

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

D.J., Appellant

and

U.S. POSTAL SERVICE, Newark, NJ, Employer

)
)
)
)
)
)
)

**Docket No. 08-1066
Issued: November 12, 2008**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 20, 2007 which denied payment of compensation benefits for wage-loss and medical benefits due to his accepted injury. He also filed a timely appeal from the September 26, 2007 Branch of Hearings and Review's decision which affirmed the prior decision and found that appellant had not established that any additional conditions were related to his employment injury. 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 met his burden of proof in establishing that he was entitled to compensation for temporary total disability for any time period after April 20, 2006; (2) whether he sustained an injury consequential to his accepted employment injury; and (3) whether the Office properly terminated appellant's medical benefits.

FACTUAL HISTORY

On April 20, 2006 appellant, then a 52-year-old mail handler, filed a traumatic injury claim alleging that on the same date he injured his right foot, calf and second toe from the left when a postal container knocked him off his feet. He returned to work on April 21, 2006. Due to pending administrative actions, appellant was placed on administrative leave as of April 21, 2006 and he was removed from the employing establishment as of June 2, 2006.

On May 9, 2006 the Office accepted appellant's claim for a contusion of the right lower leg.

Subsequent to the acceptance of the claim, additional medical evidence was received. In a July 12, 2006 letter, Dr. Mark Filippone, Board-certified in physical medical and rehabilitation, reported the findings of his physical examination of appellant on the same date. He stated that July 12, 2006 was his first examination of appellant. Dr. Filippone reported that appellant went to the emergency room on the date of his employment injury, April 20, 2006, and returned to work the next day, April 21, 2006 only to be sent home "pending removal." He noted that appellant complained of soreness in the right calf and an increase in lower back pain due to the injury. Dr. Filippone found appellant to be status post trauma to the right lower extremity, as a direct result of the employment injury on April 20, 2006 and exacerbation of a previous lower back derangement. He also opined that appellant was temporarily totally disabled. In a July 12, 2006 physician's form report, Dr. Filippone diagnosed a contusion of the right foreleg, lumbosacral radiculopathy, reflex sympathetic disorder. He also checked the "yes" box to indicate that the condition was caused or aggravated by an employment activity. Dr. Filippone found that appellant was totally disabled from April 20, 2006 to present and continuous.

A July 26, 2006 magnetic resonance imaging (MRI) scan report of the right foot revealed mild hypertrophic changes at the level of the forefoot, mildly increased signal along the course of the second metatarsal which represented a bone contusion or related to inflammatory changes, no evidence of an acute fracture or dislocation.

Additional reports from Dr. Filippone were received. In an August 11, 2006 letter, Dr. Filippone stated that he had again examined appellant who complained of pain in the foot. He stated that appellant continued to be totally disabled. In an October 3, 2006 letter, Dr. Filippone reported that he performed motor and sensory nerve conduction studies which were normal. He also performed a needle EMG examination which had abnormal results EMG/NCS studies of both lower extremities. Appellant complained of burning pain in his right forefoot. On October 11, 2006 he filed a claim for leave without pay from October 4 through 11, 2006. The employing establishment noted that appellant was terminated on June 2, 2006 for administrative reasons.

On October 27, 2006 the Office informed appellant that he was being sent for a second opinion examination.

In an October 27, 2006 letter, the Office provided questions for the second opinion specialist specifically whether the accepted condition was resolved, whether appellant had a current disability due to the employment injury and whether appellant had reached maximum

medical improvement. It noted that the only accepted condition was a contusion, that Dr. Filippone's EMG showed lumbosacral radiculopathy but it was not viewed as causally related to the work injury.

Appellant's examination was held on December 16, 2006 with Dr. David I. Rubinfeld, Board-certified in orthopedic surgery. In a December 16, 2006 report, Dr. Rubinfeld reviewed the medical and factual history and reported the findings of appellant's physical examination. He noted that there was a decrease in sensation of the second toe, which was slightly enlarged. Dr. Rubinfeld found that the contusion of the leg had resolved and there was no current disability, that appellant reached maximum medical improvement and provided no work restrictions. In a December 17, 2006 work capacity evaluation, Dr. Rubinfeld diagnosed a contusion of the lower right leg which had reached maximum medical improvement and opined that appellant was capable of performing his usual job.

In a January 8, 2007 report, Dr. Teofilo A. Dauharje, Board-certified in orthopedic surgery, stated that he evaluated appellant on January 4, 2007. He related that appellant reported being struck in the right leg and foot by a Jeep tow rotor on April 12, 2006 and that he had injured the second toe on his right foot. Dr. Dauharje also noted the employment incident on April 20, 2006. Appellant informed him that he was thereafter dismissed from work. Dr. Dauharje further noted that appellant complained of a burning pain in the second toe of his right foot and that his right foot pain was aggravated by ambulation. Upon physical examination, he found hammertoe deformities of the second through fifth toes with dorsal callosities of the PIP joints of the same. Dr. Dauharje diagnosed contusion to the right foot and nonspecific injury to the right second toes. In a January 23, 2007 report, he reviewed x-rays of the right foot taken on January 18, 2007 which revealed some degenerative changes of the tarsometatarsal joints. Dr. Dauharje diagnosed contusion to the right foot and nonspecific injury to the right second toe and recommended a nuclear bone scan to rule out any evidence.

