

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

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**A.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Grand Rapids, MI, Employer**

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**Docket No. 10-2407  
Issued: July 25, 2011**

*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, Judge

COLLEEN DUFFY KIKO, Judge

MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 24, 2010 appellant, through his representative, filed a timely appeal from an August 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 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 established intermittent employment-related disability from January 3 to October 9, 2009.

**FACTUAL HISTORY**

The case has previously been before the Board. By decision dated December 1, 2004, the Board set aside an April 22, 2004 OWCP decision regarding a recurrence of disability

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

commencing March 9, 2002.<sup>2</sup> In a decision dated May 2, 2008, the Board affirmed an August 14, 2007 OWCP decision denying wage-loss compensation from August 21 to November 25, 2006, as appellant had received a schedule award during this period.<sup>3</sup> By decision dated December 16, 2008, the Board found she was entitled to wage-loss compensation from April 15 to June 6, 2003.<sup>4</sup> By decision dated April 1, 2010, the Board found that appellant had not established employment-related disability from June 7, 2003 to November 6, 2004.<sup>5</sup> In a decision dated May 12, 2011, the Board affirmed a June 8, 2010 OWCP decision, finding she had not established intermittent employment-related disability from January 5 to December 27, 2008.<sup>6</sup> The history of the case as set forth in the Board's prior decisions is incorporated herein by reference.

On February 1, 2010 appellant submitted a January 22, 2010 claim for compensation. She claimed intermittent disability from January 3 to October 9, 2009.<sup>7</sup> On February 15, 2010 appellant submitted a Form CA-7 claiming intermittent disability from October 10, 2009 to February 9, 2010. She submitted treatment reports from Dr. David Krencik, an osteopath, regarding treatment for reflex sympathetic dystrophy (RSD) of the right foot. Appellant submitted reports dated January 9, May 8, August 28 and November 20, 2009.

On October 8, 2009 Dr. Katherine Young, a family practitioner, stated that appellant continued to have chronic pain from RSD related to an on-the-job injury on June 11, 2001. She indicated that appellant had progressively worsening pain and Dr. Young had previously reported that RSD is a condition that worsens over time. Dr. Young stated that she was attaching a list of dates appellant had missed work from January 3 to October 9, 2009 due to the work-related injury. In a report dated February 19, 2010, she stated that it was unnecessary for appellant to come to the clinic each time she missed work. According to Dr. Young, appellant did not discuss disability for work with Dr. Krencik, but he was aware appellant missed work due to her condition, as it was common with this disease. She included an additional list of dates appellant missed work from October 10, 2009 to February 12, 2010.

By decision dated March 24, 2010, OWCP denied compensation for intermittent dates from January 3, 2009 to February 9, 2010. It found the medical evidence was insufficient to establish causal relation.

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<sup>2</sup> Docket No. 04-1583 (issued December 1, 2004). The record indicated that OWCP had accepted an acute right foot contusion on June 11, 2001. Appellant also filed an occupational illness claim on October 11, 2002 for a right foot condition, which has been accepted for lesions of plantar nerve, right foot dorsal aspect injury and RSD of the right foot.

<sup>3</sup> Docket No. 07-2308 (issued May 2, 2008). Appellant received a schedule award for a 38 percent right leg permanent impairment on August 9, 2006. The period of the award was March 20, 2006 to April 24, 2008.

<sup>4</sup> Docket No. 08-671 (issued December 16, 2008).

<sup>5</sup> Docket No. 09-1840 (issued April 1, 2010).

<sup>6</sup> Docket No. 10-2002 (issued May 12, 2011).

<sup>7</sup> A time analysis Form CA-7a dated January 26, 2010 listed specific dates appellant used leave or leave without pay (LWOP).

On March 29, 2010 appellant requested a telephonic hearing, which was held on July 19, 2010. On August 2, 2010 she submitted a July 13, 2010 report from Dr. Young, who provided a history and results on examination. Dr. Young indicated that she had previously stated on numerous occasions that it was unnecessary for appellant to come in for treatment every time she missed work.

By decision dated August 20, 2010, OWCP's hearing representative found appellant had not established an intermittent employment-related disability commencing January 3, 2009.<sup>8</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>9</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>10</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>11</sup>

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>12</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>13</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>14</sup>

To establish a causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>15</sup> Causal relationship is a medical

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<sup>8</sup> OWCP's hearing representative referred to the January 22, 2010 Form CA-7 and stated that the issue was disability from January 3 to October 9, 2009.

<sup>9</sup> 5 U.S.C. §§ 8101-8193.

<sup>10</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>11</sup> 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>12</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>16</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship.<sup>17</sup>

### **ANALYSIS**

The August 20, 2010 OWCP decision addressed the issue of intermittent dates of claimed disability for the period January 3 to October 9, 2009.<sup>18</sup> With respect to the period claimed, the medical evidence does not contain a rationalized medical opinion establishing an employment-related disability on the dates claimed. Dr. Young provided a list of dates that appellant had missed work during the period claimed, stating that she had chronic pain from her RSD. This is similar to previous reports of record regarding disability in 2008 and previous periods claimed. As the Board explained in its April 1, 2010 and May 12, 2011 decisions, this type of general listing of missed days at work is of diminished probative value.<sup>19</sup> The reports failed to provide any results from examination, discuss whether appellant obtained treatment on the dates claimed or provide a rationalized opinion as to an employment-related disability for the specific dates claimed. It is not enough for a physician to simply confirm that appellant reported being unable to work on certain dates. This would, as noted above, allow an employee to self-certify his or her disability.

Dr. Young stated that it was not necessary for appellant to come in for treatment every time she missed work. Under FECA for a claimant to establish that she was disabled for work during a claimed period, she must submit probative medical evidence on causal relationship between the claimed disability and the employment injury. Appellant has the burden of proof to establish an employment-related disability for the dates claimed, and the Board finds that she did not meet her burden of proof for the dates claimed commencing January 3 to October 9, 2009.

### **CONCLUSION**

The Board finds that appellant did not establish intermittent employment-related disability from January 3 to October 9, 2009.

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<sup>16</sup> *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>17</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>18</sup> The March 24, 2010 OWCP decision had also referred to the period October 10, 2009 to February 9, 2010, the period claimed in a February 15, 2010 Form CA-7, but this period was not discussed by OWCP's hearing representative.

<sup>19</sup> In these decisions, the Board noted that Dr. Young had provided a list of "missed workdays" and stated that the missed days were due to continuing problems with foot RSD. The Board found this was not sufficient to establish disability for the dates claimed.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 20, 2010 is affirmed.

Issued: July 25, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board