

¹ With her appeal, appellant submitted evidence to the Board. The Board is limited to reviewing only the evidence of record before the Office at the time it issues its decision. See 20 C.F.R. § 501.2(c).

and June 21, 2006 which were authorized by the Office.² It paid appellant wage-loss compensation as of May 20, 2007 on the basis that she required an open-toe boot for treatment of her work-related injury, but the employing establishment could not accommodate her with an open-toe boot due to safety rules.

On October 18, 2007 Dr. Steven Neufeld, an attending Board-certified orthopedic surgeon, noted that appellant was post Achilles tendinosis debridement and partial calcaneal excision surgery and was still unable to wear a shoe. He noted that the “Airheel” and “CAM [controlled ankle motion] walker” had worked well, but were falling apart.

On January 9, 2008 the employer contended that an investigation and photographs showed that appellant was wearing “a boot that covers her entire foot” and that it was able to provide light-duty work under these circumstances. In a January 23, 2008 letter, an employing establishment official advised appellant that it had come to his attention that she was now wearing a closed boot and informed her that a prior light-duty job offer of May 7, 2007 was available.

On February 28, 2008 Dr. Neufeld noted that appellant had been “walking with the boot” and was unable to wear normal shoes. Appellant reported that her condition was getting worse. Dr. Neufeld recommended light-duty work and stated, “Patient wear from the boot if possible, weight bearing as tolerated.”

On March 20, 2008 Kimberly Crumbley, a physician’s assistant for Dr. Neufeld, noted that at appellant’s last office visit on February 28, 2008 her left foot was too painful to wear normal shoes. Ms. Crumbley advised that appellant was ambulating in a fracture boot/CAM walker. She stated that this type of boot was rigid on the sole and the dorsum of the foot was entirely covered with a foam/fabric material. The boot did not leave any exposed areas of the foot, but the upper fabric portion would not protect the foot from injury.

On June 6, 2008 the employer offered appellant a light-duty job as a modified city carrier starting June 9, 2008 with limitations of sitting up to eight hours, standing up to one hour and lifting no more than 10 pounds.

On June 16, 2008 an Office medical adviser concurred with the proposal of Dr. Ivica Ducic, an attending Board-certified orthopedic surgeon, to perform left peroneal nerve decompression surgery with possible sural nerve excision. The Office approved the procedure on July 15, 2008.

On July 11, 2008 Dr. Neufeld concurred with the light-duty job offer with limitations as provided in the June 6, 2008 job offer.

In a November 14, 2008 decision, the Office denied appellant compensation for the period August 2 to October 11, 2008 because she did not submit sufficient medical evidence to

² On October 21, 2005 appellant underwent a partial excision of the calcaneus, retrocalcaneal bursectomy and partial excision of the Achilles tendon. On June 21, 2006 she underwent excision of scar and lyses adhesions around the sural nerve and excision of chronic tendinitis of the Achilles tendon.

establish disability for work. It noted that evidence from her treating physician establish that she could work during this period.³

On November 15, 2008 Dr. Ducic performed the left ankle surgery that was authorized by the Office. Appellant received wage-loss compensation beginning November 15, 2008 based on the accepted surgery.

In a December 11, 2008 letter, appellant stated she had attempted to contact her employer about the light-duty job offer and asserted that she was still wearing an open-toed boot “that isn’t allowed in my place of work.” She submitted an August 11, 1993 memorandum addressing footwear policy on the workroom floor. The memorandum stipulated that shoes must be fully enclosed at the heel, toe and sides and must be “constructed of leather or a substantial synthetic poromeric material. Canvas or nylon is not acceptable.”

Appellant disagreed with the Office’s November 14, 2008 decision and requested a hearing before an Office hearing representative. At the April 14, 2009 hearing, she testified that her postmaster “kicked me out of the building” in March 2007 because her open-toe boot was considered unsafe by Occupational Safety and Health Administration (OSHA) standards. She contended the light-duty job offered on June 6, 2008 was merely a reissuance of the same light-duty job offered in May 2007. She stated she was never issued a closed-toe boot and had not been able to wear a “real shoe” for years.

The employing establishment submitted a response to the hearing transcript and contended that appellant was in fact issued a closed-toe boot. A memorandum of investigation of the Office of Inspector General covering the period October 30, 2007 to January 3, 2008 indicated that, under surveillance, appellant was observed wearing no medical boot on one occasion in October 2007, an open-toe black boot on two occasions in November 2007 and a white closed-toe boot on three occasions in November and December 2007.

An investigative interview was conducted with Ms. Crumbley on February 7, 2008 by Chris Wilson Special Agent of the Office of Inspector General. It was reported that Ms. Crumbley stated that appellant claimed that she was unable to return to work because the employing establishment required all employees to wear steel-toed boots on the workroom floor. Mr. Wilson explained to Ms. Crumbley that the employing establishment did not require steel-toed boots and only prohibits open-toed shoes. Ms. Crumbley stated it appeared that appellant misinformed her in order to remain out of work. She indicated that she would consult with Dr. Neufeld and prescribe a boot cover for appellant that would allow her to return to work with the employing establishment. On July 29, 2008 Mr. Wilson indicated that appellant was given a filled boot cover on May 13, 2008.

In a June 8, 2009 decision, the Office hearing representative affirmed the Office’s November 14, 2008 decision.

³ The Office did not provide any indication that it was terminating appellant’s compensation under 5 U.S.C. § 8106(c)(2).

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.⁵ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors.⁶

ANALYSIS

The Office accepted that appellant sustained a left ankle sprain at work on August 25, 2004. Appellant underwent left ankle surgeries on October 21, 2005 and June 21, 2006 which were authorized by the Office. The Office paid wage-loss compensation beginning May 20, 2007 on the basis that she required an open-toe boot for treatment of her work-related injury and the employing establishment could not accommodate her.

Appellant was offered light-duty employment as a modified city carrier on June 6, 2008. The position had restrictions of sitting up to eight hours, standing up to one hour and lifting no more than 10 pounds. Appellant claimed disability from August 2 to November 14, 2008, the date prior to surgery, for her left ankle⁷

The Board finds that the evidence of record does not establish that appellant was disabled from August 2 to November 14, 2008. In July 2008, Dr. Neufeld, an attending Board-certified orthopedic surgeon, reviewed the job description of the position offered on June 6, 2008 and concurred that it met his recommendations for appellant's physical limitations. Appellant objected to the job offer due to safety rules, contending that her employer had previously prevented her from holding a job on the workroom floor while wearing an open-toe boot. A March 20, 2008 letter of a physician's assistant reflects that appellant had been given a boot that was completely enclosed by a foam/fabric material. The employing establishment determined that this constituted a "closed-toe boot" for purposes of employment on the workroom floor. It offered light-duty employment as the employing establishment was able to accommodate her with the enclosed boot that she was provided. The job offer met appellant's physical restrictions as recommended by Dr. Neufeld. Appellant did not submit any medical evidence to establish

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁷ Appellant received disability compensation starting November 15, 2008 due to the fact that the Office-authorized surgery was performed on that date.

that her left ankle condition prevented her from working between August 2 and November 14, 2008. She is not entitled to compensation for this period because light-duty employment was available within her restrictions.

CONCLUSION

The Board finds that appellant is not entitled to compensation for the period August 2 to November 14, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 8, 2009 is affirmed.

Issued: August 25, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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