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S.R., Appellant)	
)	
and)	Docket No. 09-921
)	Issued: December 14, 2009
U.S. POSTAL SERVICE, POST OFFICE,)	
Ann Arbor, MI, Employer)	
)	

Case Submitted on the Record

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

On February 25, 2009 appellant filed a timely appeal from Office of Workers' Compensation Programs' June 17, 2008 and January 9, 2009 decisions denying compensation for wage loss. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has met her burden of proof in establishing that she was entitled to additional compensation for wage loss for intermittent periods between December 11, 2006 and September 27, 2007 causally related to her federal employment.

On October 7, 2006 appellant, a 54-year-old automation clerk, injured her left foot while walking to her vehicle. She filed a claim for benefits, which the Office accepted for posterior tibial tendinitis of the left foot.

Appellant submitted CA-7 and CA-7a forms dated March 18, 2008 requesting compensation for wage loss for intermittent periods between December 11, 2006 through September 27, 2007.

By letter dated March 27, 2008, the Office asked appellant to submit medical evidence establishing disability for the periods claimed. It requested contemporaneous medical evidence, which established that she was examined by a physician on the dates, noted and indicated that her accepted condition had worsened to the point that she was disabled from performing her regular work duties.

The Office noted that appellant had requested a total of 223.27 hours in wage loss. It received a May 31, 2007 report from Dr. James K. Kleanthous, a specialist in podiatry, who stated that he had been treating appellant since November 2006 for posterior tibial tendinitis, her accepted condition and posterior tibial tendon dysfunction. Dr. Kleanthous advised that appellant's accepted foot condition was occasionally aggravated by her work duties and that she required time off from work to ameliorate her work-related foot pain. He asserted that one of these periods in which she required time off and was absent from work due to her work-related foot pain was May 23 through 26, 2007. Dr. Kleanthous therefore requested that appellant be excused from work on those dates.

The Office disallowed the time requested by Dr. Kleanthous from May 23 to 26, 2007, which totaled 32 hours in wage-loss compensation. It stated that it required a diagnosis of an accepted condition and noted that a diagnosis of "pain," by itself, was not sufficient to establish fact of injury and support incapacitation from work on the days claimed. With regard to the remainder of the dates on which appellant requested wage-loss compensation, the Office advised appellant that the following requests for wage loss were not supported by the appropriate medical reports on the dates claimed: 4 hours for a doctor's visit on December 11, 2006; 4 hours for December 29, 2006; 8 hours for December 30, 2006;¹ 24 hours for March 17, 19 and 24, 2007; 24 hours for April 13, 14 and 16, 2007;² 8 hours for May 8, 2007; 3.66 hours for June 18, 2007; 24 hours for the period June 19 through 21, 2007;³ 8 hours for June 25; 3.50 hours for June 27, 2007; 8 hours per day from June 28 through 31, 2007; 8 hours for July 14, 2007; 5.30 hours for

¹ The Office noted that it had received a December 29, 2007 report from Dr. Albert Klemptner, Board-certified in internal medicine, on which he stated that appellant was under his care from December 29, 2007 through January 1, 2008 but did not provide an explanation as to why appellant could not work or what caused her total disability from work during this period.

² The Office noted that it had received an April 17, 2007 report from Dr. Klemptner on which he indicated that appellant was under his care from April 13 through 17, 2007; however, he did not provide an explanation as to why appellant could not work or what caused her total disability from work during this period.

³ The Office stated that it had received a June 18, 2007 report from Dr. Klemptner on which he indicated that appellant was under his care from June 16 through 21, 2007; however, he did not provide an explanation as to why appellant could not work or what caused her total disability from work during this period.

July 16, 2007;⁴ 7.23 hours for July 30, 2007; 8 hours claimed for July 30, 2007;⁵ 8 hours for August 6, 2007;⁶ 4 hours for August 14, 2007; 6.87 hours for August 15, 2007; 8 hours per day from August 16 through 18, 2007; 8 hours for August 20, 2007;⁷ 8 hours on September 5, 2007; 4 hours on September 7, 2007; 8 hours on September 8, 2007;⁸ 4 hours on September 25, 2007 and 8 hours from September 26 through 27, 2007.⁹

By decision dated June 17, 2008, the Office affirmed in part and denied in part appellant's claim for compensation based on wage loss. It accepted appellant's claims for wage loss for the following periods: 4 hours for a doctor's visit on December 11, 2006; 4 hours for December 29, 2006; 3.98 hours for January 4, 2007; 4 hours for May 16, 2007; 3.66 hours for June 18, 2007; 3.50 hours for June 27, 2007; 4 hours for July 16, 2007; 4 hours for August 6, 2007; and 4 hours for September 4, 2007, for a total of 35.14 hours.¹⁰

By letter dated June 19, 2008, appellant's attorney requested an oral hearing, which was held on October 15, 2008. Appellant resubmitted the documents pertaining to medical appointments that she had submitted prior to the Office's June 17, 2008 decision.

