

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

_____)	
T.M., Appellant)	
)	
and)	Docket No. 24-0150
)	Issued: April 9, 2024
U.S. POSTAL SERVICE, NORTH ATLANTA- BROOKHAVEN POST OFFICE, Atlanta, GA,)	
Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 8, 2023 appellant, through counsel, filed a timely appeal from a November 27, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability on and after February 11, 2023 causally related to the accepted March 11, 2017 employment injury.

FACTUAL HISTORY

On March 11, 2017 appellant, then a 21-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a right ankle injury when stepping out of her vehicle to deliver a package while in the performance of duty. She stopped work on March 11, 2017. OWCP accepted the claim for right ankle ligament sprain. Appellant returned to full-time sedentary work on May 6, 2017.

By decision dated March 29, 2018, OWCP expanded acceptance of the claim to include right foot medial cuneiform tarsal bone fracture. It authorized right foot bone fusion, which was performed on October 1, 2018. OWCP paid appellant wage-loss compensation for intermittent disability on the supplemental and periodic rolls.

Appellant returned to full-time modified work, with restrictions on August 4, 2022.

On February 9, 2023 David Sanders, a physician assistant, requested that appellant be excused from work duties for the next four weeks to allow her to attend work hardening. He opined that she would return for evaluation in four weeks prior to being released back to work duties.

Mr. Sanders, in a February 9, 2023 clinical encounter report, detailed appellant's examination findings and medical history. Diagnoses included right foot pain and right ankle and localized secondary osteoarthritis of the ankle and/or foot.

On February 24, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period February 11 through 28, 2023.

In a development letter dated March 6, 2023, OWCP notified appellant of the deficiencies of her recurrence claim. It advised her of the type of medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence. No response was received.

By decision dated April 11, 2023, OWCP denied appellant's claim for a recurrence of disability noting that her claim had not been accepted for right ankle and foot osteoarthritis. It found that she had not established disability on or after February 11, 2023 due to material change or worsening of her accepted work-related conditions.

On April 17, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated May 18, 2023, Dr. Paul V. Spiegl, a Board-certified orthopedic surgeon, noted that appellant had been under his care since April 13, 2018 following a May 11, 2017 right

foot employment injury. He detailed her medical history and complaints of lateral ankle and foot pain, right foot instability, and intermittent numbness in her toes and plantar aspect of her forefoot. On examination Dr. Spiegl observed antalgic gait, ankle weakness, and tenderness on palpation over the midfoot posterior to the lateral malleolus, and midfoot swelling. A review of x-ray interpretations revealed right mid-foot osteoarthritis. Dr. Spiegl diagnosed right ankle ligament sprain, right foot tarsal bone fracture, right foot acquired deformities, and right ankle effusion, which he attributed to the accepted March 11, 2017 employment injury. He requested expansion of the acceptance of the claim to include right foot localized osteoarthritis as caused by the accepted March 11, 2017 employment injury. Dr. Spiegl found that appellant was disabled from walking her delivery route. He related that she was capable of working with restrictions of no standing or walking more than 40 minutes per hour, up to 5 minutes per hour of stair climbing, ability to take sedentary breaks, and no lifting/carrying more than 20 pounds.

In a duty status report (Form CA-17) dated May 22, 2023, Dr. Spiegl released appellant to return to work with indefinite restrictions including no walking mail deliveries on May 11, 2023.

In a July 6, 2023 return to work/school form, Kimia Nezevat, a physician assistant, stated that appellant was seen that day and recommended she start a work-hardening program. Ms. Nezevat indicated that appellant would be reevaluated after four weeks of the work-hardening program.

By decision dated July 13, 2023, OWCP expanded acceptance of appellant's claim to include right ankle and foot secondary osteoarthritis.

OWCP subsequently received reports dated May 11 and July 6, 2023 from Ms. Nezevat, who diagnosed ankle and foot secondary osteoarthritis and right ankle sprain. On examination Ms. Nezevat reported a mildly antalgic gait, mild swelling along the dorsal midfoot aspect, and no erythema or warmth.

