

An August 23, 2007 right ankle computerized tomography (CT) scan, read by Dr. Doug Wurzbach, a Board-certified diagnostic radiologist, revealed a hairline fracture in the distal tibia.

The record reflects that appellant accepted a modified assignment as a limited-duty clerk on August 1, 2007. The position was comprised of answering the telephones, computer work and sit down assignments on an as-needed basis for four hours per day. The physical requirements were limited walking, sit down assignments and no standing for prolonged periods.

Dr. Charles M. Perry, a podiatrist and appellant's physician, submitted several reports including duty status reports dated August 20 and 22, 2007 and an August 23, 2007 disability certificate in which he indicated that appellant could perform nonweight-bearing duty. In report dated September 4, 2007, he noted that the August 23, 2007 CT scan confirmed that appellant sustained a hairline fracture of her right tibia. Dr. Perry opined that he believed that such fracture was present when he saw her on July 9, 2007.

On September 1, 2007 appellant filed a Form CA-7 claim for wage-loss compensation for the period July 23 through 30, 2007. On September 6, 2007 she filed a Form CA-7 claim for compensation beginning August 24, 2007 and continuing. The employing establishment filled in the forms and indicated that appellant was terminated for "unsatisfactory performance."

In an August 24, 2007 letter, the employing establishment notified appellant that her employment was terminated effective that same date. Appellant was advised that her termination was due to "unsatisfactory performance" during her probationary period. An August 24, 2007 employee evaluation and/or probationary report reflected that appellant was appointed to her position on June 9, 2007 and that the probationary period would end on September 9, 2007. On July 9, 2007 appellant received a rating at the end of the 30-day period indicating unsatisfactory performance levels in the areas of work quality and quantity, dependability and personal conduct. The 60-day rating reflected unsatisfactory performance levels in every category. The 90-day rating contained unsatisfactory performance in every category with the exception of work relations. The supervisor indicated that appellant was never able to carry her route in the allotted time and that she would not recommend her for retention or rehire.

In an August 30, 2007 letter, Annette Clark, a health and resource management specialist, indicated that appellant was a PTF carrier working in her 90-day probationary period. She indicated that appellant was terminated effective August 24, 2007 due to unsatisfactory performance. Ms. Clark also enclosed a copy of the letter carrier's contract related to probationary periods. The contract revealed that the "employer shall have the right to separate from its employ[ee] any probationary employee at any time during the probationary period" and also that any probationary employee so separated did not have the right to file a grievance. In a letter dated September 5, 2007, appellant alleged that her evaluation was based upon only two weeks of carrying mail prior to the July 7, 2007 injury.

By letter dated September 28, 2007, the Office requested that the employing establishment provide additional information, including clarification regarding the reason for appellant's termination.

In an October 1, 2007 report, Dr. Perry indicated that appellant had an “impacted nondisplaced hairline fracture oriented obliquely in the anterior-posterior pain over the distal tibia.” In an October 10, 2007 report, he opined that appellant was under his care for a right ankle fracture from August 23, 2007 to the present. Dr. Perry indicated that she was restricted from standing and walking for long periods of time.

In an October 26, 2007 letter, Ms. Clark indicated that appellant was terminated during the probationary period due to unsatisfactory work performance and quality. She provided a statement from Vickie Schnuerer, the manager of the employing establishment, who stated that appellant carried her route for about a month prior to her on-the-job injury. Ms. Schnuerer indicated that appellant was never able to carry the route unassisted in the allotted time. She indicated that appellant could not carry the route unassisted and that she could not sort to standard or carry the route in the allotted time. Ms. Schnuerer indicated that appellant’s 30-day evaluation was unsatisfactory as to work quantity, quality, dependability and personal conduct. She explained that the only time frame that could be utilized to make a decision as to whether appellant could be a city letter carrier was the period from June 9 to July 7, 2007. Ms. Schnuerer indicated that appellant did not demonstrate that she could satisfactorily perform the duties of a letter carrier and that her performance did not warrant retaining her as a letter carrier. She indicated that appellant’s injury had no bearing on the decision. Additionally, she referred to the collective bargaining agreement in support of her action.

By decision dated November 20, 2007, the Office denied appellant’s claim for wage-loss compensation beginning August 24, 2007 and continuing. It found that the medical evidence did not establish that the claimed period of wage loss was causally related to the accepted work injury or that the employer failed to accommodate her work limitations. Appellant was advised that she was entitled to continuation of pay through August 21, 2007 and she would receive appropriate wage-loss compensation for August 22 and 23, 2007.

