United States Department of Labor
Employees' Compensation Appeals Board

D.E., Appellant	)	
and	)	**Docket No. 08-1971**
	)	**Issued: August 5, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Minneapolis, MN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 8, 2008 appellant filed an appeal from decisions of the Office of Workers' Compensation Programs' dated November 15, 2007 and June 5, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to compensation for intermittent disability from January 3, 2005 to April 5, 2007 and September 10 to 28, 2007.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated March 6, 2007, the Board found that appellant failed to meet his burden of proof to establish that he sustained a recurrence of disability on March 20, 2006 causally related to his accepted pes planus with

marked subtalar joint degenerative disease.[1] The law and the facts of the previous Board decision are incorporated herein by reference.

On May 3, 2007 appellant submitted a Form CA-7, claim for compensation, for intermittent periods from January 3, 2005 to April 5, 2007.[2] In a November 29, 2005 return to work slip, Dr. M. Klager advised that he should be off work until December 2, 2005 and should not weight-bear on December 2, 2005. By report dated March 8, 2006, Dr. J. Chris Coetzee, Board-certified in orthopedic surgery, noted that appellant had a ligament repair in 2000 with a satisfactory result. He provided examination findings and diagnosed right ankle degenerative joint disease by x-ray. Dr. Coetzee advised that appellant could continue sedentary work with limited walking and standing. On January 11, 2007 he advised that appellant had advanced degenerative joint disease of the right ankle and recommended fusion surgery. An April 9, 2007 memorandum described appellant's job duties as sitting in a chair and polishing brass in the employing establishment lobby. In an April 9, 2007 treatment note, Dr. Coetzee advised that he had last seen appellant in March 2006. He listed appellant's complaint of increasing pain and provided findings on physical examination. On April 11, 2007 Dr. Coetzee requested authorization for surgery.

By letter dated May 1, 2007, Dale R. Dugan, a union representative, advised that appellant was sent home from work on March 13, 2006 because no work was available. He did not return until April 17, 2006.

In a May 1, 2007 report, an Office medical adviser reviewed the medical record and advised that there was insufficient documentation to determine whether the requested fusion surgery should be accepted as work related. He recommended that the records of appellant's previous surgery and x-ray reports be obtained. By letter dated May 9, 2007, the Office requested that appellant submit additional medical information.

In a May 15, 2007 letter, the Office informed appellant of the evidence needed to support his claim for disability from January 3, 2005 to April 5, 2007. On May 22, 2007 appellant submitted records from hospitalizations for a right subtalar fusion performed on January 3, 1991; a right ankle arthroscopy with synovial resection and removal of osteochondritis lesion and abrasionplasty of subchondral bone on February 27, 1992; and treatment notes dated April 13 to December 21, 1992.

On May 30, 2007 the Office referred appellant to Dr. Anil K. Agarwal, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a June 15, 2007 report, Dr. Agarwal and Dr. Rajeev Chaturvedi noted their review of the statement of accepted facts and medical record and appellant's complaint of right ankle pain. Physical examination of the right ankle was positive for tenderness and crepitus. Range of motion in dorsiflexion and plantar flexion was diminished. Strength and stability were normal. The work-related diagnoses were severe degenerative joint disease, status post subtalar arthrodesis. The physicians advised that appellant

[1] Docket No. 06-1665 (issued March 6, 2007).

[2] Time analysis records indicate that appellant worked less than a full day for much of 2005 and intermittently worked less than a full day in 2006 through April 4, 2007.

had difficulty ambulating due to right ankle pain and a burning sensation in the right foot after prolonged walking or standing in one place. However, further fusion surgery was not warranted.

In a June 15, 2007 report, Dr. Coetzee referred to his previous reports and advised that appellant's range of motion and gait had progressively degraded over the past year. He stated, "[that] the work restriction is consistent with those for any individual with his current condition."

In a decision dated June 29, 2007, the Office denied appellant's claim for compensation from January 3, 2005 to April 5, 2007. It found that the medical evidence did not provide a rationalized explanation as to why he could not perform restricted duty. On July 2, 2007 appellant requested a hearing.

