

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

SELMA PIERCE-KEITH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Torrance, CA, Employer**

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**Docket No. 05-1045
Issued: October 25, 2005**

Appearances:
Selma Pierce-Keith, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 5, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated February 17, 2004. 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 disability after October 26, 2004 due to her federal employment.

FACTUAL HISTORY

On June 29, 1996 appellant, then a 37-year-old letter carrier, filed an occupational disease claim alleging that she developed heel spurs due to walking in the performance of duty. The Office accepted appellant's claim for bilateral plantar fasciitis, bilateral heel spurs and bilateral tarsal tunnel syndrome on May 21, 1997. The Office also authorized surgery for bilateral plantar fasciotomies and tarsal tunnel releases of both feet.

Appellant underwent surgery on June 30 and July 14, 1997 on her left and right heels respectively. She returned to light duty on November 1, 1997. By decision dated January 6, 1998, the Office determined that appellant's light-duty position fairly and reasonably represented her wage-earning capacity and terminated her compensation benefits.

Appellant underwent additional right foot fasciotomy with heel spur removal on August 10, 1998. The Office authorized additional compensation benefits on September 11, 1998 and entered her on the periodic rolls on December 31, 1998. Appellant accepted a new light-duty position on January 18, 2000.

By decision dated July 31, 2000, the Office denied appellant's claim for compensation beginning January 31, 2000. On February 1, 2001 the Office granted appellant a schedule award for 12 percent permanent impairment of her left lower extremity. In a decision dated April 18, 2001, the Office granted appellant a schedule award for 12 percent impairment of her right lower extremity.

On May 3, 2002 appellant underwent bilateral orthotripsy. The Office authorized additional compensation beginning May 3, 2002. Appellant returned to work September 17 to 21 and November 4, 2002.

Dr. Stephen D. Smith, a podiatrist, completed a note on October 25, 2004 and stated that on August 6, 2004 appellant slipped and sustained a forced plantar-inversion injury of the right foot and fracture to the fifth metatarsal base. He noted that appellant was in a soft cast for a month and diagnosed tuberositis of the medial tubercle of the right calcaneus, periostitis of the right calcaneus and peroneal cuboid syndrome right foot as well as severe posterior tibial tendinitis of the right foot.

On November 1, 2004 Dr. Smith noted appellant's complaints of right ankle and heel pain. He diagnosed tuberositis medial tubercle, right calcaneus, periostitis, right calcaneus, posterior tibial tendinitis right foot, rule out tendinosis or attenuation, posterior tibial tendon right foot and acquired pronation of the right foot. He completed notes on November 8 and 11, 2004 and added the additional diagnosis of plantar fasciosis with enthesopathy left heel. Dr. Smith stated that appellant was permanent and stationary with regard to her bilateral chronic heel pain and that her foot was not well suited for any job that required her to stand and walk on a regular basis.

In a form report on November 12, 2004, Dr. Smith stated that appellant was totally disabled from October 25 through November 12, 2004, due to perineal cuboid synovitis and tibialis posterior tendinitis. He indicated with a checkmark "yes" that this was caused or aggravated by appellant's employment activity noting that any standing or walking would aggravate this condition.

Appellant completed a claim for compensation on November 22, 2004 requesting wage-loss compensation from October 26 to November 15, 2004. Appellant requested an additional schedule award on November 24, 2004 as well as wage-loss compensation from October 25, 2004. She requested wage-loss compensation from November 23 through December 6, December 7 through 10 and December 13 through 24, 2004.

On November 22, 2004 Dr. David A. Bernstein, a podiatrist, indicated that appellant could return to light-duty work on November 23, 2004, diagnosing plantar fasciitis and foot pain. In a report dated December 13, 2004, Dr. Bernstein diagnosed chronic painful plantar fasciitis, heel and arch pain in both feet. He recommended that appellant's workday be reduced to four hours spending no more than one hour standing or walking.

In a letter dated December 14, 2004, the Office requested additional factual and medical evidence supporting appellant's claim for total disability intermittently after October 26, 2004 noting her nonemployment-related injury.

Dr. Bernstein completed a narrative report on January 6, 2005 and stated that appellant's bilateral foot pain worsened as a result of her attempt to work in a supervisor position between September 13 and October 4, 2004. He stated that appellant spent more time walking and standing in this position. Dr. Bernstein concluded that appellant's plantar fasciitis was caused by and continued to be aggravated by any significant amount of standing or walking associated with her employment. He recommended that appellant reduce her work to four hours a day with only one to one and a half hours during the workday.

By decision dated February 17, 2005, the Office denied appellant's claim for disability beginning October 22, 2004.

LEGAL PRECEDENT

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.¹

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 provide by preponderance of the reliable probative and substantial medical evidence.²

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. The Board has stated that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurts too much to work, without objective signs of disability being shown, the

¹ 20 C.F.R. § 10.5(x).

² *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.³

ANALYSIS

In support of her claim for total disability on or after October 26, 2004, appellant submitted reports from Drs. Bernstein and Smith, podiatrists. Dr. Smith described appellant's nonemployment-related injury of August 6, 2004 and on November 8 and 11, 2004 indicated that appellant was permanent and stationary with regard to her chronic bilateral heel pain. However, on November 12, 2004 Dr. Smith indicated that appellant was totally disabled due to conditions which appear to be related to her nonemployment injury. He indicated with a checkmark "yes" that appellant's conditions were aggravated by appellant's employment as any standing or walking would aggravate her condition.

These reports are not sufficient to meet appellant's burden of proof in establishing a period of total disability due to her accepted employment injuries of bilateral plantar fasciitis, bilateral heel spurs and bilateral tarsal tunnel syndrome. Dr. Smith attributed her current disability to aggravation of the nonemployment-related conditions of perineal cuboid synovitis and tibialis posterior tendinitis through walking and standing. He had already noted that her accepted chronic bilateral heel pain was permanent and stationary. As appellant sustained a new injury, she has the burden of proof in establishing a causal relationship between any aggravation of this new injury and her employment. Dr. Smith's statement that her condition could be aggravated by walking or standing is not sufficiently detailed and rationalized to meet appellant's burden of proof in establishing total disability due to an employment-related aggravation of a nonwork-related condition.

On January 6, 2005 Dr. Bernstein attributed appellant's bilateral foot pain to a change in her light-duty job requirements between September 13 and October 4, 2004, noting that appellant attempted to perform the duties of a supervisory position which required additional walking and standing, which aggravated her plantar fasciitis. This opinion is in direct conflict with that of Dr. Smith in November 2004, that appellant was permanent and stationary with regard to her bilateral heel pain. At the time that Dr. Bernstein attributed appellant's disability to her accepted employment injuries, Dr. Smith opined that appellant's employment injuries had plateaued and attributed her disability to the aggravation of her nonemployment-related conditions.

Due to the conflicting medical opinion evidence offered by appellant's attending physicians, she has failed to meet her burden of proof in establishing an employment-related period of total disability on or after October 26, 2004.

CONCLUSION

The Board finds that appellant has failed to submit the necessary medical opinion evidence to establish an employment-related period of disability on or after October 26, 2004.

³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board