

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN R. HUDAJ and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, WI

*Docket No. 99-831; Submitted on the Record;
Issued February 27, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to show that she had intermittent disability during the periods August 11, 1995 to April 18, 1997 and July 27, 1997 to March 15, 1998 due to her employment injury.

The Board finds that appellant did not meet her burden of proof to show that she had intermittent disability during the periods August 11, 1995 to April 18, 1997 and July 27, 1997 to March 15, 1998 due to her employment injury.

In May 1990 appellant, then a 41-year-old distribution clerk, filed a claim alleging that she sustained a right foot injury due to the duties of her job and an incident at work on December 29, 1989. The Office of Workers' Compensation Programs accepted that she sustained an employment-related stress fracture, Morton's neuroma and reflex sympathetic dystrophy of her right foot. The Office authorized several right foot surgeries including an iliac bone graft and fusion of the tarsometatarsal joint in June 1990, resection and removal of the Morton's neuroma in July and August 1991. Appellant worked in light-duty positions and received compensation for periods of disability. On August 30, 1997 she started working six hours per day as a modified flat sorter clerk and she began to receive compensation for loss of wage-earning capacity.¹

Appellant claimed that she was entitled to additional compensation for intermittent disability during the periods August 11, 1995 to April 18, 1997² and July 27, 1997 to March 15, 1998 due to her employment injury. By decision dated June 18, 1998, the Office denied her claim that she had intermittent employment-related disability during the period August 11, 1995

¹ Prior to this time, appellant had received compensation based on her ability to work four hours per day.

² Appellant actually claimed entitlement to additional compensation for intermittent disability during the period June 6, 1995 to April 18, 1997. However, the Office paid additional compensation for intermittent disability during the period June 6 to August 11, 1995.

to April 18, 1997 on the grounds that she did not submit sufficient medical evidence in support thereof. By decision dated August 18, 1998, the Office affirmed its June 18, 1998 decision. By decision dated August 20, 1998, the Office denied appellant's claim that she had intermittent employment-related disability during the period July 27, 1997 to March 15, 1998 on the grounds that she did not submit sufficient medical evidence.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In support of her claim, appellant submitted numerous disability certificates in which Dr. David L. Becker, an attending Board-certified orthopedic surgeon, indicated that she had disability for various periods between August 11, 1995 and March 15, 1998. In these certificates, he generally stated that appellant had disability for given periods due to burning pain and swelling in her right foot.

In a report dated March 30, 1998, Dr. Becker indicated that appellant was claiming disability on various dates between July 27, 1997 and March 15, 1998. He briefly discussed the history of appellant's condition and stated:

"The inconvenience both to [appellant] and yourselves is that this onset of pain and impairment is not predictable and often can be overwhelming enough that they cannot function. These listed days above not only are not excessive, but also show a consistent pattern in [her] to try to function regardless.

"It is my medical opinion that these days in which [appellant] was disabled are directly related to the work injury, more specifically, due to the significant and severe complication of reflex sympathetic dystrophy and more than consistent with this diagnosis."

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

In a report dated May 14, 1998, Dr. Becker indicated that he did not examine appellant on each of the claimed periods of disability between August 11, 1995 and April 18, 1997 and therefore he was unable to provide a description of objective findings on each of these occasions. He indicated that appellant's reflex sympathetic dystrophy caused most of her symptoms and that she had a well-documented reflex sympathetic dystrophy "history examination and pattern." Dr. Becker indicated that statistically most patients with reflex sympathetic dystrophy do not improve and stated:

"In light of the consistent pattern of this situation over the last eight years, I did not feel it essential that I examine [appellant] on each and every one of these days in 1995 and 1996 as her complaints had been consistently corroborated with our objective examinations in the past. We not only felt that the patterns were consistent with her diagnosis but also very much a pattern that had been consistent with [appellant].

"I believe that these explanations are very consistent with why [appellant] was incapable of performing her limited-duty job for four hours on the dates claimed."

The Board finds that the reports of Dr. Becker are not sufficient to establish that appellant had intermittent disability during the periods August 11, 1995 to April 18, 1997 and July 27, 1997 to March 15, 1998 due to her employment injury.⁶ These reports are of limited probative value on the relevant issue of the present case in that Dr. Becker did not provide adequate medical rationale in support of his conclusion on causal relationship.⁷ By his own admission, Dr. Becker did not examine appellant on each of the dates she claimed employment-related disability between August 11, 1995 and April 18, 1997 and in fact it remains unclear whether he examined appellant on any of these dates. In the absence of objective findings of appellant's condition on the claimed dates, it remains unclear whether Dr. Becker's opinion on causal relationship reflects appellant's actual condition on those dates or whether his opinion is based solely on appellant's contention that she was disabled for work. In such a situation, his opinion on causal relationship is essentially of general application rather than addressed to the particular circumstances of the case. For these reasons, Dr. Becker's reports contain significant deficiencies with respect to the relevant issue of the present case and are not sufficient to establish appellant's claim.⁸

⁶ The Office accepted that appellant sustained an employment-related stress fracture, Morton's neuroma and reflex sympathetic dystrophy of her right foot.

⁷ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁸ See generally *Melvina Jackson*, 38 ECAB 443 (1987) regarding the weighing of the probative value of medical reports.

The decisions of the Office of Workers' Compensation Programs dated August 20, August 18 and June 18, 1998 are affirmed.

Dated, Washington, DC
February 27, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member