United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 09-540**
	)	**Issued: November 2, 2009**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument July 8, 2009

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 2, 2009 appellant filed a timely appeal from the September 22, 2008 merit decision of the Office of Workers' Compensation Programs finding that she did not establish a recurrence of disability. 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 has met her burden of proof in establishing that she sustained a recurrence of disability on May 10, 2004 causally related to her December 29, 1998 employment injury.

FACTUAL HISTORY

On January 15, 1999 appellant, then a 34-year-old mail carrier filed a claim alleging that she developed right foot pain on December 29, 1998 due to walking in the performance of duty. The Office accepted her claim for bilateral plantar fasciitis and aggravation of heel spurs. On February 29, 2000 appellant's attending physician, Dr. Carl Collins, a podiatrist, performed a

surgical plantar fasciectomy of the left foot and a tarsal tunnel release. Appellant returned to light-duty work on May 8, 2000. On July 19, 2000 Dr. Sandra L. Tate, a Board-certified neurologist, found that appellant had normal electrodiagnostic testing of the left lower extremity and diagnosed symptom magnification. Dr. Collins examined her on July 26, 2000 and found that she had reached maximum medical improvement. He found no objective findings to correlate with her residual symptoms and concluded that she could return to full-duty work. Appellant did not return to work but filed a claim for an emotional condition due to harassment.

By decision dated August 3, 2000, the Office terminated appellant's compensation benefits based on the medical reports. After appellant's request for an oral hearing, March 22, 2001, the Office Branch of Hearings and Review affirmed the termination decision.

In a report dated July 25, 2003, Dr. R. Jerome Williams, an internist, diagnosed plantar fasciitis and tarsal tunnel syndrome. He noted that appellant experienced hyperesthesia in both feet and indicated with a checkmark "yes" that her condition was caused or aggravated by her employment. Dr. Williams added, "walking aggravated symptoms." He estimated that she had partial impairment of 25 percent of her legs and feet. Appellant requested a schedule award on April 22, 2003. On February 25, 2004 Dr. Williams diagnosed bilateral tarsal tunnel syndrome, bilateral plantar fasciitis, post-traumatic stress syndrome and chronic pain syndrome. He opined that appellant had reached maximum medical improvement and that she had a whole person impairment of 25 percent due to her leg and foot conditions.

In a report dated July 12, 2004, Dr. Tracy M. Reed, a podiatrist, reviewed appellant's April 19, 2004 magnetic resonance imaging (MRI) scan. It listed prominent veins on the medial aspect of the left ankle in a location which could be associated with tarsal tunnel syndrome as the only abnormal finding. The report stated that there was no evidence of muscle denervation. Dr. Reed opined that appellant had enlarged veins in her left foot in addition to and as a result of tarsal tunnel syndrome.

On September 15, 2004 Dr. Richard R. Wittock, a podiatrist, opined that appellant's low back pain had not been appropriately addressed medically. He examined her and found that she failed straight leg raising and had a positive Lesegue's test, which he opined was indicative of sciatica bilaterally due to an L5-S1 radiculopathy in the left lower extremity.

The Office referred appellant to Dr. John Gragnani, a physician Board-certified in physical medicine and rehabilitation, for a second opinion evaluation. In a January 27, 2005 report, Dr. Gragnani found that appellant had nine percent impairment of the left ankle and seven percent impairment of the right ankle due to loss of range of motion.

By decision dated March 3, 2005, the Office granted appellant schedule awards for seven percent impairment of her right leg and nine percent impairment of her left leg. Appellant requested an oral hearing.

The Office accepted appellant's claim for the additional conditions of aggravation of bilateral heel spurs aggravation of bilateral plantar fasciitis on April 6, 2006.

On April 28, 2006 the Social Security Administration (SSA) found that appellant was disabled beginning January 1, 2005 due to tarsal tunnel syndrome, plantar fasciitis and

lumbosacral neuritis. In a letter dated October 19, 2006, appellant contended that as she was found disabled by the SSA, she was entitled to benefits under the Federal Employees' Compensation Act.[1]

Appellant alleged that she was entitled to augmented compensation based on the mental condition of her 21-year-old son. She submitted a September 10, 2003 report from her son's physician, Dr. Daniel B. Reising, a Board-certified psychiatrist, who diagnosed paranoid schizophrenia with delusions and noncompliance with his medication. Dr. Reising opined that this condition was disabling and life-long. On August 2, 2005 Dr. Aqeeb Ahmad, a psychiatrist, diagnosed impulse control disorder and social phobia and opined that appellant's son could not work. The Office requested additional information by letter dated August 10, 2005. In a note dated August 24, 2000, Dr. Michael J. Shanker, a Board-certified psychiatrist, opined that appellant's son was unable to attend school since March 2000 and diagnosed anxiety and depression. By letter dated October 12, 2006, the Office advised appellant that she had not submitted sufficient medical evidence to establish that her son was not capable of self-support.[2]

Appellant submitted an affidavit dated February 5, 2001 describing the course of treatment following her employment injury. She contended that her supervisor harassed her due to her employment injury, refusing to allow her to take her medication, made fun of the way she walked, did not accurately report her time and yelled at her.