By decision dated January 9, 2009, an Office hearing representative affirmed the June 17, 2008 decision denying modification. The Office stated that appellant had failed to submit medical evidence establishing a longer period for appointments than that for which she had already received compensation.

⁴ The Office noted that it had received a July 16, 2007 report from Dr. Klemptner on which he indicated that appellant was under his care from July 14 through 16, 2007; however, he did not provide an explanation as to why appellant could not work or what caused her total disability from work during this period.

⁵ The Office noted that it had received a July 30, 2007 report from Dr. Kleanthous, who stated that appellant complained of foot pain, which kept her out of work on that date. The Office reiterated that it required a diagnosis of an accepted condition and that "pain" is not sufficient to support incapacitation from work on the date claimed.

⁶ The Office noted that it had received an August 6, 2007 report from Dr. Klemptner on which he indicated that appellant was under his care on that date; however, he did not provide an explanation as to why appellant could not work or what caused her total disability from work during this period.

⁷ The Office noted that it had received an August 16, 2007 report from Dr. Klemptner on which he indicated that appellant was under his care from August 14 to 21, 2007; however, he did not provide an explanation as to why appellant could not work or what caused her total disability from work during this period.

⁸ The Office noted that it had received a September 7, 2007 report from Dr. Klemptner on which he indicated that appellant was under his care from September 5 to 9, 2007; however, he did not provide an explanation as to why appellant could not work or what caused her total disability from work during this period.

⁹ The Office noted that it had received a September 26, 2007 report from Dr. Klemptner on which he indicated that appellant was under his care from September 24 to 27, 2007; however, he did not provide an explanation as to why appellant could not work or what caused her total disability from work during this period.

¹⁰ The Office listed the dates for which she had been denied compensation. In some cases, the Office stated dates for which she was awarded compensation, but had the hours she requested from eight to four.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹¹ has the burden of establishing the essential elements of his or her claim by the weight of the evidence.¹² 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.¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶ 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 claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁷

ANALYSIS

In support of her claim, appellant submitted CA-7 and CA-7a forms for intermittent periods from December 11, 2006 to September 27, 2007, claiming a total of 223.27 hours. The Office paid wage-loss compensation for 35.14 hours during this period. The Office denied four hours of compensation on several days for which she had claimed eight hours of leave without pay, noting that she was entitled to no more than four hours of compensation for routine medical appointments. It noted that, while longer periods of time were allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care, appellant failed to provide sufficient medical evidence to support that she was disabled or attending a medical examination on the dates claimed.

The Board finds that the May 31, 2007 report from Dr. Kleanthous provides sufficient medical evidence to support disability from May 23 to 26, 2007. Dr. Kleanthous indicated that he was treating appellant for her accepted condition through this period and that her condition necessitated absence from work on those dates. He provided a diagnosis of her condition and a sufficient rationale as to why she was absent on the dates she requested wage-loss compensation. With regard to the rest of the medical reports of record, however, appellant has not established

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *Joe D. Cameron*, 41 ECAB 153 (1989).

¹³ *See Prince E. Wallace*, 52 ECAB 357 (2001).

¹⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁵ *Gary L. Watling*, 52 ECAB 278 (2001).

¹⁶ *Manual Garcia*, 37 ECAB 767 (1986).

¹⁷ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

that she was disabled beyond the periods for which the Office awarded her compensation. Dr. Kleanthous' July 30, 2007 report merely stated that appellant was unable to work on that date due to foot pain. Dr. Klemptner submitted numerous reports, which indicated that appellant was under his care, and missed work for certain periods. These reports, however, are of diminished probative value in that they did not provide adequate medical rationale in support of their conclusions.¹⁸ Dr. Klemptner failed to indicate in these reports the reason for appellant's incapacitation and provide specific support for her absences. Appellant has failed to provide sufficient medical evidence to establish disability as claimed during these periods.

Accordingly, the Board modifies the Office's wage-loss determination to allow 32 hours claimed from May 23 to 26, 2007. In all other respects, the June 17, 2008 and January 9, 2009 decisions are affirmed.

CONCLUSION

The Board modifies the June 17, 2008 and January 9, 2009 decisions to award 32 additional hours of wage-loss compensation from May 23 to 26, 2008. The Board finds that appellant has not met her burden of proof in establishing that she was entitled to additional compensation for wage loss for intermittent periods between December 11, 2006 through September 27, 2007 causally related to her federal employment.

¹⁸ *William C. Thomas*, 45 ECAB 591 (1994).

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2008 and January 9, 2009 decisions of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: December 14, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board