

On January 18, 2004 appellant filed a claim for compensation alleging wage loss from September 18, 2003 to January 6, 2004.¹ In a decision dated February 21, 2004, the Office denied this claim on the grounds that appellant had presented no medical evidence from her doctor indicating whether she was temporarily disabled during the dates in question and why.

Appellant filed an appeal with the Board on March 8, 2004.² On March 23, 2004 the Office reconsidered its February 21, 2004 decision, on its own motion³ and determined that it should rescind its decision denying compensation for wage loss: a review of the file indicated that the Office had issued a denial before affording appellant an opportunity to provide evidence to support her claim for compensation. The Office enclosed a letter explaining the evidence needed to support appellant's claim for compensation and allowed her 30 days to respond. The Office stated that it would issue a decision on her claim for compensation based on the evidence in her file at that time.⁴

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act⁵ ("Act") has the burden of proof to establish the essential elements of her claim by the weight of the evidence,⁶ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁷

As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁸ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁹

¹ On February 6, 2004 the employing establishment agreed to allow appellant to repurchase leave used during this period, creating leave without pay or wage loss.

² Except as otherwise provided by the Board's Rules of Procedure, a notice of appeal is considered to have been filed only as of the date it is received in the office of the clerk of the Board. 20 C.F.R. § 501.3(3).

³ 5 U.S.C. § 8128(a) (the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application).

⁴ Under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990), the Office's March 23, 2004 rescission, issued while the Board had jurisdiction to review the same subject matter, is null and void.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f) (1999).

⁹ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial evidence.¹⁰ Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.¹¹ The Board has held that when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹² While there must be a proven basis for the pain, due to an employment-related condition can be the basis for the payment of compensation.¹³ The Board, however, will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁴

ANALYSIS

The Office accepts that appellant developed plantar fasciitis in her left foot as a result of her federal employment. Appellant then filed a claim for compensation alleging that her wage loss from September 18, 2003 to January 6, 2004, was causally related to this employment injury. She therefore bears the burden of proof to establish such a causal relationship.

The Office is not a disinterested arbiter in this matter but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on the Office to see that its administrative processes are impartially and fairly conducted.¹⁵ While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁶ The Office is responsible for providing the claimant information about the procedures involved in establishing a claim, including detailed instructions for developing the required evidence and upon initial examination of the case should request all evidence necessary to adjudicate the case.¹⁷

The Office did not discharge this responsibility before issuing its February 21, 2004 decision denying appellant's January 18, 2004 claim for compensation. The Board will therefore

¹⁰ *Edward H. Horton*, 41 ECAB 301 (1989).

¹¹ See *Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

¹² *John L. Clark*, 32 ECAB 1618 (1981).

¹³ *Barry C. Peterson*, 52 ECAB 120 (2000).

¹⁴ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁵ *Thomas M. Lee*, 10 ECAB 175, 177 (1958).

¹⁶ *Mary A. Barnett (Frederick E. Barnett)*, 17 ECAB 187, 189 (1965).

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3.c (April 1993).

set aside the February 21, 2004 denial and remand the case to the Office for proper development of the evidence, including a description of the specific evidence required to establish appellant's claim, to be followed by an appropriate final decision on whether appellant is entitled to compensation for wage loss from September 18, 2003 to January 6, 2004.¹⁸

CONCLUSION

The Board finds that this case is not in posture for decision. Proper development of the evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: July 29, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁸ Appellant also filed claims for compensation on account of wage loss from January 13 to March 5, 2004, which claims still await final adjudication by the Office.