In a January 16, 2007 report, Dr. Filippone noted that on that date he examined appellant who complained of a burning pain in the right toes. In a January 16, 2007 attending physician's report, he found abnormal peripheral neuro examination and EMG/NCS and diagnosed contusion of the lower leg and lumbosacral radiculopathy. Dr. Filippone also opined that appellant was totally disabled.

A February 7, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine revealed central subligamentous disc herniation at L5-S1 moderately impressing on the anterior thecal sac, mild disc desiccation.

Starting on February 12, 2007 appellant filed a claim for leave without pay from January 20 to March 16, 2007.

On February 15, 2007 the Office requested additional information from appellant regarding his claims for lost wages beginning on October 4, 2006 noting that appellant was terminated from his employing establishment on June 2, 2006.

In a March 1, 2007 report, Dr. Filippone stated that he examined appellant and opined that he was totally disabled. He also noted that appellant complained of pain in the second right

metatarsal and low back pain. In a March 1, 2007 physician's report, Dr. Filippone found abnormal peripheral neuro examination and EMG/NCS, and diagnosed contusion of the lower leg and lumbosacral radiculopathy.

On March 5, 2007 Dr. Dauhajre evaluated appellant who complained of burning pain in the second toe of the right foot. He also noted that the bone scan of the right foot on February 23, 2007 revealed that the findings may be due to arthritis or something degenerative in nature with a small possibility of an infection. Dr. Dauhajre recommended an MRI scan of the right foot to rule out osteomyelitis.

In a March 20, 2007 decision, the Office denied appellant's claim for compensation for the dates subsequent to April 20, 2006 finding that the medical evidence did not establish that appellant was disabled due to the April 20, 2006 injury. It also found that appellant's medical benefits were denied as the record failed to establish that he was disabled due to the employment injury.

On March 28, 2007 appellant, through his representative, requested an oral hearing.

Additional medical evidence was received. In a May 3, 2007 report, Dr. Filippone examined appellant and found him to be "clinically giving evidence" of reflex sympathetic dystrophy of the right lower extremity. He disagreed with Dr. Rubinfeld's opinion that appellant's condition had resolved. In a May 15, 2007 narrative report, Dr. Filippone related appellant's employment injury, and his previous examinations. He felt that Dr. Rubinfeld was ignoring the evidence of reflex sympathetic dystrophy, specifically the abnormal findings and appellant's complaints. Dr. Filippone disagreed with Dr. Rubinfeld's opinion and opined that appellant's gait remained antalgic to the right foot and that further treatment was needed. He opined that appellant was totally disabled due to the April 20, 2006 injury. In a June 7, 2007 letter, Dr. Filippone opined that appellant was still temporarily totally disabled. He evaluated appellant on July 17, 2007 and found him to have pain on palpation of the base of the right second toe and to be totally disabled. On August 16, 2007 Dr. Filippone again examined appellant and found him to remain totally disabled with pain in the right second toe. He noted that appellant was unable to walk up on the right toes because of the localized pain and therefore walked on his right heel.

A hearing was held on July 17, 2007 before the Branch of Hearings and Review. In a September 26, 2007 decision, the Branch of Hearings and Review affirmed the previous decision and further found that there was no medical evidence to establish that appellant's lumbar condition was causally related to his accepted work injury.

LEGAL PRECEDENT -- ISSUE 1

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.¹ As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that

¹ William A. Archer, 55 ECAB 674 (2004).

the employee was receiving at the time of injury.² Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages.³ Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁴ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁵

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for contusion to the right lower leg as a result of the April 20, 2006 employment incident when a postal container struck him. Appellant returned to work on April 21, 2006 but was sent home on administrative leave. On June 2, 2006 he was terminated for administrative reasons.

Appellant filed claims for wage-loss compensation for the time periods through March 16, 2007. He bears the burden to establish through medical evidence that he was disabled and could not physically perform his date-of-injury job. Appellant submitted reports from Dr. Filippone and Dr. Duaharje.

In multiple reports, Dr. Filippone opined that appellant was totally disabled as of the date of the injury, April 20, 2006, and continuing due to his employment injury however Dr. Filippone never provided any medical rationale to support his conclusions. The only accepted condition in this case was contusion of the right leg. Appellant sustained this injury on April 20, 2006 and returned to work on April 21, 2006, but was placed on administrative leave that same day. Dr. Filippone never offered any physiological explanation of why the right leg contusion would preclude appellant from performing his employment duties. A mere conclusion without medical rationale explaining why the physician believes that appellant was totally disabled due to his accepted injury is not sufficient to meet appellant's burden of proof. The medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.⁶ No medical rationale was provided to explain the cause of appellant's alleged disability.