Appellant testified at her oral hearing on October 19, 2006 that she was working part time as a social service aide worker. In a report dated November 22, 2006, Dr. A.G. Lipede, a general practitioner, described her history of injury. He noted that appellant had gained weight since her injury which further aggravated her foot condition. Dr. Lipede reported findings on physical examination and diagnosed left reflex sympathetic dystrophy, left plantar fasciitis, left residual tarsal tunnel syndrome, plantar nerve entrapment syndrome, plantar fibrosis with perineural fibrosis of the medial and plantar nerve, right tarsal tunnel syndrome and right plantar fasciitis as due to appellant's 1999 employment injury. He provided additional impairment ratings. By decision dated December 14, 2006, the Office hearing representative denied appellant's claim for an additional schedule award and affirmed the March 3, 2005 decision.

On November 3, 2006 appellant filed a claim requesting wage-loss compensation from May 10, 2004 to the present. She indicated that she had worked for the United Cerebral Palsy of Greater St. Louis from October 7, 2002 through May 10, 2004. The Office requested additional information by letter dated December 1, 2006. Dr. Reed completed a report on December 13, 2006 and noted findings of pain on palpation of the scar and medical aspect of the left ankle, edema of the left ankle with hyperesthesia, loss of range of motion of the left ankle and absent posterior tibial pulse in the left ankle. She diagnosed plantar fasciitis left foot, residual tarsal tunnel syndrome left foot, reflex sympathetic dystrophy and plantar fibrosis with perineural

[1] The findings of other federal agencies or bodies are not dispositive with regard to questions arising under the Act. *Donney T. Drennon-Gala*, 56 ECAB 469, 478 (2005).

[2] This letter does not purport to be a final decision as it does not contain appeal rights. However, even if considered a final decision, the Board does not have jurisdiction to consider this issue as appellant did seek an appeal within one year. *See* 20 C.F.R. § 501.3(d)(2).

fibrosis of the medial and plantar nerves. Dr. Reed stated that appellant's current conditions were a result of her 1998 employment injury and unsuccessful surgery.

In a February 28, 2007 report, Dr. Lipede correlated his findings to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Appellant requested reconsideration on February 28 and March 6, 2007.

By decision dated March 9, 2007, the Office denied appellant's claim for a recurrence of disability beginning May 10, 2004. It noted that her physicians did not consider her private-sector work when addressing her current disability. Appellant requested an oral hearing.

By decision dated May 11, 2007, the Office reviewed appellant's schedule award claim on the merits and denied modification of its December 14, 2006 decision.

In a statement dated October 11, 2007, appellant requested wage-loss compensation beginning October 5, 2004, medical coverage, life insurance, permanent total disability and the inclusion of her adult son as a dependant.[3] She submitted a November 1, 2006 report from Dr. Nadim T. Nasrallah, a chiropractor, who diagnosed myofascitis of the lumbosacral spine, lumbar syndrome, thoracic myofascitis and cervical brachial neuritis.[4] In a report dated July 5, 2002, Dr. Williams opined that appellant was disabled. Dr. William F. Hoffman, a Board-certified neurosurgeon, examined her on August 31, 2000 and opined that she had unresolved ankle problems with swelling and tenderness. Appellant resubmitted Dr. Collins' July 26, 2000 note and Dr. Wittock's September 15, 2004 report as well as her affidavit.

Dr. Collins completed an additional report on March 26, 2007 and noted appellant's medical history. He advised that she had difficulty with prolonged walking and standing which resulted in pain in the left heel. Dr. Collins recommended additional electrodiagnostic studies. Dr. Reed completed a report on October 9, 2007 and opined that appellant could not have continued to carry mail. She stated that she did not believe that appellant was exhibiting symptom magnification. Dr. Reed reported findings of pain on palpation of the scar and medial aspect of her left ankle, edema of the left ankle with hyperesthesia, loss of range of motion and absent posterior tibial pulse. She diagnosed plantar fasciitis left foot, residual tarsal tunnel syndrome in the left foot, reflex sympathetic dystrophy and perineural fibrosis of the medial and plantar nerves. Dr. Reed opined that appellant's current condition was the result of her 1998

[3] The Act provides for payment of compensation for wage loss, schedule awards, medical and related benefits and vocational rehabilitation services for conditions arising from injuries sustained in the performance of duty while in service to the United States. *Veronica Williams*, 56 ECAB 367 (2005). The Board has found that payments under the Act are limited to the amounts and circumstances specified; neither the Office nor the Board has the authority to enlarge the terms or the Act or make an award under terms other than those specified in the statute. *Albert S. Becker*, 56 ECAB 733 (2005). The Act does not provide for complete medical insurance coverage, life insurance or compensation for permanent total disability. Therefore, appellant cannot receive these remedies.

