U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA L. ROBLES and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

Docket No. 03-88; Submitted on the Record;
Issued June 25, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for wage-loss compensation based on partial disability from November 6, 2000 to November 2, 2001.

On August 4, 1995 appellant, then a 32-year-old letter carrier, filed a notice of occupational disease alleging that she developed a left foot condition as a result of standing and walking in the performance of duty. The Office accepted that the claim for a heel spur and plantar fasciitis of the left foot. Appellant underwent surgery on October 5, 1995 performed by Dr. Michael Forsling, consisting of heel spur excision and plantar fasciitis release. She received compensation for total disability from October 5, 1995 to January 31, 1996 and intermittent periods of wage loss from April 4 to June 25, 1996.

On January 27, 1998 appellant filed a claim for an occupational disease related to her right foot. The Office accepted the claim for right heel spur and right plantar fasciitis.[1] Appellant underwent right heel spur excision with plantar fascia release on July 18, 1998. She returned to light duty in November 1998 but stopped again on December 31, 1998.

Appellant filed a claim for a recurrence of disability beginning December 31, 1998, which was denied by Office decision dated June 8, 1999 decision.

In a June 21, 1999 report, Dr. Benjamin Tam, a Board-certified orthopedic surgeon, indicated that he had been treating appellant for six months for pain in the left gastrocnemius musculature. He noted that appellant had been diagnosed with left Achilles tendinitis since 1995, a condition that proved poorly responsive to conservative treatment. Dr. Tam reported that appellant's pain symptoms did not appear to be related to her back. He opined that the symptoms were more related to the diagnosis of left Achilles tendinitis. Dr. Tam concluded that appellant should remain on temporary disability.

[1] The Office combined appellant's two claims under case number 13-1086360.

In a report dated July 8, 1999, Dr. Forsling stated that appellant had been under his care foot plantar fasciitis which treatment including physical therapy, custom orthoses and surgery. He noted that appellant opined that appellant's foot problem was managed so long as she worked light duty. Dr. Tam related that there had been times when appellant's condition worsened as a result of excessive walking at work or at home. Dr. Forsling stated that appellant's plantar fasciitis and Achilles tendinitis problems were related since they are anatomically connected. He noted that appellant was now under the care of Dr. Tam for treatment of her tendinitis.

Appellant next filed an occupational disease claim for bilateral Achilles tendinitis on November 29, 1999, which was accepted by the Office as a consequential condition of the work injury.

By letter dated December 20, 1999, appellant requested reconsideration of the Office's June 8, 1999 decision.

On February 22, 2000 Dr. Forsling approved appellant for part-time duty for two hours per day. The restrictions were a sedentary job with no climbing, bending, stooping and walking, lifting, prolonged walking or sitting.

In a March 16, 2000 decision, the Office denied appellant's request for reconsideration on the merits.

The Office referred appellant for a second opinion evaluation with Dr. Bleecker on April 20, 2000. In an April 24, 2000 report, Dr. Bleecker discussed the medical record and reported physical findings including normal range of motion of the feet and ankles. He diagnosed retrocalcaneal bursitis of both ankles due to employment factors. Dr. Bleecker opined that appellant could work eight hours with no flat-footed walking.

Dr. Bleecker also prepared a supplemental report dated May 25, 2000. He advised that there were no objective findings to support appellant's disability from work between December 31, 1998 and April 24, 2000. Dr. Bleecker repeated that appellant could work eight hours per day.

In a July 27, 2000 decision, the Office denied appellant's claim for wage-loss compensation from December 31, 1998 to May 19, 2000.

Appellant requested reconsideration on August 14, 2000 and submitted additional evidence.

In a September 6, 2000 decision, the Office denied modification of its prior decision.

In a September 26, 2000 report, Dr. Forsling stated that appellant had been under his care for chronic plantar fasciitis. He opined that appellant's condition was permanent and stationary. He stated: "In order to maintain her at this current level of tolerance, it was necessary that she be on disability during the period of time noted earlier this year and now is limited to walking only two hours out of each eight-hour day."

In an October 2, 2000 report, Dr. Tam indicated that appellant remained symptomatic with excruciating and debilitating pain when she was forced to stand or walk for any length of time. He opined that appellant should work only a maximum of two hours per day.

Dr. Clayton A. Varga, a Board-certified anesthesiologist specializing in pain management, requested authorization on November 1, 2000 for appellant to receive two additional lumbar sympathetic blocks for reflex sympathetic dystrophy of the left foot.

Appellant returned to full-time light duty on October 16, 2000. She worked a few weeks, and then on November 6, 2001 reduced her work hours to four per day.

In a November 20, 2000 report, Dr. Varga noted that appellant had returned to work on a full-time basis but after several weeks reported increased leg and ankle pain. He related that appellant had received lumbar injections for the pain with no permanent resolution. Dr. Varga opined that appellant should return to working only four hours per day because of her significant pain and the medications that she was required to take for the pain.

On March 16, August 3 and November 5, 2001 appellant filed CA-7 claims for compensation for intermittent wage loss based on a four-hour workday.

