

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

E.H., Appellant)
)
and) **Docket No. 07-1407**
) **Issued: December 12, 2007**
U.S. POSTAL SERVICE, POST OFFICE,)
Chapin, SC, Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 1, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' hearing representative's merit decision dated April 13, 2007 finding that she did not establish a period of disability causally related to her federal employment. 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 met her burden of proof in establishing that she was totally disabled for the period August 21 to November 10, 2006.

FACTUAL HISTORY

On July 28, 2003 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim alleging a back injury while reaching to throw mail into a bin. The Office accepted appellant's claim for a herniated disc at L3-4 on December 23, 2003. The Office authorized surgery. Appellant underwent a surgical excision of the L3-4 disc on January 28, 2004. On March 23, 2004 the Office entered appellant on the periodic rolls. The Office approved additional surgery

on August 9, 2004. Appellant underwent a surgical left L4-5 hemilaminectomy, medial facetectomy and decompression of the L5 nerve root on August 27, 2004. On January 7, 2005 the Office approved additional surgery. Appellant underwent a lumbar spinal fusion on January 13, 2005.

Appellant returned to part-time light-duty work on July 12, 2005. She underwent an authorized surgical repair of a right rotator cuff tear on August 9, 2005. Appellant again returned to part-time light-duty work on December 13, 2005.

In a telephone message dated June 27, 2006, appellant informed the Office that she broke her left ankle at her mother's house on June 9, 2006. She attributed this new injury to her accepted employment injuries. Appellant stated that she broke her ankle when her back went out.

Appellant filed a claim for compensation on August 18, 2006 requesting compensation for leave without pay from August 7 to 18, 2006. She requested compensation from August 21 to September 1, 2006 on September 2, 2006. In a letter dated September 12, 2006, the Office requested that appellant provide medical evidence addressing the relationship between her current total disability and her accepted back and right shoulder injuries. Appellant submitted treatment notes regarding her left ankle fracture. Dr. Timothy J. Shannon, a Board-certified orthopedic surgeon, examined appellant on June 10, 11 and 12, July 5 and August 22, 2006. He diagnosed left ankle biomalleolar fracture.

Appellant claimed compensation from September 4 through 15, 2006. In a letter dated September 29, 2006, the Office again requested factual and medical information to establish that her left ankle fracture was due to her accepted employment injuries. Appellant claimed compensation from September 18 to 29 and October 2 to 13, 2006. The Office requested additional information regarding her disability beginning October 2, 2006 in a letter dated November 2, 2006. Appellant filed an additional claim for compensation for the period October 16 to 27, 2006. The Office requested additional information regarding this period of disability on November 13, 2006. Appellant did not respond to the requests for information, but submitted an additional claim form requesting compensation from October 30 to November 10, 2006. The Office addressed this claim in a letter dated November 29, 2006. It requested that she submit medical evidence addressing how her work injuries of herniated disc at L3-4 and right rotator cuff tear caused her left ankle fracture. In a telephone conversation on December 8, 2006, appellant informed the Office that her back problem caused her to go limp, fall and break her ankle.

By decision dated January 3, 2007, the Office adjudicated appellant's claim for the period August 21 to September 1, September 4 to 15, October 2 to 13 and 16 to 27 and October 30 to November 10, 2006. The Office found that appellant failed to submit medical evidence to establish that she was totally disabled during these periods due to her accepted employment injuries.

Appellant requested a review of the written record on January 16, 2007. In a report dated January 12, 2007, Dr. Claire Birdsong, a Board-certified family practitioner, stated: "I do believe it feasible that her ankle injury is related to her previous back injury due to her chronic

lumbar radiculopathy causing her chronic leg pain, which in effect caused her inability to prevent her fall that caused her ankle injury.”

By decision dated April 13, 2007, an Office hearing representative found that Dr. Birdsong had not provided sufficient medical reasoning to establish that appellant’s left ankle fracture was due to the accepted back injury. Due to the lack of supporting medical evidence, he found that appellant had not met her burden of proof in establishing that she was totally disabled from August 21 through November 10, 2006 due to her accepted employment injuries.

LEGAL PRECEDENT

Appellant, for each period of disability claimed, has the burden of proving by a preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be provided by a preponderance of the reliable probative and substantial medical evidence.¹

ANALYSIS

Appellant claimed that she was totally disabled due to her left ankle fracture beginning August 21, 2006. The Office requested that she submitted medical evidence establishing that this condition and the resulting disability were causally related to her accepted back and shoulder injuries. Appellant alleged that her left ankle fracture occurred because instability due to her back condition. In support of this allegation, she submitted a January 12, 2007 report from Dr. Birdsong, a Board-certified family practitioner, who stated: “I do believe it feasible that her ankle injury is related to her previous back injury due to her chronic lumbar radiculopathy causing her chronic leg pain, which in effect caused her inability to prevent her fall that caused her ankle injury.” The Board finds that this report is not sufficient to meet appellant’s burden of proof. Dr. Birdsong stated that it was “feasible” that chronic leg pain could have had an impact on appellant’s June 2006 fall which resulted in her left ankle fracture. However, she did not state in terms of reasonable medical certainty that appellant’s back condition did cause or contribute to the fall which resulted in her left ankle fracture. The Board has held that opinions such as the condition was “probably” related, “most likely” related or “could be” related are speculative and diminish the probative value of the medical opinion evidence. The opinion regarding causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, but the opinion must be one of reasonable medical certainty regarding the relationship of the condition to the employment and must be supported with affirmative evidence explained by medical rationale and based upon a complete and accurate factual and medical background.² Dr. Birdsong did not describe the circumstances surrounding appellant’s fall, did not explain why she believed that chronic leg pain could have impaired appellant’s ability to walk such that a fall was likely and did not offer any medical reasoning in support of her opinion. For these reasons, the Board finds that appellant has not submitted sufficient medical opinion evidence to

¹ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

² *Kathy A. Kelley*, 55 ECAB 206 211-12 (2004).

establish that she was totally disabled as a result of her accepted employment injuries from August 21 to November 10, 2006.

CONCLUSION

The Board finds that appellant has not submitted the necessary rationalized medical opinion evidence to establish a causal relationship between her accepted back injury and her left ankle fracture. Therefore, she has not established that she was totally disabled for the period August 21 to November 10, 2006 due to accepted employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2007
Washington, DC

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

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

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