The Office determined that a conflict in medical opinion existed between the opinions of Dr. Coetzee and Dr. Agarwal, regarding the need for right ankle subtalar fusion surgery. It referred appellant to Dr. Scott R. McGarvey, a Board-certified orthopedic surgeon, for an impartial evaluation. In an August 24, 2007 report, Dr. McGarvey provided a history of appellant's ankle condition and complaint of severe pain with any weight-bearing. He provided findings on physical examination, noting that appellant had a significant limp on the right with tenderness and decreased right ankle range of motion. X-rays of his ankles and feet, obtained for Dr. McGarvey, demonstrated severe planovalgus deformity bilaterally and extensive degenerative changes in the right tibiotalar joint. Dr. McGarvey opined that appellant had severe post-traumatic and degenerative arthritis of the right ankle with probable nonunion of the right subtalar joint from previous surgery. He agreed with Dr. Coetzee's treatment plan, advising that appellant would benefit from a right ankle arthrodesis after obtaining a preoperative computerized tomography (CT) scan. A September 4, 2007 CT scan of the right ankle and hind foot demonstrated a solid-appearing arthrodesis across the posterior facet of the subtalar joint and a chronic-appearing osteochondral injury of the lateral talar dome with mild to moderate secondary osteoarthritis of the tibiotalar joint. The Office forwarded the CT scan report to Dr. McGarvey for his review and opinion. On October 3, 2007 Dr. McGarvey advised that, since the CT scan confirmed a solid arthrodesis, further surgery in that area was not required. However, he recommended right ankle fusion surgery for appellant's severe arthritis of his right ankle, as advised by Dr. Coetzee.

On October 4, 2007 appellant filed a CA-7 form claim for the period September 10 to 28, 2007.[3] In letters dated October 5, 2007, the Office notified him that ankle surgery was authorized and of the evidence needed to support his claim for wage loss. Appellant submitted employing establishment clinic notes and disability slips dated August 9 and September 6, 2007 in which nurses B. Lein and Kris Dario noted his complaints of bilateral arm and foot pain and that he requested to go home. In a September 24, 2007 work capacity evaluation, Dr. Coetzee advised that appellant could perform sedentary work for eight hours a day and provided restrictions on walking and standing with no repetitive foot movement. On November 5, 2007 he performed a right ankle fusion and appellant began receiving disability compensation.

By decision dated November 15, 2007, the Office denied his claim for compensation for the period September 10 to 28, 2007. However, appellant received wage-loss compensation

[3] Time analysis records indicate that appellant worked half days throughout the claimed period.

totaling 17 hours for the physician visits on March 8, 2006 and January 11, June 15, September 4 and 19, 2007.

On December 5, 2007 appellant requested a hearing from the November 15, 2007 decision. In a December 9, 2007 letter, he described his work schedule from September 6, 2007 up to his surgery.

Dr. Coetzee submitted reports regarding appellant's postsurgery convalescence.[4] In a February 5, 2008 letter, he advised that on September 7, 2007 appellant was given a "verbal ok" to work four hours a day.

At the hearing, held on February 20, 2008, appellant testified that he began working four hours a day on September 10, 2007 and on October 15, 2007, returned to full-time work until his surgery on November 5, 2007. He stated that he was also having arm and shoulder pain in addition to foot pain and alleged that he was not doing sedentary work at the employing establishment. In a February 22, 2008 report, Dr. Coetzee advised that he was not made aware that sedentary work was available for appellant. He advised that appellant could perform sedentary work for four hours daily beginning March 1, 2008, working up to eight hours in one month. Dr. Coetzee recommended a functional capacity evaluation to determine his long-term work restrictions. In an undated letter, received by the Office on February 19, 2008, Jim Rakow, office manager for Dr. Coetzee, advised that appellant contacted him, contending that his work restrictions were not being followed and requested that he be restricted to four hours of work daily. Mr. Rakow stated that, if his work restrictions were followed, he could work eight hours daily. In a March 20, 2008 report, Dr. Coetzee advised that appellant's work polishing brass was "almost an ideal occupation or interim job." He stated that appellant could do the work in a wheelchair and should not stand or walk for more than five minutes every hour. Appellant returned to limited duty for four hours daily on March 31, 2008.

A hearing was held telephonically on April 14, 2008 regarding the claimed January 3, 2005 through April 5, 2007 period. Appellant testified regarding his job duties and physical condition. By decision dated June 5, 2008, an Office hearing representative affirmed the June 29 and November 15, 2007 Office decisions.[5]

[4] In a November 30, 2007 report, Dr. Maryam Rajablou noted appellant's complaint of right arm pain, provided findings on examination and noted that a cervical spine x-ray demonstrated moderate degenerative change.