Dr. Spiegl, in a report dated July 28, 2023, noted appellant's complaints, reviewed diagnostic tests, and provided examination findings. He diagnosed right ankle and foot secondary osteoarthritis, acquired right foot deformity, and right ankle sprain. Dr. Spiegl referred appellant for a functional capacity evaluation (FCE) to assess her work capacity.

A hearing was held before an OWCP hearing representative on September 15, 2023.

By decision dated November 27, 2023, OWCP's hearing representative affirmed the April 11, 2023 decision denying appellant's recurrence claim.

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.³ 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. Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.⁴

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 an 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.⁵

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence for which he or she claims compensation is causally related to the original injury.⁶ This burden of proof requires that a claimant furnish medical evidence from a qualified physician who concludes that the recurrent disability is causally related to employment injury for the period of disability claimed.⁷ The physician's opinion must be based on a complete and accurate factual and medical history and it must be supported by sound medical reasoning.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability on and after February 11, 2023 causally related to the accepted March 11, 2017 employment injury.

In support of her claim for disability commencing February 11, 2023, appellant submitted a report dated May 18, 2023 and a May 22, 2023 Form CA-17 from Dr. Spiegl. In his May 18,

³ 20 C.F.R. § 10.5(x); *S.H.*, Docket No. 21-0987 (issued September 1, 2023); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁴ *R.H.*, Docket No. 21-0717 (issued June 12, 2023); *G.L.*, Docket No. 16-1542 (issued August 25, 2017); *Theresa L. Andrews*, 55 ECAB 719, 722 (2004). See also *Albert C. Brown*, 52 ECAB 152 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *T.P.*, Docket No. 22-1335 (issued June 23, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁶ *S.H.*, *supra* note 3; *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *S.S.*, 59 ECAB 315, 218-19 (2008).

⁷ *Id.*

⁸ *Id.*

⁹ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

2023 report, Dr. Spiegl diagnosed right ankle ligament sprain, right foot tarsal bone fracture, right foot acquired deformities, right ankle effusion, and right foot localized osteoarthritis, which he attributed to the accepted March 11, 2017 employment injury. He opined that appellant was disabled from her date-of-injury position, but could work with restrictions. In a May 22, 2023 Form CA-17, Dr. Spiegl released her to return to work on May 11, 2023 with restrictions. He, however, did not explain with medical rationale how/why appellant's disability was causally related to the accepted March 11, 2017 employment injury.¹⁰ The Board also notes that Dr. Spiegl did not specifically address the period of disability allegedly commencing on February 11, 2023.¹¹ Therefore, this medical evidence is insufficient to establish appellant's recurrence claim.

OWCP also received a report dated July 28, 2023, from Dr. Spiegl in which he diagnosed right ankle ligament sprain, right foot tarsal bone fracture, right foot acquired deformities, right ankle effusion, and right foot localized osteoarthritis and referred appellant for an FCE. Dr. Spiegl, however, offered no opinion as to whether appellant was disabled from work due to the accepted conditions during the claimed period. Therefore, this report is of no probative value and is insufficient to establish appellant's claim for a recurrence of disability.¹²

Appellant also submitted medical evidence from Mr. Sanders, a physician assistant, and Ms. Nezevat, a physician assistant. The Board has held that medical reports signed solely by a physician assistant, nurse practitioner, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.¹³ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is of no probative value and is insufficient to establish appellant's recurrence claim.

As appellant has not submitted rationalized medical evidence establishing a recurrence of disability on or after February 11, 2023 causally related to the accepted March 11, 2017 employment injury, the Board finds that she has not met her burden of proof.

¹⁰ *Supra* note 5.

¹¹ *E.D.*, Docket No. 21-1368 (issued September 7, 2023); *K.B.*, Docket No. 18-0226 (issued August 6, 2018).

¹² *See D.A.*, Docket No. 22-1174 (issued December 7, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see B.A.*, Docket No. 23-0422 (issued November 29, 2023) (a physician assistant is not considered a physician as defined under FECA); *X.M.*, Docket No. 22-0271 (issued February 28, 2023) (physician assistants are not considered physicians as defined under FECA); *S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

Appellant may submit new evidence with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 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 total disability on and after February 11, 2023 causally related to the accepted March 11, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2024
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