

and fell. The employing establishment did not controvert her claim. A supervisor indicated that no time was lost and that medical expenses were expected.

The record indicates that appellant previously tripped over some cords at work on March 9, 2005 and sustained an inversion plantar flexion sprain of her right ankle.¹ She received treatment, including physical therapy, from Dr. William G. Gerlach, a podiatrist.

On June 20, 2005 Dr. Gerlach completed an attending physician's form report. He noted that the date of injury was June 18, 2005. Dr. Gerlach diagnosed "inversion plantar flexion right sprain ankle" and indicated with an affirmative mark that this condition was caused or aggravated by an employment activity. He added: "[Appellant] fell at work." Dr. Gerlach answered "N/A," or not applicable, to items asking for periods of total or partial disability for work.

On July 11, 2005 Dr. Gerlach completed a duty status report. He confirmed that the history of the June 18, 2005 injury given by appellant corresponded to that provided by the supervisor: "Tripped over a mat and twisted right ankle." Dr. Gerlach examined appellant that day. Clinical findings included edema, right ankle. He diagnosed right ankle sprain and indicated that appellant was not able to perform her regular duties. He stated that she was able to sit six to eight hours a day. Dr. Gerlach indicated that appellant's next appointment was for surgery on July 26, 2005.

On July 19, 2005 Dr. Gerlach explained that appellant needed to remain off work:

"I am writing this letter to you to explain [that appellant] needs to remain off work until the expected time to go back. We have discussed with [her] that she needs to stay off her foot at least until July 29, 2005. She is going back into surgery July 26, 2005 on her foot. At this time I am not certain when she will be returning to her job.

"I do have her diagnosis which is 845.00 and 729.5. 845.00 means sprained/strained ankle and 729.5 means pain in limb."

On August 5, 2005 the employing establishment informed the Office that it had received Dr. Gerlach's duty status report and offered appellant a job but that she refused to return to work.

On August 10, 2005 the Office notified appellant that her claim was accepted for the condition of right ankle sprain. The Office explained that her physician's request for authorization of surgical treatment remained pending. It advised that it was unclear why the surgery was necessary and requested additional information.

"If you would like your claim expanded to include surgical treatment and disability from work you must submit additional medical evidence including the operative report and postoperative treatment notes pertaining to your surgical treatment on July 26, 2005. You should also submit a well-rationalized medical

¹ Office File No. 11-2027495.

report [that] describes the diagnosed conditions affecting your ankle and explaining how these conditions are related to your stumble at work on June 18, 2005.” (Emphasis omitted.)

The Office also explained that appellant needed to submit additional medical information within 30 days to support a claim for continuation of pay:

“If your injury results in lost time from work, you may be eligible to receive continuation of pay until you recover or return to light duty, up to a maximum of 45 calendar days. If wage loss continues after your entitlement to continuation of pay expires, you may claim disability compensation on Form CA-7. At this time the evidence of file is insufficient to support a claim for continuation of pay. You must submit a report that explains if your total disability from work is related to your June 18, 2005 injury or to a preexisting condition or due to your surgical intervention.” (Emphasis omitted.)

The record indicates that appellant returned to limited duty on August 12, 2005.

On August 24, 2005 Dr. Gerlach related appellant’s findings, diagnosis and treatment but gave no indication that her June 18, 2005 employment injury had caused any disability for work. He stated that he examined her on June 20, July 11, 26 and 29 and August 5, 2000. Dr. Gerlach’s August 29, 2005 prescription note stated that appellant “needed to be off work August 27, 2005 and ½ day August 28, 2005.”

In a decision dated September 21, 2005, the Office found that appellant was not entitled to continuation of pay during her work absence from June 19 to August 1, 2005 because medical evidence was not provided to support that she was totally disabled during the 45-day continuation of pay period due to the June 18, 2005 work injury.

LEGAL PRECEDENT

The United States shall authorize the continuation of pay of an employee who has filed a claim for a period of wage loss due to a traumatic injury with her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2).²

To be eligible for continuation of pay, a person must: (1) have a traumatic injury that is job related and the cause of disability or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.³

² 5 U.S.C. § 8118(a). The latter section provides that written notice of injury shall be given “within 30 days.” The context of section 8122 makes clear that this means within 30 days of the injury. *George A. Harrell*, 29 ECAB 338 (1978).

³ 20 C.F.R. § 10.205(a) (1999).

The employer, not the Office, pays continuation of pay.⁴ The intent of the continuation of pay provision is to eliminate interruption in the employee's income for the period immediately following a job-related traumatic injury, not to increase the amount of compensation.⁵

ANALYSIS

Appellant reported her traumatic injury on an Office claim form within 30 days of the injury and the employing establishment did not controvert her claim. But the initial evidence indicated that she was not disabled for work. The supervisor classified her claim as a "no time lost" case with medical expenses expected. On June 20, 2005 -- only two days after the injury -- Dr. Gerlach, the attending podiatrist, answered "N/A" or not applicable to items asking for periods of total or partial disability for work. With no evidence to support that appellant had, in the words of the Act, "a period of wage loss due to a traumatic injury," there was simply no basis for continuing her pay.

The first indication that appellant was unable to perform her regular duties came on July 11, 2005 when Dr. Gerlach completed a duty status report. He indicated that her next appointment would be for surgery on July 26, 2005. On July 19, 2005 Dr. Gerlach clarified that appellant was going to have surgery on her foot on July 26, 2005 and needed to remain off her foot until at least July 29, 2005. This, together with evidence that she returned to limited duty on August 12, 2005, supports that appellant began losing time from work within 45 days of her June 18, 2005 employment injury. But Dr. Gerlach did not report that this work stoppage was due to the June 18, 2005 employment injury.

On August 5, 2005 the Office advised appellant that she had 30 days to submit a report explaining whether her total disability for work was related to her June 18, 2005 employment injury. Appellant did not submit such a report.

The Board finds that the Office properly denied continuation of pay. The medical evidence submitted did not support that the June 18, 2005 employment injury caused any period of wage loss within 45 days of the injury. The Board will, therefore, affirm the Office's September 21, 2005 decision.⁶

CONCLUSION

The Board finds that the Office properly denied continuation of pay following appellant's June 18, 2005 employment injury.

⁴ *Id.* at § 10.200.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.2 (March 2004).

⁶ The Board's jurisdiction is limited to the evidence in the case record that was before the Office at the time of its September 21, 2005 decision. 20 C.F.R. § 501.2(c). If supporting medical evidence is later received or if the Office authorizes the July 26, 2005 surgery, continuation of pay may be reinstated retroactively. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.7.b (March 2004).

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board