Dr. Dauhajre evaluated appellant but never opined that he was totally disabled. Medical evidence which does not offer any opinion addressing the issue at hand, whether appellant was totally disabled during the claimed time periods due to his employment injury, are of no

² *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

³ *See Fred Foster*, 1 ECAB 21 (1947).

⁴ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also Edward H. Horton*, 41 ECAB 301 (1989).

⁵ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *William A. Archer*, *supra* note 1; *Fereidoon Kharabi*, *supra* note 4.

⁶ *Beverly A. Spencer*, 55 ECAB 501 (2004).

probative value. The medical evidence does not support that appellant was totally disabled during the claimed time periods.

Furthermore, the Office's second opinion physician, Dr. Rubinfeld, conducted a thorough examination on December 16, 2006 and found that appellant's accepted condition of right leg contusion had resolved and that appellant was not disabled.

The Board finds that appellant has not met his burden to establish that he was disabled due to his accepted condition for any time period following April 20, 2006.

LEGAL PRECEDENT -- ISSUE 2

The Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁷ It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.⁸ A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.⁹

ANALYSIS -- ISSUE 2

During the hearing held before the Branch of Hearings and Review on July 17, 2007, appellant alleged that he had other medical conditions which developed as a result of the accepted April 20, 2006 injury. Appellant bears the burden to establish that his claim for consequential injuries, lumbosacral radiculopathy, reflex sympathetic disorder, *second right toe condition*, are due to his accepted injuries of contusion of the right lower leg. As part of this burden, appellant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship between the claimed consequential injuries and the accepted injuries.¹⁰

The medical evidence is insufficient to establish that appellant sustained a consequential injury. In a July 12, 2006 physician's report, Dr. Filippone diagnosed lumbosacral radiculopathy and reflex sympathetic disorder however he never explained how these conditions were related to appellant's accepted employment injury except to check the "yes" box indicating that the condition was caused by an employment activity. The Board has held that merely checking a box "yes" without additional explanation or rationale, is not sufficient to establish causal relationship between appellant's employment and the diagnosed condition.¹¹ In a January 16,

⁷ 5 U.S.C. § 8102(a).

⁸ *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

⁹ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

¹⁰ *Charles W. Downey*, 54 ECAB 421 (2003).

¹¹ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

2007 physician's report, Dr. Filippone again diagnosed lumbosacral radiculopathy but provided no medical rationale to support his conclusion that the condition was related to appellant's employment injury. His reports are of no probative value as they do not provide the requisite medical rationale to support causal relationship between the employment incident or accepted condition and the consequential injuries.¹² A February 7, 2007 MRI scan of the lumbar spine revealed a disc herniation at L5-S1 but did not contain an opinion as to the cause of this condition.

As appellant failed to submit sufficient probative medical evidence to establish that his alleged conditions of lumbosacral radiculopathy, reflex sympathetic disorder, and second right toe condition were a consequence of his accepted employment injury, he has failed to establish the requisite causal relationship and the Office properly denied his claim.

LEGAL PRECEDENT -- ISSUE 3

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.¹³

ANALYSIS -- ISSUE 3

In the March 20, 2007 decision, the Office denied all claims for medical benefits subsequent to the date of the injury, April 20, 2006. However there is no medical evidence to support the Office's conclusion that appellant's condition resolved the same day of the employment injury. Although the medical evidence does suggest that, as of December 16, 2006, the date of appellant's examination with Dr. Rubinfeld, his accepted employment injury had resolved.

The Office accepted that appellant sustained a contusion of the right lower leg on April 20, 2006. In order to terminate appellant's medical benefits the Office must furnish medical opinion evidence to establish that his accepted condition had resolved. No such evidence was provided. As there is no medical evidence to prove that appellant's condition resolved on the day of the incident, the Board finds that the Office improperly terminated appellant's medical benefits as of April 20, 2006.

CONCLUSION

The Board finds that appellant failed to meet his burden to establish that he was disabled for any time period after April 20, 2006 and to establish that he sustained an injury consequential to his accepted employment injury. The Board finds that the Office did not properly terminate appellant's medical benefits for the accepted condition of right leg contusion.

¹² A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship that is unsupported by medical rationale. *Robert Winchester*, 54 ECAB 191 (2002).

¹³ *T.P.*, 58 ECAB ____ (Docket No. 07-60, issued May 10, 2007).

ORDER

IT IS HEREBY ORDERED THAT the September 26 and March 20, 2007 decisions of the Office of Workers' Compensation Programs are affirmed in part and reversed in part.

Issued: November 12, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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