United States Department of Labor
Employees' Compensation Appeals Board

MARILYN FIELDS-JOHNSON, Appellant	)	
and	)	**Docket No. 04-1497**
	)	**Issued: November 5, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Inkster, MI, Employer	)	

Appearances:
Marilyn Fields-Johnson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 19, 2004 appellant filed an appeal of the decision of the Office of Workers' Compensation Programs dated February 18, 2004, which denied her claim for disability compensation on or after March 10, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she was entitled to disability compensation for any period on or after March 10, 2000 causally related to her accepted Achilles tendinitis.

FACTUAL HISTORY

On February 14, 2001 appellant, then a 42-year-old letter carrier working limited duty,[1] filed an occupational disease claim Form CA-2, alleging that excessive standing and walking in

[1] The employing establishment indicated that, at the time of appellant's February 14, 2001 claim, her job consisted of casing her route and delivering three-hour jump stops.

her federal employment caused bilateral tendinitis in her feet. She first became aware of the condition and its relationship to her employment on December 1, 1999. In support of her claim, appellant submitted a number of form reports and treatment notes dating from March 3, 2000 to February 19, 2001 from Dr. Kavitha Vanga, Board-certified in internal medicine, who diagnosed Achilles tendinitis and provided work restrictions consisting of no prolonged standing and walking for 20 minutes or less. Bilateral x-rays of the ankles on March 3, 2000 were negative. Dr. John Corbett, Board-certified in orthopedic surgery, examined appellant for the employing establishment. In an October 6, 2001 report, he noted findings on examination and diagnosed bilateral Achilles tendinitis, bilateral heel pad bursitis and ankle stiffness caused by the preceding diagnoses. The physician advised that the condition was caused by the way appellant had walked over a number of years.

On October 9, 2001 the Office accepted that appellant sustained employment-related bilateral Achilles tendinitis. On October 31, 2001 she accepted a limited-duty job offer within the restrictions provided by Dr. Vanga. On September 6, 2002 appellant accepted a similar offer with the same work restrictions. The physician submitted treatment reports.[2] On a form report dated October 3, 2002, in response to an Office inquiry, Dr. Vanga advised that appellant had employment-related osteoarthritis of both ankles which was a permanent condition and provided restrictions of a sit-down job with no prolonged standing or walking. On April 9, 2003 she filed a Form CA-7 claim for intermittent periods of disability from March 10, 2000 to September 20, 2001. By letter dated May 1, 2003, the Office informed appellant of the type evidence needed regarding the CA-7 claim. She was asked to provide documentation supporting that she sustained wage loss because work was not provided within her medical restrictions. Appellant submitted reports from Dr. Vanga dated August 29 and December 7, 2001, in which he reiterated his physical restrictions, leave slips and a report of leave analysis from December 1, 1999 to August 1, 2001.

By decision dated June 4, 2003, the Office noted that appellant sustained an employment-related Achilles tendinitis beginning December 1, 1999, but denied that she sustained a recurrence of disability on March 10, 2000 causally related to the accepted condition. On June 26, 2003 appellant requested a hearing. She submitted additional reports from Dr. Vanga, including a July 30, 2003 disability slip, indicating that she should not stand for greater than two hours with no prolonged walking. Appellant also submitted limited-duty job offers and leave information.

At a hearing held on November 20, 2003 appellant testified regarding missing work and stated that on numerous occasions she was sent home because the employing establishment did not have work for her. She submitted additional leave slips and time analysis.

In a decision dated February 18, 2004, an Office hearing representative affirmed the June 4, 2003 decision, finding the medical evidence of record insufficient to establish that appellant's claimed disability was caused by the accepted condition.

[2] Appellant also submitted reports from a physician whose signature is illegible.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[3] the term "disability" means the incapacity, because of an 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 wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.[4] 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.[5]

ANALYSIS

On October 9, 2001 the Office accepted that appellant sustained bilateral Achilles tendinitis beginning on December 1, 1999. She thereafter submitted a claim for compensation for intermittent periods of disability beginning on March 10, 2000 and submitted a number of disability slips and treatment notes from her attending internist, Dr. Vanga, and information regarding leave taken. Although the Office developed the claim as a recurrence of disability, appellant claimed disability prior to the acceptance of the claim.[6]

