United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant **and** **U.S. POSTAL SERVICE, ANACOSTIA STATION, Washington, DC, Employer**	**Docket No. 09-123** **Issued: August 13, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 17, 2008 appellant filed a timely appeal from March 19 and September 22, 2008 decisions of the Office of Workers' Compensation Programs denying his recurrence claim and February 21 and March 19, 2008 decisions denying authorization to change treating physicians. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established that he sustained a recurrence of disability commencing January 4, 2008 causally related to his September 19, 2000 employment injury; and (2) whether the Office properly denied his request for a change of treating physician.

FACTUAL HISTORY

On March 24, 2003 appellant, then a 42-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he reinjured his left ankle on September 19, 2000 at work while delivering mail. In a June 13, 2003 statement, he claimed that he originally broke his

left ankle on June 17, 2000 in a nonwork-related accident. Because appellant was on a last chance agreement he was forced to continue working on his ankle, causing permanent damage. On July 23, 2003 the Office accepted his claim for aggravation of left ankle arthritis.[1]

The record reveals that appellant was out of work intermittently for problems related to his left ankle. On August 9, 2007 he was returned to work by a second opinion physician with a permanent 20-pound weight restriction on pushing, pulling and lifting and a four-hour restriction on walking and standing.

On January 15, 2008 appellant filed a claim for a recurrence of disability (Form CA-2a) commencing January 4, 2008. He claimed that he was taken off his usual assignment and given an assignment with more stress. Appellant stated that his ankle was damaged due to his original injury and that walking and climbing steps too often caused the ankle to weaken. He also alleged that he tripped walking down stairs on his new route. Appellant stopped work on January 10, 2008. The employing establishment stated that it changed his route due to conduct and to relieve a customer.

In an undated letter, appellant requested authorization to change his treating physician from Dr. Kenneth Lippman to Dr. John T. Campbell, a Board-certified orthopedic surgeon. He stated that he was originally authorized to obtain treatment from Dr. Janet Conway, a Board-certified orthopedic surgeon, but she refused to provide treatment. The Office authorized treatment by Dr. Lippman. Appellant contended that Dr. Lippman was unprofessional and unsympathetic. He also stated that he was removed from his regular assignment at the employing establishment and placed on an assignment that had many steps, which caused him to reinjure his ankle. If appellant was not removed from his regular assignment he would not have been injured. He stated that he was currently out on leave and would not return to work until his appointment with Dr. Campbell on February 26, 2008.

By letter dated February 19, 2008, the Office requested that appellant provide additional information regarding the alleged recurrence.

On February 21, 2008 the Office denied appellant's request to change his physician. By letter dated March 5, 2008, it reissued its decision to deny his request to change physicians on the basis that it had previously honored his request to change physicians to Dr. Lippman and that his file demonstrated a pattern of abuse toward his treating physicians.

In a February 22, 2008 medical report, Dr. Lippman, stated that appellant presented for completion of paperwork. Appellant reported that he was currently on sick leave and intended to return to work for light duty the following week. He also stated that his injury related to a September 19, 2000 accident. Physical examination revealed chronic, decreased ankle motion. No soft tissue swelling or localized tenderness was present on lower left leg, foot or ankle. Dr. Lippman opined that appellant presented with a more recent injury that should also be an accepted condition.

[1] By decision dated January 31, 2007, the Office awarded appellant a schedule award for 38 percent impairment to his left lower extremity. It indicated a maximum medical improvement date of November 15, 2006.

By decision dated March 19, 2008, the Office denied appellant's recurrence claim on the grounds that he did not establish a change in the nature and extent of his injury or a change in his light-duty requirements. It also stated that his request to change physicians was denied because he did not provide any evidence to corroborate his allegations that Dr. Lippman demonstrated a lack of professionalism and sympathy.

In a duty status report (Form CA-17) dated February 22, 2008, Dr. Lippman indicated that appellant could return to work on February 22, 2008 per his report. He noted that he did not evaluate appellant for work restrictions.