On November 20, 2007 the Office received a letter from appellant dated October 8, 2007. Appellant alleged that she was fired unjustly. She alleged that her employment injury prevented her from performing her job and that she received unsatisfactory ratings due to the injury. The Office received a copy of Dr. Perry’s October 10 and November 14, 2007 reports. Dr. Perry indicated that appellant’s right ankle fracture was a direct result of her July 7, 2007 work injury. A November 26, 2007 CT scan of the right ankle read by Dr. James M. Joseph, a Board-certified diagnostic radiologist, revealed no evidence of fracture or osseous abnormality. Dr. Joseph indicated that the hairline fracture observed in August 2007 was no longer present and opined that it had healed.

On December 17, 2007 appellant’s representative requested a hearing, which was held on March 11, 2008.¹

¹ By letter dated December 10, 2007, appellant requested reconsideration. She indicated that she received continuation of pay from July 24 to 30, 2007. Appellant indicated that she did not receive compensation from August 24, 2007 and continuing. In a letter dated January 15, 2008, her representative requested that the Office dismiss the reconsideration request and proceed with the hearing.

In a report of February 8, 2008, Dr. Perry stated that diagnostic tests showed that the hairline fracture had healed but that appellant continued to have pain, which prevented her from walking long distances and carrying mail. He referred appellant to a neurologist for her continued pain.

The Office received a March 6, 2008 report from Dr. Roy W. King, an osteopath specializing in neurology, who indicated that appellant was seen for pain in the limb and recommended therapy.

By decision dated April 18, 2008, the Office hearing representative affirmed the Office's November 20, 2007 decision. The Office hearing representative noted that appellant indicated that she was paid for lost time from work up to August 24, 2007 and denied appellant's claim for wage-loss compensation for the period August 24, 2007 and continuing. The Office hearing representative found that the medical evidence failed to establish that appellant was disabled due to residuals of her accepted injury and that the record indicated that she was terminated for cause and not because of her work injury.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing that the essential elements of his or her claim by the weight of the evidence.⁴ Under the 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 injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.⁵ 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.⁶

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.⁷ 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.⁸

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

² The hearing representative also directed that the Office accept the claim for a resolved hairline fracture of the right ankle.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Gary L. Watling*, 52 ECAB 278 (2001).

⁸ *Manual Garcia*, 37 ECAB 767 (1986).

claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.⁹

ANALYSIS

Appellant submitted claims for compensation for the period August 24, 2007 and continuing. She had the burden of establishing by the weight of the substantial, reliable and probative evidence, that she was totally disabled as a result of her accepted employment-related injury during the alleged period. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁰ The Office properly denied compensation because appellant failed to provide sufficient medical evidence to support that she was disabled due to residuals of her accepted condition.

The medical evidence does not establish that appellant was totally disabled during the period in question. On the contrary, appellant's physician, Dr. Perry, repeatedly and consistently indicated that she could be on nonweight-bearing duty for work and that she should be restricted from standing and walking for long periods of time. Appellant accepted a modified-duty position on August 1, 2007 and continued in this position until she was terminated on August 24, 2007. There is no medical evidence of record that contains an opinion that appellant was totally disabled from August 24, 2007 and continuing due to her work injury.

Appellant does not contend that she was totally disabled or that the employing establishment failed to provide a light-duty job, which accommodated her restrictions. Rather, she contends that she was unjustly terminated because her injury prevented her from performing her job and that she received unsatisfactory ratings as a result. The record, however, reflects that appellant was terminated from her position with the employing establishment on August 24, 2007 for "unsatisfactory performance" during her probationary period. The employing establishment indicated that, during the probationary period, an employee could be separated at any time without the right to file a grievance. Ms. Clark provided a statement from the manager, Ms. Schnuerer, who indicated that appellant was never able to carry her route prior to the injury, nor could she sort or carry her route in the allotted time. She stated that appellant's marks for the 30-day evaluation were unsatisfactory as to work quantity, quality, dependability and personal conduct. Ms. Clark also indicated that it was the only time frame that could be utilized to determine whether appellant could perform the duties of a city letter carrier and that her performance did not demonstrate that she should be retained.

The Board has held that an employee is not disabled within the meaning of the Act where she has been provided appropriate light duty by an employing establishment and the light duty is terminated for reasons unrelated to her physical impairment.¹¹ There is no evidence that appellant was terminated due to her physical inability to perform her assigned duties or that she

⁹ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

¹¹ *See Major W. Jefferson, III*, 47 ECAB 295 (1996).

stopped work due to residuals of her accepted conditions. As there is no evidence in the record that she was not capable of performing her assigned duties during the period in question, she had no disability within the meaning of the Act.¹²

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was entitled to compensation for wage loss beginning August 24, 2007, as she failed to show that she was disabled within the meaning of the Act.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2008 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: December 9, 2008
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

¹² See *John W. Normand*, 38 ECAB 1378 (1988) (finding that a claimant cannot be considered to have compensable disability when he has been provided appropriate light duty by the employing establishment and the light duty is terminated as a result of conduct he engaged in for reasons unrelated to his physical impairment).