[4] Section 8101(2) of the Act provides that the term "'physician' … includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." 5 U.S.C. § 8101(2). As Dr. Nasrallah did not diagnose a subluxation of the spine, he is not considered a physician for the purposes of the Act.

employment injury and resulting surgery in 2000. She stated that since 2000 appellant had worked in positions which did not require walking, standing or lifting.

Appellant testified at the October 11, 2007 oral hearing that she had not appealed her emotional condition claim. The hearing representative informed her that she was not entitled to life insurance or permanent disability under the Act. Appellant described her post-federal employment and stated that she stopped working in May 2004 because she could no longer tolerate the pain. She stated that she was currently working part-time mentoring for the state of Missouri.

By decision dated January 4, 2008, the hearing representative affirmed the March 9, 2001 decision, denying appellant's claim for recurrence of disability on the grounds that she failed to submit rationalized medical opinion evidence.

Appellant requested reconsideration on July 23, 2008 and submitted a May 19, 2008 report from Dr. Reed, who opined that appellant was permanently disabled due to her employment-related injuries of plantar fasciitis and heel spurs on the left foot. Dr. Reed noted appellant's duties in the private sector finding that she had limited walking and no weight bearing that would lead to her current condition. She stated that appellant's left foot surgery was not successful and as a result appellant developed plantar fibrosis with perineural fibrosis of the medial and plantar nerves and residual tarsal tunnel syndrome and enlarged veins. Dr. Reed stated that appellant was totally and permanently disabled since April 2004 due to surgical complications of scar tissue formation, swelling, peripheral and neurovascular complications, failure of the procedure, recurrence of the original condition with worsening, damage to vascular structures and significant and chronic pain. She reviewed the medical history and concluded that appellant was permanently and totally disabled due to her employment injury.

By decision dated September 22, 2008, the Office denied modification of its January 4, 2008 decision. It found that Dr. Reed's report was not based on a complete and accurate medical background as she did not discuss the lack of electrodiagnostic findings in July 2000.

LEGAL PRECEDENT

Under the Act,[5] 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.[6] Disability, is thus not synonymous with physical impairment, which may or may not result in 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.[7] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration

[5] 5 U.S.C. §§ 8101-8193.

[6] 20 C.F.R. § 10.5(f).

[7] *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[8]

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[9]

For each period of disability claimed, appellant has the burden of proving by a preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be provide by 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]

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. The Board has stated 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 hurts 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]

ANALYSIS

The Office accepted appellant's claim for bilateral plantar fasciitis and aggravation of heel spurs. Appellant underwent corrective surgery on February 29, 2000. On July 19, 2000 Dr. Tate, a Board-certified neurologist, found that appellant had normal electrodiagnostic testing of the left lower extremity and diagnosed symptom magnification. Dr. Collins, appellant's attending physician and a podiatrist, examined appellant on July 26, 2000 and found no objective findings to correlate with her residual symptoms. He concluded that she could return to full-duty

[8] *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

[9] 20 C.F.R. § 10.5(x).

[10] *Fereidoon Kharabi, supra* note 8.

[11] *William A. Archer* 55 ECAB 674, 679 (2004).

[12] *Id.*

work. Appellant did not return to work at the employing establishment, but filed a claim for an emotional condition which was not accepted by the Office. The Office terminated her compensation benefits and she there after worked in the private sector.

On November 3, 2006 appellant requested wage-loss compensation beginning May 10, 2004. She stated that she stopped her private-sector job as she could no longer tolerate the pain.

On October 9, 2007 and May 19, 2008 Dr. Reed addressed appellant's disability for work. She stated that appellant could not have continued to carry mail and that she did not believe that appellant was exhibiting symptom magnification. Dr. Reed provided diagnoses of appellant's current conditions and opined that they were causally related to her accepted employment injuries. She noted that appellant was not required to perform walking or standing in her private-sector employment. Dr. Reed concluded that appellant was totally and permanently disabled since April 2004 due to surgical complications. These reports are not sufficient to meet her burden of proof it does not establish that she was disabled for work beginning May 10, 2004. The Office has accepted that appellant continued to experience medical residuals due to her accepted condition and has authorized medical treatment. The issue is whether she is disabled and entitled to wage-loss benefits due to the accepted conditions. Clearly, appellant continued to work in the private sector after 2000 and was in fact working at the time of her oral hearing in 2007. These reports do not address a spontaneous change in her employment-related condition which rendered her disabled beginning in May 2004. Although Dr. Reed provided a period of disability beginning in April 2004, she did not explain how the condition appellant experienced prevented her from earning wages in the private sector where she was not required to perform excessive walking or standing.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained a recurrence of disability beginning May 10, 2004, causally related to her December 29, 1998 employment injury.

ORDER

IT IS HEREBY ORDERED THAT September 22 and January 4, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 2, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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