On September 3, 2008 appellant filed a request for reconsideration. He stated that the Office's basis for denying his claim was incorrect because he was never on light or limited duty and that he was able to carry out his regular assignment, which had little to no stairs and required little walking. On December 7, 2007 appellant was improperly removed from his assignment and assigned to a different route daily. He stated that none of the routes at the employing establishment were light or limited duty. Appellant was assigned to Route 625 in January 2008 and on January 4, 2008 he twisted his ankle while coming down steps on this route. He again requested authorization to change his treating physician on the grounds that Dr. Lippman was unprofessional.

In a duty status report (Form CA-17) dated June 12, 2008, Dr. Campbell indicated that appellant could return to work as of February 27, 2008 and provided work restrictions limiting standing and walking to two hours a day.

In a worksheet dated February 26, 2008, Dr. Campbell indicated that appellant could return to work on February 27, 2008 and provided work restrictions including limiting standing or walking to 20 minutes to an hour, no climbing or walking on uneven surfaces, limiting lifting or carrying to 20 pounds and allowing a five-minute break each hour to elevate foot.[2]

In a report signed on April 15, 2008, Rebecca Cerrato stated that appellant presented for a reevaluation of his left ankle. A magnetic resonance imaging (MRI) scan from his last visit showed an osteochondral lesion along the anteromedial aspect of the talar dome and radiographs showed arthritis. Physical examination revealed loss of range of motion in the ankle and tenderness to palpitation anteriorly across the ankle joint line. Appellant demonstrated soreness in the sinus tarsi and subtalar joint. With weight bearing he had an antalgic gait, but standing he had neutral alignment to both his ankle and hindfoot. A computer axial tomography (CAT) scan showed extensive arthritic changes and some loose body fragments in the anterior aspect of the ankle joint with large spurring of the dorsal tibia. It also showed narrowing and subchondral changes in the medial and lateral gutter and some cystic changes and narrowing of the joint space of the subtalar joint.

By decision dated September 22, 2008, the Office denied modification of the March 19, 2008 decision, finding that appellant did not submit sufficient medical evidence to establish that

[2] Appellant also submitted another worksheet dated February 26, 2008 purporting to be signed by Dr. Campbell and containing different work restrictions. This signature does not match other medical documents signed by the doctor.

his disability on January 4, 2008 was related to the September 19, 2000 employment injury. It noted that appellant did not alleged that he was on light or limited duty at the time of the alleged recurrence and the Office did not receive a light-duty job offer based on the August 3, 2007 second opinion report prior to his return to work.

LEGAL PRECEDENT -- ISSUE 1

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[3] This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."[4] A person 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 claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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 supports that conclusion with sound medical reasoning.[5] Where no such rationale is present, medical evidence is of diminished probative value.[6]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained an aggravation of left ankle arthritis on September 19, 2000 due to his employment factors. The issue is whether appellant established that he sustained a recurrence of disability on January 4, 2008 causally related to this employment injury.

Appellant alleged that he reinjured his left ankle after he was assigned a new route with more stress and that required climbing stairs. He also claimed that he tripped while walking down stairs. Here, appellant alleged that his current condition is related to new work factors and a new incident rather than a spontaneous change in his work-related condition.[7] That he sustained a new injury is supported by Dr. Lippman's February 22, 2008 medical report, wherein he stated that appellant presented with a more recent ankle injury that should also be an accepted condition. As Dr. Lippman attributed appellant's current condition to a newer injury rather than

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[3] *R.S.*, 58 ECAB ___ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

[4] *J.F.,* 58 ECAB ___ (Docket No. 06-186, issued October 17, 2006); *Elaine Sneed*, 56 ECAB 373, 379 (2005); 20 C.F.R. § 10.5(x).