[5] On October 12, 2007 appellant submitted: a CA-7 claim form for the period September 29 to October 12, 2007, on October 29, 2007; a CA-7 form for the period March 8 to October 26, 2007; on November 9, 2007 a CA-7 form for the period November 5 to 9, 2007. By decision dated March 13, 2008, the Office denied his claim for compensation for the period September 29 to October 12, 2007. Appellant requested a hearing on March 17, 2008, that was held telephonically on July 15, 2008. By decision dated October 6, 2008, an Office hearing representative affirmed the March 13, 2008 decision. Any periods of claimed disability compensation subsequent to September 28, 2007 are not at issue in the present appeal.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[6] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[7] 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 wages he or she was receiving at the time of injury has no disability as that term is used in the Act[8] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[9] Whether a particular injury causes an employee to be 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 medical evidence.[10]

The Board 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.[11] Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.[12]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[13] 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.[14] Neither, the mere fact that a disease or condition manifests itself during a period of employment nor the belief that

[6] 5 U.S.C. §§ 8101-8193.

[7] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[8] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[9] *Donald E. Ewals*, 51 ECAB 428 (2000).

[10] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals, id.*

[11] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[12] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[13] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[14] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[15]

Section 8103(a) of the Act provides that an employee may be furnished necessary and reasonable transportation and expenses incident to the securing of medical services.[16] The Board has interpreted this section to authorize payment for loss of wages incurred while obtaining medical services. Compensation for wage loss may be authorized while obtaining the medical services and for a reasonable time spent traveling to and from the provider's location.[17]

ANALYSIS

At the time appellant claimed disability on January 3, 2005, he was performing sedentary duty in a sitting position with no standing. While he received wage-loss compensation for the physician visits beginning on March 8, 2006, the record supports that he had an appointment with Dr. Klager on November 29, 2005. Office procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.[18] The Board has held that for a routine medical appointment, a maximum of four hours of compensation is usually allowed.[19] Appellant would therefore be entitled to up to four hours of compensation for November 29, 2005.

Regarding appellant's disability from January 3, 2005 to April 4, 2007, in a November 29, 2005 return to work slip, Dr. Klager advised that he should be off work until December 2, 2005. However, he did not address the job requirements of appellant's sedentary position or provide a rationalized explanation as to why he could not perform this work. The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.[20] Dr. Klager's opinion is therefore insufficient to establish that appellant was totally disabled for this period. In a March 8, 2006 report, Dr. Coetzee advised that appellant could continue in his sedentary work. The subsequent medical records did not establish that appellant was disabled from his sedentary position for the period January 3, 2005 to April 5, 2007. Appellant has submitted insufficient medical evidence to establish that he was disabled from work for this period. The Office properly denied wage-loss compensation for intermittent disability from January 3, 2005 to April 5, 2007.[21]

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[15] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[16] 5 U.S.C. § 8103(a).

[17] *Gayle L. Jackson*, 57 ECAB 546 (2006).

[18] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (December 1995).

[19] *William A. Archer*, *supra* note 11.

[20] *See Albert C. Brown*, 52 ECAB 152 (2000).

[21] *See Tammy L. Medley*, *supra* note 10.

Regarding the period September 10 to 28, 2007, Dr. Coetzee submitted a September 19, 2007 disability certificate in which he advised that appellant should work half days pending surgery and should not bear weight. However, he did not provide a rationalized explanation as to why appellant could not continue performing the essentially sedentary duty work. The Board has held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.[22] Dr. Coetzee's September 21, 2007 report is therefore insufficient to establish that appellant was disabled for this period. Moreover, in a work capacity evaluation dated September 24, 2007, three days later, Dr. Coetzee advised that appellant perform with sedentary work for eight hours a day.

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant. The Board concludes that Dr. Coetzee's reports are contradictory.[23] There is no other competent medical evidence of record that addresses the period of claimed disability.[24] Appellant has failed to meet his burden of proof.[25]

CONCLUSION

The Board finds that appellant established that he is entitled to wage-loss compensation for up to four hours on November 29, 2005. Appellant did not establish that he was entitled to additional wage-loss compensation for the periods January 3, 2005 to April 5, 2007 and September 10 to 28, 2007.

[22] *See supra* note 20.

[23] *See Conard Hightower*, 54 ECAB 796 (2003).

[24] The Board notes that appellant submitted notes by nurses and from Mr. Rakow. Such reports, however, are not considered medical evidence as these persons are not considered physicians under the Act. *Sean O'Connell*, 56 ECAB 195 (2004). Section 8101(2) of the Act defines the term "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); *see George H. Clark*, 56 ECAB 162 (2004).

[25] *Conard Hightower*, *supra* note 23.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2008 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: August 5, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board