

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CYNTHIA K. HICKSON and DEPARTMENT OF JUSTICE,  
U.S. ATTORNEY'S OFFICE, Beaumont, TX

*Docket No. 00-1093; Submitted on the Record;  
Issued February 23, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant met her burden to establish that her recurrence of disability of the low back was caused or aggravated by her accepted August 14, 1998 right foot injury.

On August 14, 1998 appellant, a 20-year-old office clerk/student intern, injured her right foot when she slipped and fell. She filed a claim for benefits on August 20, 1998, which the Office accepted for an allergic reaction and contusion of the right foot. Appellant's term as a student intern ended on September 30, 1998.

On June 1, 1999 appellant filed a claim, alleging that she sustained a recurrence of disability which was caused or aggravated by her August 14, 1998 employment injury. An August 20, 1998 duty status report from appellant's treating physician, Dr. Phillip J. Hahn, a podiatrist, indicated that she would be able to sit for an eight-hour day, but was limited to standing and walking for no more than two hours per day, and needed to have her right foot elevated as much as possible.

By letter dated July 14, 1999, the Office of Workers' Compensation Programs advised appellant that it required additional medical evidence, including a comprehensive medical report, to support her claim that her current condition or disability was causally related to her accepted August 14, 1998 employment injury. The Office also requested that appellant submit a factual statement explaining the circumstances of her alleged recurrence. The Office stated that appellant had 30 days in which to submit the requested information. Appellant did not submit any additional medical evidence within 30 days.

By decision dated August 16, 1999, the Office denied appellant's claim for a recurrence of disability, finding that she failed to submit medical evidence sufficient to establish that her current condition or disability was causally related to the August 14, 1998 employment injury.

By letter dated August 16, 1999, appellant requested reconsideration.

In a letter received by the Office on August 15, 1999, appellant advised the Office that when she returned to work following her employment injury, her duties were the same as before

the injury. She stated that she was responsible for answering telephone calls, receiving visitors, retrieving files for the attorneys, photocopying, making a backup tape of the daily email/correspondence on the server, and delivering mail to the clerk's office or mail to the post office.

By letter dated September 20, 1999, appellant advised the Office that she was seeking compensation for loss of wages and medical treatment causally related to her August 14, 1998 employment injury, covering the period from October 1, 1998 through the present. She stated that she was off work from August 17 through 30, 1998, returned to work on light duty on August 31, 1998 and worked until her internship terminated on September 30, 1998.

In a treatment note dated September 15, 1998, Dr. Hahn stated that appellant was to remain on light duty until further notice. He also submitted several progress reports from January, March, May, August and September 1999 in which he stated findings on examination and noted that appellant would periodically experience pain in her right foot.

By decision dated October 4, 1999, the Office denied appellant's claim, finding that she did not submit evidence sufficient to warrant modification of the previous decision.

The Board finds that appellant has not established that her current condition or disability of the right foot was caused or aggravated by the August 14, 1998 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.<sup>1</sup>

The record contains no such medical opinion. Appellant has failed to submit medical opinion evidence containing a rationalized, probative report from her physician, which relates her recurrence of disability to her August 14, 1998 employment injury. For this reason, she has not discharged her burden of proof to establish her claim.

As used in the Federal Employees' Compensation Act,<sup>2</sup> the term disability means incapacity because of an injury in employment 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. The general test in determining loss of wage-earning capacity is whether the employment-caused impairment prevents the employee from engaging in the kind of work she was doing when she was injured.<sup>3</sup> In other words, if an employee is unable to perform the required duties of the job in which she was employed when injured, the employee is disabled. However, if an employee no longer has an impairment, which prevents her from performing the duties of the job she held when injured, she is no longer disabled.

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<sup>1</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

<sup>2</sup> 5 U.S.C. § 8102.

<sup>3</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

The evidence of record does not indicate that appellant was unable to perform the type of work she was performing when injured. Appellant did not submit sufficient medical evidence to establish she was unable to perform the regular duties of her internship when she returned to work following her employment injury. The only medical evidence appellant submitted in support of her claim for a recurrence of disability were Dr. Hahn's 1999 medical notes, which reviewed her history of injury and related her complaints of pain. These reports indicated appellant had intermittent pain in her right foot during the year following her August 14, 1998 employment injury, but do not contain a probative, rationalized medical opinion sufficient to establish that her alleged recurrence of disability was caused or aggravated by her August 14, 1998 employment injury.

In addition, appellant stated that when she returned to work following her employment injury, her duties were the same as before the injury. These included answering telephone calls, receiving visitors, retrieving files for the attorneys, photocopying, making a backup tape of the daily email/correspondence on the server, and delivering mail to the clerk's office or mail to the post office. Appellant has provided no evidence that these duties exceeded the restrictions contained in Dr. Hahn's August 20, 1998 duty status report, which indicates that appellant would be able to sit for an eight-hour day and could stand and walk for two hours per day, as long as she elevated her right foot as much as possible.<sup>4</sup> Therefore, the Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability.

The decisions of the Office of Workers' Compensation Programs dated October 4 and August 16, 1999 are hereby affirmed.

Dated, Washington, DC  
February 23, 2001

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>4</sup> The Office noted that appellant did not sustain any additional loss of wages due to her employment injury, as her federal employment was temporary and ended on September 30, 1998, and she was able to return to college full time and obtain part-time work as a substitute school teacher.