The Office determined that a conflict existed in the record as to the proper diagnosis of appellant's foot condition and regarding whether appellant could work eight hours a day limited duty as opposed to four hours per day limited duty. The Office sent appellant, along with a statement of accepted facts and a copy of the medical record, to Dr. Robert A. Audell, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a report dated May 21, 2001, Dr. Audell reviewed the medical record and noted physical findings. He recorded appellant's work status as "She has been working modified duties four hours a day since [August 2000]." Dr. Audell diagnosed lumbar strain with residuals secondary to bilateral foot pain and limping, status post bilateral plantar fascial spur excision with continued plantar fascial pain and rule out psoriatic arthritis and a possible herniated lumbar disc with extreme radiculopathy. He stated that appellant's foot and back condition was the result of her May 11, 1993 work injury. Dr. Audell reported that appellant was a reasonable individual and appeared to be in pain although her symptoms were not consistent with her orthopedic findings on examination. He opined that appellant could continue with "current job duties." Dr. Audell further recommended that appellant undergo magnetic resonance imaging (MRI) and electromyogram (EMG) testing to rule out a herniated disc.

Nerve conduction studies and an EMG of the lower extremities dated June 6, 2001 were interpreted as normal. An MRI scan dated June 8, 2001 showed degeneration with small disc protrusions at L4-5 and L5-S1.

In an attending physician's report dated November 19, 2001, Dr. Forsling diagnosed plantar fasciitis due to the May 11, 1993 work injury. He indicated that appellant could return to work four hours per day with no prolonged walking or standing, no lifting over 10 pounds, no climbing, bending or stooping.

In a decision dated December 3, 2001, the Office denied appellant's claim for compensation for partial disability wage loss based on a four-hour workday beginning November 6, 2000.

On December 7, 2001 appellant requested a hearing, which was held on June 25, 2002.

Appellant submitted reports from Dr. Varga dated April 9 and May 6, 2002, indicating that appellant continues to have chronic ongoing pain in the left lower extremity status post surgery with a neuropathic component to the pain.

In a July 10, 2002 report, Dr. Varga diagnosed low back, leg and foot pain due to appellant's work injury secondary to chronic bilateral plantar fasciitis. He also diagnosed left Achilles tendinitis, chronic neuropathic pain of the lower extremities and degenerative disc disease of the lumbar spine.

Appellant further submitted a June 11, 2002 report signed by a physician's assistant.

In decision dated September 20, 2002, an Office hearing representative affirmed the Office's December 3, 2001 decision.

The jurisdiction of the Board is limited to those decisions issued within one year of the date of appellant's appeal. In this case, appellant filed her appeal on October 15, 2002; therefore, the Board may only consider those decisions issued on or after October 15, 1991. The only Office decisions of record to post-date October 15, 2001 are the decisions dated December 3, 2001 and September 20, 2002.[2]

Appellant is seeking compensation for partial disability wage loss based on a four-hour workday she began on November 6, 2000. The entire period of compensation claimed is November 6, 2000 to November 2, 2001.

The Board concludes that the case is not in posture for a decision.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 supports this that conclusion with sound medical reasoning.[3]

With respect to appellant's alleged partial disability from work, the Office determined that a conflict existed in the record between appellant's treating physician and the Office referral physician. The Office referred appellant for an impartial medical evaluation with Dr. Audell, who opined that appellant suffered from a lumbar strain secondary to bilateral foot pain and limping, status post bilateral plantar fascial spur excision which he attributed to appellant's work injury. Dr. Audell opined in his May 2, 2001 report that appellant could continue her "present duties" with limitations. As of May 2, 2001, appellant was working four hours per day under the advice of her treating physician. The Office second opinion physician, Dr. Bleeker, had opined that appellant was capable of working eight hours per day despite her work-related foot injury.

[2] *See Earl David Seal*, 49 ECAB 152 (1997); 20 C.F.R. § 501.2(c), 501.3(d)(2).

[3] *Dennis J. Lasanen*, 43 ECAB 549 (1992); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

In reviewing the Office's denial of compensation, the Office hearing representative ignored Dr. Audell's report and credited Dr. Bleeker's opinion regarding appellant's work status. The Board, however, finds that Dr. Audell's opinion, which is entitled to special weight as the impartial medical specialist,[4] implies that appellant could only work four hours per day since that was the amount of hours appellant was working when she was examined by Dr. Audell. At the very least, the Office should have obtained a supplemental report from Dr. Audell clarifying the extent of appellant's disability for work. Until such time as Dr. Audell's opinion is clarified, there remains a conflict in the medical record, which must be resolved.[5] On remand the Office is directed to obtain a supplemental report from the impartial medical specialist. After such further development as the Office deems necessary, it shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated September 20, 2002 and December 3, 2001 are hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
June 25, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] Where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for review for the purpose of resolving that conflict, the opinion of such specialist is entitled to special weight if it is sufficiently well rationalized and based upon a proper factual background. *Josephine L. Bass*, 43 ECAB 929 (1992); *LeAnne E. Maynard*, 43 ECAB 482 (1992).

[5] Section 8123 of the Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. *See* 5 U.S.C. § 8123; *LeAnne E. Maynard*, *supra* note 4.