

This is the second appeal in this case. On September 24, 2009 the Board reversed a hearing representative's July 28, 2008 decision affirming a March 3, 2008 wage-earning capacity

decision.<sup>1</sup> The Board found the Office failed to establish that appellant was capable of performing the duties of the selected position full time. The facts of the case as set forth in the prior decision are incorporated by reference.

On October 3, 2005 the Office received a September 19, 2005 note for September 8, 2005 from Dr. Roger A. Fontes, a treating Board-certified orthopedic surgeon, who requested that appellant be excused from work on September 8, 2005. Dr. Fontes advised that appellant was being treated for left lower limb reflex sympathetic dystrophy. Appellant also submitted an undated hospital note excusing him from work on September 4, 2005.

On October 4, 2005 the Office received appellant's September 16, 2005 claim for wage-loss compensation for intermittent disability between September 4 and 8, 2005 and an attached time analysis form. Appellant noted that she used 8 hours of leave on September 4, 2005, 2.25 hours of leave on September 5, 2005 and 7 hours of leave on September 8, 2008, or a total of 17.25 hours. She noted the leave used was due to her ankle.

By letter dated October 5, 2005, the Office informed appellant that the medical evidence submitted was insufficient to support her claim for intermittent wage-loss compensation. Appellant was advised as to the medical evidence required to support her claim.

In a July 23, 2008 decision, the Office denied appellant's claim for 17.25 hours of intermittent wage loss for the period September 4 to 8, 2005.

On July 28, 2008 appellant's counsel requested a telephonic hearing before an Office hearing representative, which was held on November 10, 2008. Appellant testified that she went to the hospital on September 4, 2005 as a result of the walking and stair climbing involved in her work. Subsequent to the hearing, she submitted additional medical and factual evidence.

By decision dated January 28, 2009, the Office hearing representative affirmed the denial of her claim for 17.25 hours of intermittent wage loss from September 4 to 8, 2005.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of her claim by the weight of the evidence.<sup>3</sup> For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.<sup>4</sup> Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical

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<sup>1</sup> Docket No. 08-2296 (issued September 24, 2009). On June 16, 2004 appellant, then a 44-year-old transportation security screener, twisted her left ankle while retrieving a bag from the rollers. The Office accepted her claim for left ankle tibiofibular strain and chronic left posterior tibial tendinitis.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>4</sup> See *Amelia S. Jefferson*, *supra* note 3; see also *David H. Goss*, 32 ECAB 24 (1980).

issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>5</sup>

Under the Act the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>7</sup> An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>8</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

A claimant 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).<sup>9</sup> 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.<sup>10</sup>

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>11</sup>

### ANALYSIS

The Office accepted appellant’s claim for left ankle tibiofibular strain and chronic left posterior tibial tendinitis. She has the burden of establishing by the weight of substantial, reliable and probative medical evidence a causal relationship between her claimed intermittent disability for 17.25 hours from September 4 to 8, 2005.

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<sup>5</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>6</sup> *S.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-536, issued November 24, 2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

<sup>7</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>8</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>9</sup> *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006).

<sup>10</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>11</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

Appellant submitted medical excuses for September 5 and 8, 2005, leave requests, time analysis forms and a claim for wage-loss compensation. To support wage loss, appellant must submit documentation from a doctor containing medical rationale based on a complete factual and medical history showing treatment or an appointment on the dates in question for the accepted condition and that such treatment was for the effects of the employment-related injury. As noted, the Board does not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the period of disability for which disability is claimed.

Appellant has not submitted medical evidence sufficient to establish her disability for the period claimed. Dr. Fonte requested that appellant be excused from work on September 8, 2005 and the Summerlin Hospital note stated that appellant was disabled from working on September 4, 2005. This evidence is not sufficient in that they do not relate appellant's inability to work on these dates to the accepted left ankle condition. Dr. Fonte did not provide a rationalized medical opinion addressing how appellant's accepted injury caused disability for the hours claimed. The Board has held that medical conclusions unsupported by rationale are of little probative value.<sup>12</sup> Accordingly, appellant has not established that she is entitled to wage-loss compensation.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she was disabled for 17.25 hours from September 4 to 8, 2005 causally related to her accepted left ankle condition.

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<sup>12</sup> *Willa M. Frazier*, 55 ECAB 379 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 28, 2009 is affirmed.

Issued: December 15, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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