

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LIGAYA R. BUSTOS and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 03-1470; Submitted on the Record;
Issued September 2, 2003*

DECISION and ORDER

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

The issue is whether appellant established that she was disabled for work from September 11 to 22, 2000, July 23 to August 10 and August 23, 2001 due to a work-related bilateral foot condition.

On July 18, 1992 appellant, then a 49-year-old distribution clerk, filed a notice of occupational disease alleging that she injured her feet in the performance of duty as a result of having to stand for long periods of time at work. She listed the date that she first realized her foot condition was caused or aggravated by her federal employment as February 24, 1992. The Office of Workers' Compensation Programs accepted the claim for bilateral heel spurs. Appellant came under the care of Dr. Dale R. Allen, a Board-certified orthopedic surgeon, for treatment of her bilateral foot condition and underwent surgery to remove the heel spurs. She received compensation for intermittent periods of disability wage loss and medical benefits.¹ Appellant returned to work in a modified position effective January 6, 1996, in accordance with the work restrictions provided by Dr. Allen that limited her to 15 minutes of standing and walking every 2 to 3 hours.

On August 30, 2001 appellant filed a Form CA-7, claiming leave buy back compensation from September 11 to 22, 2000, July 23 to August 10 and August 23, 2001. She submitted a Form CA-20, attending physician's report, signed by Dr. Allen on August 28, 2001, which listed the same periods of total disability alleged by appellant on her CA-7 form, but also included the date of August 23, 2001. The diagnosis was listed as "tend[i]nitis, achilles tendon, heel spur calcaneus." The date of injury was listed as February 24, 1992. He indicated that appellant's foot condition was due to "standing and walking on [a] concrete floor for extended periods of time."

¹ Appellant also received a schedule award for 10 percent permanent disability of the left foot and 10 percent permanent disability of the right foot.

In a November 13, 2001 letter, the Office advised appellant of her responsibility to submit medical evidence, including a complete narrative report from her treating physician that explained, with medical rationale, why she was unable to work in her light-duty assignment for the periods claimed as a result of her employment-related foot condition. The Office subsequently received a December 12, 2001 letter from Dr. Allen, wherein he stated that appellant had been off work from September 11 to 22, 2000 and July 23 to August 10, 2001 because of severe heel pain secondary to chronic plantar fasciitis. He also noted that appellant was seen in his office for follow-up on August 23, 2001.

In a decision dated January 30, 2002, the Office denied appellant's claim for wage-loss compensation from September 11, 2000 to August 23, 2001.² The Office held that the medical evidence was insufficient to establish that she was disabled for work during the claimed period as a result of her work injury. On November 8, 2002 appellant requested reconsideration and submitted a report from Dr. Allen dated March 8, 2002.³ He stated that he saw appellant on September 11, 2000, at which time she had been unable to walk without difficulty. Dr. Allen indicated that he had advised appellant to stay off work from September 11 to 22, 2000 and July 23 to August 10, 2001 because of severe left heel pain due to "chronic, persistent plantar fasciitis suffered from a work-related injury." Appellant also submitted a report from Dr. William M. Valentine, a podiatrist, dated September 28, 2002. He advised that he had seen appellant on referral from Dr. Allen. Dr. Valentine noted that appellant had been under his care from July 31 until October 31, 2001 for treatment of retrocalcaneal bursitis of the left heel, for which he prescribed a combination of rest, immobilization, steroid injections and anti-inflammatory medicine, culminating in a 90 percent reduction of appellant's pain symptoms by October 1, 2001. In a decision dated December 18, 2002, the Office denied modification of its prior decision.

The Board finds that appellant failed to establish that she was disabled for work from September 11 to 22, 2000, July 23 to August 10 and August 23, 2001 due to a work-related bilateral foot condition.

Under the Federal Employees' Compensation Act⁴ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn the wages that she was receiving at the time of injury, has no disability as that term is used in the Act and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁵

² The Office did not specify that the claimed dates of disability were from September 11 to 22, 2000, July 23 to August 10 and August 23, 2001.

³ Appellant submitted copies of treatment notes from Dr. Allen dated April 9, June 13 and September 2002 indicating that she continued to be treated for chronic plantar fasciitis.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Maxine J. Sanders*, 46 ECAB 835 (1995).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

In this case, the Office accepted that work factors caused appellant to develop bilateral heel spurs and she received appropriate compensation for intermittent periods of disability wage loss until she returned to limited duty on January 6, 1996. Appellant subsequently claimed that she was disabled for work from September 11 to 22, 2000, July 23 to August 10 and August 23, 2001. Because she was required to file a CA-7 form for each period of disability claimed, she maintained the burden of proving by the preponderance of the reliable, probative, and substantial evidence that she was disabled for work as a result of her employment injury.⁸ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence. The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁹

The Board finds that appellant failed to satisfy her burden of establishing disability for work for the periods alleged on her Form CA-7. The Office advised her of the nature of the medical evidence required to establish her claim for compensation, which was to include a detailed narrative report from her treating physician that explained with medical rationale why she was unable to work in her light-duty position for the claimed periods due to the accepted work-related foot condition.

Although Dr. Allen stated that appellant was unable to work from September 11 to 22, 2000, July 23 to August 10 and August 23, 2001, he did not offer any medical rationale or objective findings to support the alleged period of disability. He noted only that appellant was in pain, on the stated dates, due to chronic plantar fasciitis. The Board notes, however, that the

⁶ Gary L. Fowler, 45 ECAB 365 (1994); Victor J. Woodhams, 41 ECAB 345 (1989).

⁷ Minnie L. Bryson, 44 ECAB 713 (1993); Froilan Negron Marrero, 33 ECAB 796 (1982).

⁸ See *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *Yvonne R. McGinnis*, 50 ECAB 272 (1999) (the employee has the burden of proving that he or she is disabled for work as a result of an employment injury or condition. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to the employment).

⁹ *Fereidoon Kharabi*, *supra* note 8.

Office accepted this claim for bilateral heel spurs and not plantar fasciitis. In the absence of reasoned explanations, as to how appellant's diagnosed foot condition was due to the accepted work injury and how that condition caused appellant to be disabled from a job that is basically sedentary in nature, Dr. Allen's opinion does not satisfy appellant's burden of proof.

Similarly, Dr. Valentine stated that he treated appellant from July 31 until October 31, 2001 for treatment of retrocalcaneal bursitis of the left heel, a condition that has not been accepted by the Office as work related. Because appellant has not submitted any reasoned medical evidence to show that she was disabled from September 11 to 22, 2000, July 23 to August 10 and August 23, 2001 as a result of her accepted employment injury, the Board finds that the Office properly denied her claim for wage-loss compensation.

The decision of the Office of Workers' Compensation Programs dated December 18, 2002 is hereby affirmed.

Dated, Washington, DC
September 2, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member