

**United States Department of Labor
Employees' Compensation Appeals Board**

M.Y., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Coppell, TX, Employer**

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**Docket No. 09-2214
Issued: May 13, 2010**

Appearances:
Michael Frye, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On August 24, 2009 appellant filed a timely appeal from the February 27, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for periods 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 met her burden of proof to establish that she sustained total disability for various periods between August 2007 and March 2008 due to her March 14, 2007 employment injury.

FACTUAL HISTORY

The Office accepted that on March 14, 2007 appellant, then a 35-year-old mail handler, sustained a right ankle sprain while performing her work duties.¹ Appellant did not stop work at

¹ Diagnostic testing from March 2007 did not show any fracture of the right foot.

the time of her injury. She began working in limited-duty positions for the employing establishment. In May 2007, appellant began working in a position which required her to intermittently lift up to 40 pounds for eight hours per day, stand for one hour per day, walk for one hour per day and bend/stoop for one hour per day.

Appellant periodically stopped work and filed claims alleging she sustained disability for certain periods between August 2007 and March 2008 due to her March 14, 2007 employment injury.²

In support of her claims, appellant submitted medical documents, including brief disability certificates and work restriction reports completed by Dr. Louis D. Zegarelli, an attending osteopath and Board-certified family practitioner. The disability certificates indicated that appellant was “medically incapacitated” from work or “medically unable” to work for various periods.³ The periods of disability included August 5, 16, 26 to 27, 29 to 30, September 5, 9, 12 to 18, 25 to 26, October 7, 15 to 16, 18 and November 9, 2007 to April 30, 2008.

Dr. Zegarelli listed the date of injury as March 14, 2007, listed the diagnosed condition due to injury as right foot or ankle sprain and indicated that the listed restrictions were necessitated by the work injury. In an August 30, 2007 work restrictions form, Dr. Zegarelli advised that appellant could only intermittently lift, push or pull up to 40 pounds for eight hours a day and could only stand for one hour a day, walk for one hour a day and bend/stoop for one hour a day. He stated that appellant could not walk up stairs. Dr. Zegarelli produced similar work restrictions reports on September 25, October 25 and December 13, 2007, again generally noting that appellant could only lift up to 10 pounds.⁴

Dr. Zegarelli provided some findings on physical examination. In a September 28, 2007 report, he noted that appellant complained of significant pain in her right ankle and foot. Dr. Zegarelli stated that there did not appear to be significant swelling in her right ankle and foot and noted that she was neurologically intact. He diagnosed chronic mechanical pain/dysfunction of the right foot and ankle, right lower extremity paresthesias and calcaneal bone spur. Dr. Zegarelli produced similar reports from examination every month or so.

In November 2007 appellant began to wear a controlled ankle motion boot on her right foot based on the recommendation of an orthopedic specialist. On November 9, 2007 Dr. Zegarelli stated that appellant was placed off work as it was his understanding that she would not be able to work while wearing this type of boot. In a December 20, 2007 letter, the president of appellant’s union stated that on December 14, 2007 management sent appellant home from

² Appellant filed Forms CA-7 alleging disability for the periods August 5 to October 18, 2007, November 11 to 29, 2007, December 2, 2007 to January 8, 2008 and January 6 to March 28, 2008.

³ In some of the reports, Dr. Zegarelli indicated that the disability was due to a “work injury.”

⁴ Dr. Zegarelli also produced Forms CA-20 (attending physician reports) in which he listed the date of injury as March 14, 2007, listed the diagnosed condition due to injury as right foot or ankle sprain and indicated that the work injury caused various periods of disability. The listed periods of disability generally corresponded to the periods listed in the disability certificates he produced.

work because she was wearing a controlled ankle motion boot on her right foot. He indicated that this type of footwear was not permitted because it had an open toe. In a January 30, 2008 report, Dr. Zegarelli advised that appellant was sent home from the workplace because she was wearing a controlled ankle motion boot. He indicated that appellant would remain disabled until the employing establishment changed its policy.

In an April 15, 2008 decision, the Office denied appellant's claims for intermittent disability on the grounds that she did not submit sufficient medical evidence to establish disability between August 2007 and March 2008 due to her March 14, 2007 employment injury.

