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G.L., Appellant)	
)	
and)	Docket No. 08-1723
)	Issued: January 6, 2009
U.S. POSTAL SERVICE, VIENNA POST)	
OFFICE, Vienna, VA, Employer)	
)	

Case Submitted on the Record

DECISION AND ORDER

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

On June 3, 2008 appellant, through counsel, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 6, 2008 denying his claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

The issue is whether appellant has established that he was disabled for the period January 5 to April 7, 2007 causally related to his accepted employment injury. On appeal his counsel contends the denial was erroneous as the evidence established that appellant sustained a new foot injury on January 5, 2007 due to his working outside his restrictions.

On July 13, 2006 appellant, then a 51-year-old part-time flexible carrier, filed an occupational disease claim alleging that on November 17, 2005 he first realized that his bilateral

foot condition was employment related. The Office accepted his claim for aggravation of gout in the right foot on August 29, 2006.

On April 10, 11 and 16, 2007 appellant filed claims for wage-loss compensation for the period January 5 to April 7, 2007. He also provided time-analysis sheets for the period January 5 to April 7, 2007. The reason given by appellant for using leave without pay for this period was “foot injury.”

Appellant submitted verification of treatment forms from Allan Korff, a nurse practitioner, dated January 16, 2007; Dr. Ethiopia Abebe, a treating Board-certified internist, dated April 4, 2007; Brigid Wiredu, a nurse practitioner, dated January 10, 2007; and Dr. Hien T. Nguyen, a treating Board-certified internist, dated January 5, 2007. These notes indicated repeated periods of illness and returns to light-duty work during this time. Appellant also submitted an unsigned verification of treatment form dated February 22, 2007 which stated that appellant had been unable to work due to illness for the period February 21 to 25, 2007 and that he sought medical treatment on February 22, 2007. In a verification of treatment form dated January 5, 2007, Dr. Nguyen indicated that appellant received medical treatment and was totally disabled for the period January 5 to 7, 2007. In a January 10, 2007 verification of treatment form, Ms. Wiredu indicated that appellant received medical treatment, was totally disabled for the period January 9 to 16, 2007 and may resume work on January 17, 2007. In a January 16, 2007 verification of treatment form, Mr. Korff indicated that appellant was totally disabled for the period January 9 to 28, 2007 and may resume work with restrictions on walking on January 29, 2007. In an April 4, 2007 verification of treatment form, Dr. Abebe indicated that appellant received medical treatment and was totally disabled for the period March 31 to April 6, 2007 and may resume work on April 8, 2007.

Appellant also submitted after visit summary reports dated April 4 and 5, 2007 and duty status reports (Form CA-17) dated February 22 and April 2, 2007 from Dr. Abebe, an after visit summary report from Mr. Korff dated January 16, 2007 and an after visit summary report from Ms. Wiredu dated January 10, 2007 and Dr. Nguyen dated January 5, 2007. Dr. Nguyen, in a January 5, 2007 after visit summary report, diagnosed toe pain and instructed appellant to stay off his feet. In a January 10, 2007 after visit summary report, Ms. Wiredu diagnosed hypertension and foot pain and advised rest. Mr. Korff, in a January 16, 2007 after visit summary report, diagnosed arthritis of the foot or ankle and recommended putting ice on appellant’s right big toe. In an April 4, 2007 after visit summary, Dr. Abebe diagnosed toe pain and gouty arthropathy. He recommended elevating the leg and avoiding prolonged walking which would aggravate the condition. Dr. Abebe, in another visit summary, diagnosed toe pain and elevated blood pressure and recommended avoiding strenuous activity involving the right big toe. In the duty status reports dated February 22 and April 2, 2007, he diagnosed right big toe pain and indicated that appellant was able to work full time with restrictions.

By letter dated April 25, 2007, the Office informed appellant that the medical evidence received was insufficient to support his claim. Appellant was advised as to the type of medical evidence required to support his claim.

By decision dated May 25, 2007, the Office denied appellant’s claim for wage-loss compensation for the period January 5 to April 7, 2007.

Subsequent to the denial of his claim, appellant submitted an April 6, 2007 employing establishment form report by Dr. Abebe and medical evidence pertaining to treatment and disability for periods following April 7, 2007. Dr. Abebe, in the April 6, 2007 report, diagnosed right big toe pain and that he was unable to determine appellant's recovery date.

In a letter dated June 8, 2007, appellant's counsel requested an oral hearing before an Office hearing representative, which was held on September 18, 2007.

By decision dated October 15, 2007, the Office hearing representative affirmed the denial of appellant's claim for wage-loss compensation for the period January 5 to April 7, 2007.

Following the hearing representative's decision, the Office received letters dated October 22, 2007 from appellant's attorney and medical evidence previously submitted and not pertaining to the period of disability in question. In the October 22, 2007 letter, appellant's attorney contended that the denial of appellant's claim was erroneous as appellant sustained a new foot injury on January 5, 2007 and that the employing establishment violated appellant's light-duty work restrictions.

In a letter dated December 14, 2007, appellant's attorney requested reconsideration. He contended that the medical evidence submitted with his October 22, 2007 letter established that appellant was working outside his restrictions.

In its March 6, 2008 decision, the Office denied modification of the October 15, 2007 hearing representative's decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.¹ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.² Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.³ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁴

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

¹ See *S.F.*, 59 ECAB ____ (Docket No. 08-426, issued July 16, 2008); *Prince E. Wallace*, 52 ECAB 357 (2001).

