibial nerve, contractures of the left ankle external ligamentous complex, and status postarthroscopic surgery of the left ankle. In a November 1, 2020 work capacity evaluation (Form OWCP-5c), Dr. DiLallo indicated that appellant could work for 8 hours per day, with restrictions from sitting and walking more than 2.6 hours, and pushing, pulling, or lifting more than 20 pounds. Appellant could not engage in squatting or climbing.

Appellant returned to full-time modified work on December 1, 2020 in a position with work restrictions that were in accordance with those recommended by Dr. DiLallo. She worked that day and stopped work on December 2, 2020. Appellant later claimed that she sustained a recurrence of disability on December 2, 2020 causally related to the accepted January 17, 2019 employment injury.

In a January 29, 2021 development letter, OWCP informed appellant of the deficiencies in her recurrence claim. It advised her of the factual and medical evidence necessary to establish her claim and provided a questionnaire. OWCP afforded appellant 30 days to respond.

In a February 8, 2021 statement, appellant indicated that her left foot/ankle symptoms had progressively worsened.

Appellant submitted a December 11, 2020 report, from Dr. Ryan who reported physical examination findings, noting that she had 5/5 strength in her lower extremity muscle groups. Dr. Ryan indicated that she exhibited limitations of range of motion in the left ankle. He noted that appellant reported that she tried to work for 2 hours and 49 minutes, and experienced worse pain. Dr. Ryan diagnosed arthralgia of the left foot and neuropathy, neuritis, and edema of the left ankle. On February 4, 2021 he diagnosed arthralgia of the left foot and neuritis of the left ankle. In a February 8, 2021 report, Dr. Ryan diagnosed left metatarsophalangeal joint sprain and, in a February 9, 2021 note, he ordered diagnostic testing.

In a February 16, 2021 duty status report (Form CA-17), Dr. Ryan indicated that there was no change in appellant's condition with respect to work restrictions, and noted, "Cont[inue] same restrictions as on file from Dr. DiLallo." In an attending physician's report (Form CA-20) of the same date, he indicated, "Same restrictions as per Dr. DiLallo on [January 1, 2020]." In an undated narrative report received by OWCP on February 16, 2021 Dr. Ryan advised that appellant should remain under Dr. DiLallo's restrictions from January 2020.

OWCP referred appellant and the case record, including a SOAF and a series of questions, for a second opinion examination and evaluation with Dr. John C. Barry, a Board-certified orthopedic surgeon. It requested that he provide an opinion on her employment-related condition and her ability to work. In a March 9, 2021 report, Dr. Barry maintained that appellant's accepted January 17, 2019 employment-related conditions, *i.e.*, left ankle sprain and tarsal tunnel syndrome, had resolved.

By decision dated April 16, 2021, OWCP denied appellant's claim for a recurrence of disability, finding that the medical evidence of record was insufficient to establish a worsening of her accepted January 17, 2019 employment injury such that she was disabled from her work duties commencing December 2, 2020.

On June 14, 2021 appellant returned to work in a full-time position.

On April 16, 2022 appellant, through counsel, requested reconsideration of her claim.

Appellant submitted July 8, 2021 and May 19, 2022 reports, from Dr. Eric G. Dawson, a Board-certified orthopedic surgeon, who reported her symptoms and detailed physical examination findings. In the May 19, 2022 report, Dr. Dawson indicated that it was appropriate for her to be in "light[-]duty status." In August 25, 2021 and June 13, 2022 reports, he discussed schedule award ratings for lower extremity permanent impairment.

Appellant also submitted numerous records from a March 2020 hospitalization, and other medical records produced between late-2019 and mid-2020.

By decision dated July 14, 2022, OWCP denied modification of its April 16, 2021 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>4</sup> This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.<sup>5</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 condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>6</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>7</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>8</sup>

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work.<sup>9</sup> As part of this burden, the employee must show a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.<sup>10</sup>

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<sup>4</sup> 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>7</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

<sup>8</sup> *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

<sup>9</sup> *See D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>10</sup> *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *Terry R. Hedman, id.*; *R.N.*, Docket No. 19-1685 (issued February 26, 2020).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability, commencing December 2, 2020, causally related to the accepted January 17, 2019 employment injury.

In a December 11, 2020 report, Dr. Ryan reported physical examination findings, and diagnosed arthralgia of the left foot and neuropathy, neuritis, and edema of the left ankle. He noted that appellant reported that she tried to work for 2 hours and 49 minutes and experienced worse pain. On February 4, 2021 Dr. Ryan diagnosed arthralgia of the left foot and neuritis of the left ankle. In a February 8, 2021 report, he diagnosed left metatarsophalangeal joint sprain and, in a February 9, 2021 note, he ordered diagnostic testing. However, Dr. Ryan did not provide an opinion on appellant's ability to work or disability from work in these reports. 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>11</sup> Therefore, these reports are insufficient to establish appellant's claim.

In a February 16, 2021 Form CA-17, Dr. Ryan indicated that there was no change in appellant's condition with respect to work restrictions and noted, "Cont[inue] same restrictions as on file from Dr. DiLallo." In a Form CA-20 of the same date, he indicated, "Same restrictions as per Dr. DiLallo on [January 1, 2020]." In an undated narrative report received by OWCP on February 16, 2021 Dr. Ryan advised that appellant should remain under Dr. DiLallo's restrictions from January 2020. However, these reports show no change in appellant's work restrictions from the time she was last working, and thus would not demonstrate a worsening of her work-related left foot/ankle condition such that she sustained a recurrence of disability. Therefore, these reports also are insufficient to establish her claim.

Appellant submitted July 8, 2021 and May 19, 2022 reports from Dr. Dawson who reported her symptoms and detailed physical examination findings. In the May 19, 2022 report, Dr. Dawson indicated that it was appropriate for her to be in "light[-]duty status." In August 25, 2021 and June 13, 2022 reports, he discussed schedule award ratings for lower extremity permanent impairment. However, these reports do not contain an opinion that appellant sustained a recurrence of disability on or after December 2, 2020 causally related to the accepted January 17, 2019 employment injury. As noted above, 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>12</sup> Therefore, these reports are insufficient to establish appellant's claim.

Appellant submitted numerous records from a March 2020 hospitalization, and other medical records produced between late-2019 and mid-2020. However, these reports do not relate to the period of her claimed recurrence of disability. Therefore, these reports are of no probative value and are insufficient to meet appellant's burden of proof.

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<sup>11</sup> See *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *Id.*

Appellant also submitted a March 9, 2021 report of Dr. Barry, an OWCP referral physician. However, Dr. Barry provided an opinion that her accepted January 17, 2019 work-related conditions, *i.e.*, left ankle sprain and tarsal tunnel syndrome, had resolved. Therefore, this report is of no probative value and insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a recurrence of disability, commencing December 2, 2020, causally related to the accepted January 17, 2019 employment injury, the Board finds that appellant has not met her burden of proof to establish a recurrence claim.

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 met her burden of proof to establish a recurrence of disability, commencing December 2, 2020, causally related to her accepted January 17, 2019 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board