In a January 29, 2009 letter, a nurse case manager at the employing establishment stated that appellant was not permitted to work on December 14, 2007 because she was wearing a controlled ankle motion boot. The employing establishment was now able to provide appellant with modified work which allowed her to wear the boot.⁵ Dr. Zegarelli provided disability certificates and reports from examination findings which found that appellant remained disabled due to her March 14, 2007 employment injury. In a May 12, 2008 report, he advised that appellant needed to continue wearing her controlled ankle motion boot to maintain stability of the right ankle.

Appellant requested reconsideration of her claim arguing that she had residuals of her March 14, 2007 work injury which caused disability. She stated that the injury required her to wear a controlled ankle motion boot which caused management to send her home from work.

In a February 27, 2009 decision, the Office affirmed its April 15, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁶ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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,

⁵ In a July 15, 2008 letter, the chief representative of appellant's union asserted that on December 14, 2007 management sent appellant home from work because she was wearing a controlled ankle motion boot on her right foot.

⁶ 5 U.S.C. §§ 8101-8193.

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

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.⁸

ANALYSIS

The Office accepted that on March 14, 2007 appellant sustained a right ankle sprain while performing her work duties. Appellant did not stop work at the time of her injury, but began working in limited-duty positions for the employing establishment.⁹ She intermittently stopped work and filed claims alleging disability between August 2007 and March 2008 due to her accepted employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that her disability between August 2007 and March 2008 was due to her March 14, 2007 employment injury.

Appellant submitted disability certificates and work restriction reports from Dr. Zegarelli, an attending osteopath and Board-certified family practitioner, who indicated that appellant was “medically incapacitated” from work or “medically unable” to work for various periods beginning in August 2007.¹⁰ This evidence does not establish appellant’s claim of total disability for periods between August 2007 and March 2008 because Dr. Zegarelli did not provide adequate medical rationale addressing how her disability related to the accepted injury. Dr. Zegarelli did not describe the March 14, 2007 employment injury in any detail or explain how such a right ankle sprain caused or contributed to her disability for the periods claimed.

The documentation submitted by Dr. Zegarelli in August 2007 listed the date of injury as March 14, 2007, listed the diagnosed condition due to injury as right foot or ankle sprain and advised that restrictions were necessitated by the work injury. Dr. Zegarelli listed that appellant could lift up to 10 pounds. These reports are of limited probative value because Dr. Zegarelli did not provide sufficient explanation of how the work restrictions were necessitated by the March 14, 2007 employment injury.

In attending physician reports, Forms CA-20, Dr. Zegarelli listed the date of injury as March 14, 2007, listed the diagnosed condition as right foot or ankle sprain and that the work injury caused various periods of disability. He listed periods of disability in the disability certificates he produced. However, Dr. Zegarelli failed to provide medical rationale explaining how the listed periods of disability were work related. He submitted some findings on examination. These reports note that appellant reported pain to her right ankle and foot but provide limited findings. For example, Dr. Zegarelli generally noted that there was no significant swelling to appellant’s right ankle and foot and that she was neurologically intact.

⁸ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁹ In May 2007 appellant began working in a position which required her to intermittently lift up to 40 pounds for eight hours per day, stand for one hour per day, walk for one hour per day and bend/stoop for one hour per day.

¹⁰ In some of the reports, Dr. Zegarelli indicated that the disability was due to a “work injury.”

When the reports advised that appellant became disabled due to her March 14, 2007 employment injury, Dr. Zegarelli failed to discuss the specific findings giving rise to this determination.

The record indicates that on December 14, 2007 management sent appellant home from work because she wore a controlled ankle motion boot on her right foot. In several reports, Dr. Zegarelli indicated that this circumstance caused appellant to be disabled from work. However, he did not provide a rationalized medical opinion explaining how residuals of the March 14, 2007 employment injury necessitated that appellant wear this type of boot.

For these reasons, appellant has not established that she sustained intermittent disability between August 2007 and March 2008 due to her March 14, 2007 employment injury.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained intermittent total disability between August 2007 and March 2008 due to her March 14, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2010
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