The Board finds that the Office erred in failing to address appellant's entitlement to compensation for the dates in which she received medical treatment for her accepted condition. An employee is entitled to disability compensation for loss of wages incurred while receiving treatment and for loss of wages incidental to treatment for which the employee did not receive pay.[7] In a number of the reports provided by Dr. Vanga, specifically those dated March 17, April 17, May 18 and 20, June 19 and December 14, 2000 and February 19, 2001 and February 26, 2002 the physician provided restrictions to appellant's physical activity and indicated that she was seen for treatment of the accepted condition of Achilles tendinitis on those dates. In the report dated February 26, 2002, Dr. Vanga further stated that appellant could not work from February 25 to 27, 2002 due to the accepted condition. Appellant also provided leave analysis which indicated that she took 3.15 hours sick leave on March 17, 2000, 1 hour sick leave on May 20, 2000 and 4 hours leave without pay (LWOP) on December 14, 2000. The Board finds this to be probative evidence to establish entitlement for disability compensation for loss of wages incurred during the above periods in which appellant received medical treatment.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[5] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[6] Office regulations contemplate that a recurrence of disability means an inability to return to work, after an employee has returned to work, which resulted from a previous injury or illness. 20 C.F.R. § 10.5(x). Here, the disability claimed on appellant's April 9, 2003 CA-7 form occurred before the claim was accepted. Consequently, it does not appear that this is a recurrence of disability situation.

[7] *Henry Hunt Searls, III*, 46 ECAB 192 (1994).

The case will be remanded to the Office for an award of compensation for the claimed hours on March 17, May 20 and December 14, 2000.[8]

Dr. Vanga also provided reports dated March 3, 2000, August 29, November 27 and December 19, 2001, December 6, 2002 and July 30, 2003 which contained a diagnosis of ankle pain and indicated that appellant had treatment that day. Appellant indicated that she took three-quarter hours sick leave on March 3, 2000 and eight hours LWOP on August 29, 2001. While there must be a proven basis for the pain, pain due to an employment-related condition can be the basis for payment of compensation for disability under the Act.[9] The Board, however, notes that, in a September 11, 2002 report, Dr. Vanga advised that appellant's ankle pain was secondary to arthritis, not the accepted condition. The Board, therefore, finds that appellant has failed to provide an adequate basis for establishing entitlement to compensation on the days in which Dr. Vanga provided treatment for ankle pain.

Appellant also asserted that she was sent home because the employing establishment had no work within her restrictions. Dr. Vanga provided a number of reports dating from March 3, 2000 to July 30, 2003, in which he diagnosed Achilles tendinitis and provided work restrictions. The Board notes that appellant is claiming intermittent wage-loss compensation beginning March 10, 2000, yet the claim was not accepted until October 9, 2001. Shortly thereafter, on October 31, 2001 she accepted a position within the restrictions provided by Dr. Vanga. In support of her claim that she was at times sent home because there was no work prior to accepting the limited-duty position, appellant submitted a number of leave slips, most of which were signed by a supervisor, with notations of either "no work" or "no work available."[10]

The test of "disability" under the Act is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured.[11] The leave slips, without further explanation, are insufficient to establish that appellant is entitled to wage-loss compensation for the claimed periods. However, in the absence of contrary information from the employing establishment or a job description that provides the physical restrictions of appellant's position prior to October 31, 2001, the Board finds this evidence together with the physical restrictions provided by Dr. Vanga, to be sufficient. The case will be remanded to the Office. On remand the Office should obtain appropriate information from the employing establishment and determine if appellant is entitled to wage-loss compensation for any of the dates in which she claims she was sent home because work was not available within the restrictions provided by Dr. Vanga for her Achilles tendinitis.

Other than the issue of whether appellant is entitled to compensation for the above-referenced dates, she failed to submit rationalized medical evidence establishing that she was totally disabled for additional dates and periods claimed.

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[8] *Id.*

[9] *Fereidoon Kharabi, supra* note 6.

[10] These dated from March 11, 2000 to September 29, 2001.

[11] *Corlisia Sims*, 46 ECAB 963 (1995).

CONCLUSION

The case will be remanded to the Office for an award of wage-loss compensation for March 17, May 20 and December 14, 2000 dates in which appellant was undergoing treatment for her accepted condition. The Board further finds that the case is not in posture for decision regarding whether appellant is entitled to wage-loss compensation for dates she claims she was sent home because work was not available within her restrictions.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 18, 2004 be affirmed in part, set aside in part and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: November 5, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member