

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

ROBERT T. BUSH, Appellant

and

**FEDERAL EMERGENCY MANAGEMENT
AGENCY, Brevard County, FL, Employer**

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Docket No. 05-1379

Issued: September 8, 2005

Appearances:

Robert T. Bush, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 14, 2005 appellant filed a timely appeal from a May 4, 2005 merit decision of the Office of Workers' Compensation Programs, denying his claim for wage-loss compensation for total disability during the period January 9 through 21, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he is entitled to wage-loss compensation for total disability during the period January 9 through 21, 2005 due to his November 12, 2004 employment injuries.

FACTUAL HISTORY

On November 18, 2004 appellant, then a 43-year-old temporary employee, filed a traumatic injury claim alleging that on November 12, 2004 he hurt his left ankle and Achilles tendon when he twisted his left ankle while in the performance of his work duties. Appellant stopped work on the date of injury. By letter dated January 21, 2005, the Office accepted his claim for left ankle sprain and left Achilles tendinitis.

On January 28, 2005 appellant submitted a January 7, 2005 medical report of Dr. Stephen K. Badolato, a treating Board-certified family practitioner, who found that he sustained a work-related injury and could return to his regular job duties with physical restrictions pertaining to his left ankle. He also submitted Dr. Badolato's January 21, 2005 report which reiterated that appellant sustained a work-related injury. Dr. Badolato found that appellant could return to his regular job duties without any physical restrictions and that he had reached maximum medical improvement on January 21, 2005. Treatment notes dated January 21, 2005 indicated that appellant's left ankle sprain had resolved. An unsigned report dated January 6, 2005 from Dr. Douglas M. Gordon, a Board-certified radiologist, noted a magnetic resonance imaging (MRI) scan of appellant's left ankle revealed focal thickening of the mid to distal Achilles tendon, probably reflecting focal tendinitis without evidence of a complete tear of the tendon. Diffuse mild edema about the medial and lateral aspects of the ankle were noted, without evidence of an underlying medial or lateral ligamentous or tendinous injury and minimal tenosynovitis involving the posterior tibial tendon.

On March 14, 2005 appellant filed a claim for compensation (Form CA-7) dated January 22, 2005 alleging total disability from January 9 through 21, 2005. On the reverse of the claim form, the employing establishment indicated that following the November 12, 2004 employment injury, appellant returned to his regular work duties and that he missed some days due to the accepted work-related injury.

By letter dated April 5, 2005, the Office advised appellant that he needed to submit medical evidence establishing that he was totally disabled for work during the claimed period. The Office advised that it had requested that the employing establishment submit additional information regarding the amount of time he worked and the leave he used during the claimed period.

In response, appellant submitted duplicate copies of Dr. Badolato's medical reports.

By decision dated May 4, 2005, the Office denied appellant's claim for compensation for the period January 9 through 21, 2005. The Office noted that it was advised by the employing establishment that appellant had been terminated because his temporary assignment expired on January 8, 2005. The Office found that appellant's work stoppage was due to being terminated by the employing establishment on January 8, 2005 because his temporary assignment expired on that date.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,¹ the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.² Disability is, thus, not synonymous with physical impairment which may

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

or may not result in an incapacity to earn wages.³ An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.⁴ A reduction-in-force or termination of employment following a temporary appointment does not, of itself, rise to a compensable disability.⁵ When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁶

To meet this burden appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

ANALYSIS

The Office accepted appellant's claim for left ankle sprain and left Achilles tendinitis. Appellant subsequently alleged that he was totally disabled from January 9 through 21, 2005. The employing establishment advised the Office that appellant's temporary appointment expired on January 8, 2005. The Board finds that appellant did not stop work on January 8, 2005 due to residuals of his November 12, 2004 employment injuries which prevented him from continuing in his employment beyond that date. Rather, he stopped work because his temporary appointment expired. Appellant has not submitted any medical evidence establishing that his accepted employment injuries worsened to the point that he could no longer perform his regular work duties that he had performed prior to January 8, 2005.

Dr. Badolato's reports found that appellant sustained a work-related injury. On January 7, 2005 Dr. Badolato opined that appellant could return to his regular job duties with

³ See *Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages and not upon physical impairment as such).

⁴ See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

⁵ See *Brenda L. Frazier*, Docket No. 00-660 (issued February 6, 2001); *Jerome R. Wise*, Docket No. 93-2112 (issued January 10, 1995).

⁶ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

physical restrictions related to his left ankle. On January 21, 2005 he opined that appellant could return to his regular job duties without any physical restrictions. The Board finds that Dr. Badolato's reports are insufficient to establish appellant's claim because he did not address why appellant was totally disabled from performing his regular work duties during the claimed period due to residuals of the November 12, 2004 employment injury.

The unsigned treatment notes and unsigned MRI scan report are insufficient to establish appellant's claim because they lack proper identification and do not constitute probative medical evidence sufficient to establish appellant's burden of proof.

The Board finds that the record in this case fails to establish that it was the residuals of appellant's November 12, 2004 employment-related left ankle sprain and left Achilles tendinitis that prevented him from continuing in his employment beyond January 8, 2005. Therefore, he is not entitled to compensation for total disability during the period January 9 through 21, 2005.

CONCLUSION

The Board finds that appellant has failed to establish that he is entitled to wage-loss compensation for total disability during the period January 9 through 21, 2005 due to his November 12, 2004 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board