U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANN MARIE METOHARAKIS and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Providence, RI

*Docket No. 01-1175 Submitted on the Record;*
*Issued February 15, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's total disability for the period January 13 to February 23, 2000 is causally related to her accepted employment injury.

On November 21, 1999 appellant, a 42-year-old registered nurse, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that she slipped on a substance on the floor and twisted her left foot causing a fracture of the cuneiform bone. She worked November 21, 1999, used sick leave November 22 and 23, 1999 and was off duty until November 27, 1999 when she reported to work in a light-duty capacity. Appellant worked until December 3, 1999, after which she remained off work until February 23, 2000.

In a December 3, 1999 disability certificate, Dr. Christopher W. Di Giovanni, an orthopedic surgeon and appellant's treating physician, indicated that she could not do any work requiring standing or weight bearing for a minimum of eight weeks.

In a December 3, 1999 report, Dr. Di Giovanni noted appellant's history of injury and diagnosed symptomatic left accessory navicula with posterior tibial tendinitis, status post recent foot sprain. He stated that appellant should be placed in a short leg cast, stay off her foot for a few weeks and progress to weight bearing as tolerated.

In a December 21, 1999 letter, the employing establishment furnished diagnostic tests and nursing notes confirming appellant's nondisplaced left fracture, her return to light duty and its continued willingness to provide light duty complying with her medical restrictions.

In a letter dated December 30, 1999, the Office of Workers' Compensation Programs requested that appellant submit additional information. The Office also requested medical documentation explaining how the reported work incident caused or aggravated the claimed injury. Appellant was allotted 30 days to submit the requested evidence.

By letter dated January 5, 2000, the employing establishment again noted that they were able to accommodate appellant's light-duty restrictions and would modify the duties to accommodate any required medical limitations. They provided a light-duty description, which was based upon the employee health physician and appellant's physician's light-duty descriptions.

In a January 28, 2000 disability certificate, Dr. Di Giovanni stated that appellant needed a custom three-quarter length orthosis. He also advised that appellant was unable to work for two to three weeks pending her custom orthotic fitting.

On February 3, 2000 appellant submitted a claim for compensation for the period January 13 to February 29, 2000.

By letter dated February 7, 2000, the Office accepted appellant's claim for left tibialis tendinitis.

By letter dated February 9, 2000, the Office advised appellant to provide a detailed explanation as to the reason for her failure to return to limited duty despite her attending physician's descriptions indicating that she could perform limited duty. Appellant was allotted 15 days to submit the requested evidence.

By letter dated February 18, 2000, the Office advised appellant that they could not process her claim for compensation as the medical evidence of record established that she could perform limited-duty work. She was allotted 30 days to submit evidence showing that she was totally disabled from any type of work during the time claimed on her Form CA-7.

In a decision dated August 8, 2000, the Office denied appellant's claim for compensation for January 13 through February 29, 2000, as the evidence of file failed to establish total disability due to the injury November 20, 1999.

By letter dated August 9, 2000, appellant, through her representative, requested an oral hearing, which was held on January 11, 2001. Additional medical documentation was supplied at the hearing, including a duplicate of Dr. Di Giovanni's December 3, 1999 report and several recent ones. Appellant also provided photographs.

In a December 13, 1999 duty status report, Dr. Di Giovanni indicated that appellant was advised to return to work and described her limitations which included; no lifting; sitting up to eight hours a day; standing no more than one hour a day; walking no more than one to two hours per day; no climbing, kneeling, driving, operating machinery or dealing with chemicals; bending, twisting and pulling for one to two hours a day; simple grasping and keyboard for eight hours a day; and reaching above the shoulder intermittently for eight hours a day.

In a January 28, 2000 prescription slip, Dr. Di Giovanni ordered a custom orthosis.

In a January 28, 2000 disability slip, Dr. Di Giovanni stated that appellant was unable to work for two to three weeks pending her custom orthotic fitting.

In an August 24, 2000 report, Dr. Di Giovanni stated that appellant was initially treated with casting and anti-inflammatories and protective weight bearing which had significantly helped her symptoms. He stated that he saw appellant on January 28, 2000 and that he advised a well-molded orthosis, noting that it was typical for patients to require an additional two to three weeks' time for molding and delivery of the custom made orthosis. Dr. Di Giovanni then advised that:

> "I told [appellant] that I would clear her for light duty if she could still stay off the leg at that time. She, however, stated that, that would essentially be impossible at her present work given her job description and, therefore, I told her then she would be completely unable to work for two to three weeks, subsequent from that office visit, pending custom orthotic fitting, afterwards, she could return to work full duty with the use of anti-inflammatories."

By letter dated February 6, 2001, the employing establishment responded to the transcript of proceedings from the January 11, 2001 hearing. The employing establishment noted that light duty was available for all injured employees unless they were totally incapacitated. Appellant was offered a light-duty assignment within her physician's restrictions and transportation was available in the form of public transportation and, if appellant had requested a tour of duty change while she was recovering, the employing establishment would have accommodated her request. The employing establishment also requested that continuation of pay should apply to the period from November 21 to November 26, 1999 as appellant worked intermittently during that time.

In a March 12, 2001 decision, the hearing representative affirmed the August 8, 2000 decision finding that the factual medical evidence of record failed to support appellant's entitlement to compensation from January 13 to February 23, 2000.

The Board finds that appellant has not established that she was totally disabled from January 13 to February 23, 2000 causally related to her accepted employment injury.

Following the November 21, 1999 employment injury, appellant returned to light-duty work on November 27, 1999 until December 8, 1999, when she indicated that she could no longer perform light duty. She subsequently claimed total disability commencing January 12 to February 23, 2000. When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this 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 light-duty job requirements.[1]

Appellant has not provided any medical reports, based on objective findings, which establish that there has been a change in the nature and extent of her condition such that she can

[1] *Richard E. Konnen*, 47 ECAB 388 (1996);*Terry R. Hedman*, 38 ECAB 222, 227 (1986).

no longer perform her light-duty job and also has provided no evidence to establish that there has been a change in the nature and extent of her light-duty job requirements. On December 30, 1999 the Office advised appellant of the type of medical and factual evidence needed to establish her claim for a recurrence of disability, however, appellant has not submitted such evidence.

Appellant provided several reports from her treating physician Dr. Di Giovanni. In his December 3, 1999 disability slip, he advised that she could not do any work that required standing or weight bearing. The record reflects that the employing establishment provided a light-duty position complying with his restrictions. In his December 13, 1999 duty status report, he advised that appellant could return to light duty and proceeded to describe her limitations. On January 28, 2000 Dr. Di Giovanni advised that appellant was totally disabled for two to three weeks pending fitting of her custom orthotic. He did not provide any explanation to show that appellant's condition had changed such that she was unable to continue her light-duty position that did not require standing or walking. Dr. Di Giovanni did not provide a rationalized medical opinion which explained how and why appellant's total disability commencing January 13, 2000 was causally related to her accepted employment injury. Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.[2] In Dr. Di Giovanni's August 24, 2000 report, he advised that he could clear appellant for light duty but noted that she informed him that light duty was not available. Upon that assumption, he indicated that she would be totally disabled during the aforementioned time period in order for her foot to heal. However, the record reflects that the employing establishment was able to accommodate any restrictions and appellant's assertion that light duty was unavailable was incorrect.

As appellant has not submitted competent medical evidence showing a change in the nature and extent of her injury-related condition, such that she was unable to perform the light duty assigned by the employing establishment, such that she was disabled from January 13 to February 23, 2000 due to her accepted employment injury, she has not met her burden of proof.

[2] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

The March 12, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
February 15, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member