United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 10-1689**
	)	**Issued: February 11, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Jacksonville, FL, Employer	)	

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 June 8, 2010 appellant, through her representative, filed a timely appeal from the May 13, 2010 merit decision of the Office of Workers' Compensation Programs, which denied compensation for claimed disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the disability for which appellant claims compensation is causally related to her accepted employment injury.

FACTUAL HISTORY

On September 24, 2007 appellant, then a 51-year-old mail processor, filed a claim for compensation alleging that she injured her feet as a result of prolonged standing on concrete floors in the performance of duty. The Office accepted her claim for bilateral plantar fasciitis and paid a schedule award for a one percent impairment of each lower extremity. It also paid compensation for intermittent periods of disability for work. Appellant returned to limited duty.

Appellant claimed compensation for total disability on June 25, 2009 because she was unable to perform her duties due to pain, but her physician was out of town. She also claimed compensation for two hours of disability a day beginning July 22, 2009, on physician's orders.[1]

A June 25, 2009 note from the office of appellant's podiatrist stated: "[Appellant] picked up supplies needed to accommodate her orthotics. [Physicians] out of town."

Appellant visited the emergency room on June 26, 2009. She reported no injury. Hospital records noted: "Got new orthotics but didn't have additional pad. Podiatrist out of town but their nurse gave material for pad. Unable to give note for work." Records also noted: "Used material and remade pad for new orthotics. Improved per patient." Appellant was advised to follow up with her podiatrist as scheduled. A discharge note stated: "Please excuse [appellant] from work June 25, 2009 as unable to perform duties due to bilateral plantar fasciitis. May return to full duty June 25, 2009."

On July 21, 2009 Dr. John S. Anderson, the podiatrist, saw appellant for her left heel. He described his findings on examination: "Tenderness noted to the heel in general, just general pain to the foot. Nothing significant. Some lateral pain." Dr. Anderson diagnosed calcaneal exostosis with associated plantar fasciitis, radiculopathy and diabetes. He noted:

> "[Appellant] has gotten a new modification of duties and this was not adequate for her. She has been doing this modification for two weeks. [Appellant] says she is sitting too much, needs to walk around a little bit more. She says she would like to get a note where she can only work six hours a day. I explained to [appellant] that I am a little concerned as far as the amount of accommodations the [employing establishment] has made to [her] and still nothing seems to be adequate enough for her. There always seems to be some wrench in the aspect of trying to accommodate [appellant]. [Appellant] was made award of this. I verbally talked to [her] about this and she understood my concerns. We are going to modify her activities on this for approximately a month. [Appellant] will return and we will discuss her options at that point."

On October 7, 2009 the Office denied appellant's disability claim. It found that she did not submit a fully explained medical opinion addressing disability for the dates claimed or objective findings on examination supporting the limitation of hours. The Office noted that Dr. Anderson based his six-hour limitation on appellant's request.

In a decision dated May 13, 2010, an Office hearing representative affirmed. He found that the medical evidence failed to establish total disability on June 25, 2009 or partial disability beginning July 22, 2009. The hearing representative was unable to find that appellant's office visit on June 25, 2009 occurred during her scheduled work hours. The Office hearing

[1] On the prior appeal of this case, the Board found that appellant did not meet her burden to establish that she was disabled for work on February 7 or 8 2009 or from March 13 to 22, 2009 as a result of her accepted employment injury. The Board found that it appeared the disability claimed was the result of her own assessment that she was unable to perform her duties. Appellant's podiatrist offered no explanation that she had objective signs of disability for the dates at issue. Docket No. 10-737 (issued October 13, 2010).

representative did find that Dr. Anderson provided no reason for limiting her working only six hours a day given his concerns about her requests for accommodations.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[2] "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.[3]

When an employee is disabled from the job she held at the time of injury but returns to a limited-duty position, she has the burden of establishing by the weight of the reliable, probative and substantial evidence that she cannot perform such limited duty. As part of her burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[4]

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.[5] The Board has held that when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for the payment of compensation.[6]

As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure or the need to travel a substantial distance to obtain the medical care.[7]

ANALYSIS

The Office accepted that appellant sustained a bilateral plantar fasciitis injury in the performance of duty. Appellant returned to limited duty and thereafter claimed total disability on June 25, 2009 and partial disability beginning July 22, 2009. She does not allege that this disability was a result of a change in the nature and extent of her limited-duty job requirements. Appellant's burden therefore is to show a change in the nature and extent of her injury-related condition.

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[2] 5 U.S.C. § 8102(a).

[3] 20 C.F.R. § 10.5(f).

[4] *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

[6] *John L. Clark*, 32 ECAB 1618 (1981).

[7] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.0900.8 (November 1998).

Appellant has not submitted sufficient medical opinion evidence to support the disability claimed. She claims total disability on June 25, 2009, but the only support comes from a hospital discharge note the following day: "Please excuse [appellant] from work June 25, 2009 as unable to perform duties due to bilateral plantar fasciitis. May return to full duty June 26, 2009." This note does not explain what findings justified appellant's absence from work. Without a sound medical basis, the note is no more persuasive than a claimant's self-certification that she simply hurt too much to go in to work that day. Another problem with this note is that it immediately releases appellant to full duty. Total disability on June 25, 2009 followed by full duty on June 26, 2009 requires an explanation, which the note does not provide.

The medical documentation does not establish appellant's entitlement to compensation for total disability on June 25, 2009. The record also does not establish her entitlement to compensation for a routine medical appointment that day. There is no evidence appellant needed to miss work on June 25, 2009 to go to her podiatrist's office. With the physicians out of town, it is clear that she did not have a routine medical appointment. Instead, appellant simply stopped by the office to pick up some material for her orthotics. The Board therefore finds that the Office properly denied compensation for June 25, 2009.

The only support for partial disability beginning July 22, 2009 comes from the podiatrist, Dr. Anderson, who saw appellant the previous day and noted tenderness to the heel in general and general pain to the foot but "nothing significant." His findings did not indicate a change in the nature and extent of her injury-related condition. Nonetheless, appellant asked Dr. Anderson for a note restricting her to six hours a day. Dr. Anderson made clear that he was reluctant, given that she was never satisfied with accommodations, but he gave appellant what she wanted and modified her work activities for a month.

Although appellant does have a note from her physician restricting her to six hours a day beginning June 22, 2009, Dr. Anderson's reasoning is insufficient to entitle her to compensation for those lost hours. Dr. Anderson did not base the restriction on his physical findings. He based it simply on appellant's request, one he was reluctant to grant. This amounts to appellant's self-certification of disability and is no more persuasive than the June 26, 2009 note she obtained stating that she was "unable to perform duties" the previous day. Her podiatrist must provide a sound medical basis for taking her off limited duty, one that is causally related to accepted employment injury.

Because appellant has not submitted sufficient medical documentation to support her claim for compensation, the Board finds that she has not met her burden of proof. The Board will therefore affirm the Office's May 13, 2010 decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to show a change in the nature and extent of her injury-related condition. The medical evidence does not establish that the disability for which she claims compensation is causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2011
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