

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GYPSY ROGERS and DEPARTMENT OF STATE,  
FEDERAL CREDIT UNION, Washington, DC

*Docket No. 01-516; Submitted on the Record;  
Issued September 20, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she had any disability for the period July 19 through November 11, 1999 and August 13, 1999 continuing, causally related to her accepted November 2, 1998 work injury.

On November 2, 1998 appellant, then a 51-year-old accountant filed a traumatic injury claim alleging that on that same day she sustained a left ankle sprain and leg injury at work when a steel pipe struck her left leg and landed on her foot. On June 8, 1999 the Office of Workers' Compensation Programs accepted the claim for left ankle sprain and left plantar fasciitis. Subsequently, on May 1, 2000 the Office updated the claim to include lumbar strain.

On October 25, 1999 appellant filed a Form CA-7 claim for compensation beginning August 13, 1999. In support, appellant submitted a clinical note from Dr. Christopher Highfill, an attending physician dated October 19, 1999, which reported the history of appellant's November 2, 1998 injury and that appellant had been evaluated by a specialist in June 1999 for left plantar fasciitis and retrocalcaneal bursitis. He also reported that appellant had complaints of hip, lower leg and back pain and that her heel pain had not improved. Dr. Highfill related appellant's belief that she had not been able to work since the injury due to the pain in her foot and left side. He assessed that appellant's pain was diffuse in nature and more consistent with fat pad atrophy involving the left heel. Dr. Highfill noted that appellant did have a component of plantar fasciitis, which he believed might have been persistent. Dr. Highfill did not assess her complaints of knee, hip and back pain nor did he address whether appellant was disabled from work at that time.

Appellant also submitted a November 11, 1999 report from Dr. Sam Wiesel, a Board-certified orthopedic surgeon. He reported the history of the work injury and that he had seen appellant since September 1999 for leg and low back pain. Dr. Wiesel stated that when appellant returned to work after acute treatment of her lower leg, she reported some associated low back pain, which had radiated into her groin area. He reported that appellant had normal neurological

test results and that a magnetic resonance imaging scan and electromyography returned normal except for some very mild degeneration at L4-5 and L5-S1 and L5 radiculopathy. Dr. Wiesel noted that appellant continued to have low back and leg pain and stated that although the back pain was associated with the injury, he could not say that it was caused by the injury. Dr. Wiesel did not address whether appellant was disabled from work.

In letters dated December 8, 1999 and January 31, 2000, the Office advised appellant that there was no medical evidence to support total disability beginning August 13, 1999 or that she received medical treatment as indicated. The Office afforded her additional time with which to submit supportive evidence.

In response, appellant submitted reports from Dr. Stephen Haas, a Board-certified orthopedic surgeon, dated November 4, 1998 and March 6, 2000, which noted the work injury and that appellant had an ankle and leg injury which caused some persistent pain. In the March 6, 2000 report, Dr. Haas noted that her Achilles tendon was tender, but that she had full range of motion and was able to bear weight without support. He then stated that appellant could return to work “on the 16<sup>th</sup> of November, with follow-up evaluation in three weeks.”

By decision dated February 7, 2000, the Office denied appellant’s CA-7 claim for compensation beginning August 13, 1999 on the grounds that the evidence was insufficient to establish that she was disabled from work as a result of her injury.

On May 1, 2000 appellant filed another Form CA-7 claim for compensation for the period July 19 through November 11, 1999. In a letter dated June 9, 2000, the Office advised appellant to submit medical evidence supportive of her claim. In response, appellant submitted medical reports already of record.

By decision dated September 26, 2000, the Office denied appellant’s claim for compensation for the period July 19 through November 11, 1999 based on insufficient evidence. The Office noted that appellant was given the opportunity to submit evidence establishing disability, however, no such evidence was submitted.

The Board finds that appellant has failed to establish that her condition during the claimed periods of disability is causally related to the accepted employment injury of November 2, 1998.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the injury was sustained in the performance of duty as alleged and that any disability or specific condition, for which compensation is claimed is causally related to the employment injury.<sup>2</sup> As used in the Act, the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>3</sup> Disability is thus not synonymous with

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Patricia A. Keller*, 45 ECAB 278 (1993); *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*,

physical impairment, which may or may not result in an incapacity to earn wages.<sup>4</sup> Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.<sup>5</sup>

The record in this case contains no such medical opinion to support that appellant was disabled from work for the period July 19 through November 11, 1999 or continually from August 13, 1999. Dr. Highfill provided a history of injury and a diagnosis of the accepted conditions; however, he indicated very generally that appellant complained of disabling pain during the claimed periods of disability related to the November 2, 1998 injury and did not offer an opinion as to whether appellant was actually disabled. Dr. Wiesel who evaluated appellant on November 11, 1999 did not address at all the issue of disability. Dr. Haas who saw appellant on November 4, 1998 following her work injury and again in March 2000, stated in his March 6, 2000 report that appellant could return to work on “November 16<sup>th</sup>.” However, he did not specify whether he referred to a time period immediately following the injury in 1998 or to November 1999 or later in 2000. Thus, this report is clearly insufficient to establish a claim of disability for the specified time periods. None of appellant’s physician’s provided a probative, rationalized medical opinion sufficient to establish that appellant’s claimed disability from July 19 through November 11, 1999 and beginning August 13, 1999 were causally related to her accepted work-related conditions.

By letters dated December 8, 1999, January 31 and June 9, 2000, the Office explained to appellant the type of medical evidence necessary to establish her claim that her claimed periods of disability were causally related to her November 2, 1998 employment injury. Because appellant has failed to provide sufficient medical evidence, the Office properly denied appellant’s claim for disability compensation benefits for the period beginning July 19 through November 11, 1999 and for a continuing period after August 13, 1999.

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37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948).

<sup>4</sup> See *Fred Foster*, 1 ECAB 21 (1947).

<sup>5</sup> See *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

The September 26 and February 7, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
September 20, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member