

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

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**L.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Kingsford, MI, Employer**

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**Docket No. 08-398  
Issued: May 23, 2008**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 19, 2007 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' hearing representative's merit decision dated October 15, 2007 finding that she had not established an additional period of disability. 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 disabled from August 16, 2005 to March 3, 2006 due to her accepted employment injury.

**FACTUAL HISTORY**

On June 7, 2002 appellant, then a 49-year-old clerk, filed a traumatic injury claim alleging that she sustained a left ankle and foot injury on that date when a coworker pushed a 500-pound cart over her left foot. She filed a notice of recurrence of disability on June 25, 2004 alleging that she continuously experienced pain and swelling in her left foot following the June 7, 2002 employment injury. On August 9, 2004 the Office accepted appellant's claim for

plantar fasciitis and Achilles tendinitis on the left. The Office accepted her recurrence of disability on September 15, 2004 and paid compensation benefits beginning through October 4, 2004 when she returned to sedentary work. Appellant continued to seek treatment and the Office authorized shockwave therapy on April 22, 2005. The Office paid compensation benefits for leave without pay from May 9 to July 19, 2005. Dr. Mark Nelson, a podiatrist, completed a report on October 6, 2005 stating that appellant underwent shockwave treatment on May 9, 2005 to treat chronic plantar fasciitis. He examined appellant on June 2, 2005 and found that she had excessive pain on palpation and mild edema of the left heel. Dr. Nelson assumed that appellant's pain would decrease by June 20, 2005 allowing her to return to light duty. However, appellant reported continued left foot pain on June 22 and 23, 2005. Dr. Nelson changed her return to work date to July 1, 2005. He examined appellant on June 30, 2005 and changed her return to sedentary work date to July 18, 2005. Appellant returned to work on July 20, 2005 and worked three days.

On October 26, 2005 Dr. Nelson stated that appellant continued to report "excessive, chronic pain in her bilateral plantar heels." He found no significant pathology on x-ray of appellant's feet. Dr. Nelson noted that appellant also reported bilateral thigh and lower back pain resulting in total disability for work. He stated, "Her lower back pain and thigh pain complaints could be related to the use of the cam walker boot." Dr. Nelson discharged appellant from his care as he had no further treatment suggestions. He stated, "With regards to her work duties and foot problems, she appears unable physically to perform walking or standing type activities due to her chronic foot pains." Dr. Nelson found that appellant required light duty with restrictions on walking and standing.

On November 30, 2005 appellant filed a claim for compensation requesting wage-loss compensation beginning August 16, 2005. She filed an additional claim requesting wage-loss compensation through November 30, 2005. In support of her claims, appellant submitted form reports completed by a nurse practitioner dated December 7 and 10, 2005. The Office responded on January 13, 2006 and informed her that she must submit medical evidence in support of her claimed period of disability. Appellant submitted an additional claim for compensation for the period December 1, 2005 through March 3, 2006.

In a note dated August 28, 2006, Dr. Victoria Jakel, a Board-certified family practitioner, reported appellant's history of injury and stated that appellant last worked on August 22, 2005. She found that appellant developed pain in her right foot in December 2005 due to an abnormal gait. Dr. Jakel noted that appellant's gait was antalgic and that she used a cane. She diagnosed a crush injury to the left foot with chronic pain and onset of right foot pain secondary to pes planus and left foot injury. Dr. Jakel also diagnosed chronic low back pain exacerbated by an altered gait. In a report dated September 3, 2006, Dr. Jakel stated that she first treated appellant in December 2005 and repeated her earlier history and diagnoses.

On March 8, 2007 Dr. Karen J. Miljour, an osteopath, evaluated appellant due to chronic pain in the left foot and low back. She stated that appellant was not able to work as she could not stand repetitively and had difficulty with sitting for any length of time.

By decision dated March 27, 2007, the Office denied appellant's claim for benefits from August 16, 2005 to March 3, 2006. The Office found that she had not submitted the necessary

medical evidence to support her claim for disability. Appellant, through her attorney, requested an oral hearing. She testified at the telephone hearing on July 30, 2007 stating that she last worked on August 22, 2005.

The hearing representative issued a decision on October 15, 2007 and affirmed the March 27, 2007 decision of the Office. She found that appellant had not submitted the necessary medical opinion evidence addressing appellant's disability for work due to her accepted left foot conditions.

### **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.<sup>1</sup>

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.<sup>2</sup>

### **ANALYSIS**

The Office accepted appellant's claim for plantar fasciitis and Achilles tendinitis due to her June 7, 2002 employment injury. The Office further accepted that she sustained a recurrence of disability on May 9 through July 19, 2005. Appellant's attending physician, Dr. Nelson, a podiatrist, released appellant to return to light-duty work on July 19, 2005. She worked intermittently between July 19 and August 22, 2005.

Appellant filed claims for compensation requesting wage-loss compensation from August 16, 2005 through March 3, 2006. She submitted limited medical evidence in support of her claims for total disability. Appellant submitted several reports from a nurse practitioner. Registered nurses, licensed practical nurses, nurse practitioners and physician's assistants are not "physicians" as defined under the Federal Employees' Compensation Act. Their opinions are of

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<sup>1</sup> 20 C.F.R. § 10.5(x).

<sup>2</sup> *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

no probative value.<sup>3</sup> As these reports have no probative value, the reports are not sufficient to meet appellant's burden of proof in establishing a period of disability due to her accepted employment-related foot conditions.

In reports dated October 6 and 26, 2005, Dr. Nelson addressed appellant's disability for work. He released appellant to return to light-duty work on July 18, 2005. Dr. Nelson reported appellant's description of her "excessive chronic pain" in both feet, but was unable to provide any objective findings supporting her claim for total disability for work. He discharged appellant from treatment and noted that appellant could perform light-duty work with restrictions on walking and standing. These reports do not support appellant's claim for total disability on or after August 16, 2003, instead Dr. Nelson indicated that appellant was capable of light-duty work.

Appellant also submitted two reports from Dr. Jakel, a Board-certified family practitioner, dated August 28 and September 3, 2006. Dr. Jakel noted that she first examined appellant in December 2005 and diagnosed crush injury to the left foot and right foot pain secondary to that injury. She did not offer any opinion regarding appellant's ability to work or whether she was totally disabled beginning in August 2005. Dr. Jakel's reports do not address the issue of appellant's disability for work and are therefore not sufficient to meet appellant's burden of proof in establishing a period of total disability due to her accepted left foot injury.

Dr. Miljour, an osteopath, examined appellant on March 8, 2007, diagnosed chronic pain in the left foot and opined that appellant was unable to work. She listed appellant's limitations as the inability to stand repetitively as well as difficulty sitting due to her low back conditions. While Dr. Miljour opined that appellant was totally disabled, she did not address any specific period of disability and did not provide any medical reasoning in support of her opinion. Without the necessary rationalized medical opinion, this report is not sufficient to meet appellant's burden of proof and does not establish that she was totally disabled from August 16, 2005 through March 3, 2006.

### **CONCLUSION**

The Board finds that appellant has not submitted the necessary medical opinion evidence to meet her burden of proof in establishing that she was totally disabled from August 16, 2005 to March 3, 2006 due to her accepted left foot injuries.

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<sup>3</sup> *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologist, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 15, 2007 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: May 23, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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