[5] *I.J.,* 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008)*; Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[6] *See Ronald C. Hand,* 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[7] *See Cecelia M. Corely*, 56 ECAB 662 (2005).

a spontaneous change of the prior work injury, the Board finds that appellant's claim does not meet the definition of a recurrence of disability.[8]

Further, the Board finds that the medical evidence is insufficient to establish that appellant sustained a recurrence of disability. In a February 26, 2008 worksheet and a June 12, 2008 duty status report, Dr. Campbell indicated that appellant could return to work as of February 27, 2008 and indicated work restrictions. He did not provide any details describing the cause of the current injury or how appellant's disability related to the September 19, 2000 employment injury. Therefore, these reports are of diminished probative value.[9] Further, Dr. Lippman, in a duty status report, opined that appellant could return to work on February 22, 2008. He stated that he did not evaluate appellant for work restrictions. This report does not support appellant's claim that he was totally disabled due to his September 19, 2000 employment injury. Finally, appellant submitted an April 15, 2008 medical report signed by Ms. Cerrato. Because there is no indication that Ms. Cerrato is a physician within the meaning of the Federal Employees' Compensation Act, this report is of diminished probative value.[10] Thus, the Board finds that the medical evidence is insufficient to establish that appellant sustained a recurrence of disability due to a change in his work-related condition.[11]

The Board notes that appellant did not allege a change in his light or limited-duty requirements. Appellant specifically stated that he was not on light duty at the time of the alleged recurrence and that none of the routes at the employing establishment were light or limited duty. Moreover, the employing establishment stated that he was removed from his regular route due to misconduct, which would preclude a claim for a recurrence of disability based on a withdrawal of light duty.[12] Therefore, the Board finds that appellant did not sustain a recurrence of disability due to a change in his light-duty requirements.

LEGAL PRECEDENT -- ISSUE 2

The payment of medical expenses incident to securing medical care is provided for under section 8103 of the Act.[13] The pertinent part provides that an employee may initially select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instruction as the Secretary considers necessary. Further, section 10.316(a) of the Office's federal regulations provides that an employee only has an initial choice of physicians and thereafter must submit a written request to the Office containing his or her

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[8] *See Bryant F. Blackmon*, 56 ECAB 752 (2005).

[9] *See Donald T. Pippin*, 54 ECAB 631 (2003).

[10] Under section 8101(2) of the Act, the definition of 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).

[11] *See Mary A. Ceglia*, 55 ECAB 626 (2004).

[12] To support a claim for a recurrence, a withdrawal of light duty must have occurred for reasons other than misconduct or nonperformance of job duties. *Jackie D. West*, 54 ECAB 158 (2002).

[13] 5 U.S.C. § 8103.

reasons for desiring a change of physician.[14] Section 10.316(b) provides that the Office will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating a condition like the work-related one or the need for a new physician when an employee has moved.[15]

In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.[16] The Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office's authority is that of reasonableness.[17]

ANALYSIS -- ISSUE 2

In the instant case, appellant submitted a written request to change physicians from Dr. Lippman to Dr. Campbell. However, his dislike of Dr. Lippman is not a sufficient reason for the Office to determine that a change of physician is warranted. Appellant failed to submit evidence that treatment by Dr. Lippman was unprofessional or provided inadequate treatment, allegations which he lodged against the doctor to support a change in treating physicians. Accordingly, he has not demonstrated that the Office's decision to deny the change in physicians was unreasonable. The Board finds that appellant failed to establish that it abused its discretion by refusing to authorize a change of physicians on the basis of inadequate treatment or improper care.[18] Thus, the Board further finds that the Office acted reasonably in determining that a change in physicians was not necessary to treat appellant's accepted condition.

CONCLUSION

The Board finds that appellant did not establish that he sustained a recurrence of disability commencing January 4, 2008 causally related to his September 19, 2000 employment injury. The Board also finds that the Office properly denied appellant's request for a change of physician.

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[14] 20 C.F.R. § 10.316(a). *See Billy W. Forbess*, 45 ECAB 742 (where the Board held that the Office should have employed a reasonable and necessary standard in determining whether a change of physician should be authorized when appellant did not obtain authorization prior to changing physicians). *See also Elizabeth J. Davis-Wright*, 39 ECAB 1232 (1988).

[15] 20 C.F.R. § 10.316.

[16] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[17] *Id.*

[18] *See C.N.*, 57 ECAB 730 (2006).

ORDER

IT IS HEREBY ORDERED THAT the September 22, March 19 and February 21, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 13, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board