² *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

³ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Manuel Garcia*, 37 ECAB 767 (1986).

claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.⁵

ANALYSIS

Appellant's claim was accepted for aggravation of gout in the right foot causally related to factors of his federal employment. He must establish that the aggravation of the gout in his right foot caused him to be disabled from work for the period January 5 to April 7, 2007.⁶

Initially, the Board notes that appellant's argument that he established his claim based on his sustaining a new injury on January 5, 2007 due to his working outside is restrictions is not relevant to the issue at hand, *i.e.*, whether appellant established that his disability was due to his accepted employment injury of aggravation of his right foot gout. If appellant is claiming a foot condition due to allegedly working outside his restrictions, this would be a claim for a new injury.

In support of his claim for disability for the period January 5 to April 7, 2007 resulting from the accepted employment aggravation of his right foot gout, appellant provided several verification of treatment forms dating January 10 and 16, 2007 and after visit summary reports from nurse practitioners. However, these reports do not constitute medical evidence and are insufficient to establish his disability for work as they were not authored by physicians. Section 8101(2) of the Act provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law.⁷ Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses,⁸ acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions carry no weight or probative value.⁹

The record also contains verification of treatment forms by Drs. Abebe and Nyugen. The Board finds that this medical evidence is insufficient to support his claim for disability for the period January 5 to April 7, 2007. The verification of treatment forms indicated repeated periods of illness and returns to light-duty work during this time period. The Board finds that these reports are insufficient to establish appellant's claim for disability for the period January 5 to April 7, 2007. None of these form reports contain any physical findings although they noted appellant received medical treatment for this toe or foot condition. Neither Dr. Abebe nor Dr. Nyugen provided any specific opinion on causal relationship between the claimed period of disability and the accepted employment condition of aggravation of his right foot gout. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of

⁵ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

⁷ 5 U.S.C. § 8101(2)

⁸ *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007).

⁹ *Id.*

limited probative value on the issue of causal relationship.¹⁰ Thus, these form reports by Drs. Abebe and Nyugen are insufficient to establish that appellant was totally disabled for the period January 5 to April 7, 2007 due to his accepted employment injury.

Similarly, the after visit summary reports by Drs. Abebe and Dr. Nguyen are insufficient to support appellant's burden. Dr. Nguyen, in a January 5, 2007 after visit summary report, diagnosed toe pain and instructed appellant to stay off his feet. In an April 4, 2007 after visit summary, Dr. Abebe diagnosed toe pain and gouty arthropathy. He recommended elevating the leg and avoiding prolonged walking which would aggravate the condition. Dr. Abebe, in the April 5, 2007 visit summary, diagnosed toe pain and elevated blood pressure and recommended avoiding strenuous activity involving the right big toe. In the duty status reports dated February 22 and April 2, 2007, he diagnosed right big toe pain and indicated that appellant was able to work full time with restrictions. Neither Dr. Abebe nor Dr. Nguyen provided an opinion as to the cause of appellant's condition in these reports. In addition, the physicians in these reports failed to provide any specific opinion on causal relationship between the claimed period of disability and the accepted employment condition of aggravation of his right foot gout. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Thus, these reports by Drs. Abebe and Nyugen are insufficient to establish that appellant was totally disabled for the period January 5 to April 7, 2007 due to his accepted employment injury.

The record also contains an April 6, 2007 report and duty status reports dated February 22 and April 2, 2007 by Dr. Abebe, who, in the April 6, 2007 report, diagnosed right big toe pain. Dr. Abebe did not mention any dates of disability or appellant's accepted employment injury. In the duty status reports, he diagnosed right big toe pain and indicated that appellant was able to work full time with restrictions. As noted above, medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² Since Dr. Abebe provided no opinion about the cause of appellant's condition or addressed the issue of appellant's disability for the period January 5 to April 7, 2007, these reports are insufficient to meet appellant's burden of proof.

The unsigned February 22, 2007 verification of treatment report which found that appellant aggravated her right knee osteoarthritis and unsigned reports stating that appellant was disabled for the period February 21 to 25, 2007 due to illness are not relevant as the origins of these unsigned reports are not documented.¹³ As such, the Board finds that these unsigned reports do not constitute a basis for establishing that appellant's disability for the period January 5 to April 7, 2007 was causally related to his accepted employment injury of right foot gout.

¹⁰ S.S., 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

¹¹ *Id.*

¹² J.M., 58 ECAB ____ (Docket No. 06-2094, issued January 30, 2007).

¹³ An unsigned medical report with no adequate indication that it was completed by a physician is not considered probative medical evidence. See *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

An award of compensation may not be based on surmise, conjecture or speculation.¹⁴ Neither the fact that appellant's condition became apparent during a period of employment nor his belief that his condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹⁵ Causal relationship must be established by rationalized medical opinion evidence.¹⁶ As appellant failed to submit such evidence, the Office properly denied his claim for compensation for the period January 5 to April 7, 2007.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that he was entitled to wage-loss compensation for the period January 5 to April 7, 2007 causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 6, 2008 is affirmed.

Issued: January 6, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁴ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007).

¹⁵ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *V.W.*, 58 ECAB ____ (Docket No. 07-234, issued March 22, 2007).

¹⁶ *Roy L. Humphrey*, 57 ECAB 238 (2005); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).