United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 10-737**
	)	**Issued: October 13, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Miami, FL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2010 appellant, through her representative, filed a timely appeal from the December 22, 2009 merit decision of the Office of Workers' Compensation Programs, which denied wage-loss compensation for particular dates. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant was disabled for work on February 7 or 8 or from March 13 to 22, 2009 as a result of her accepted employment injury.

FACTUAL HISTORY

On September 24, 2007 appellant, then a 51-year-old mail processor, filed a claim alleging that her bilateral foot condition was a result of prolonged standing on concrete floor in the performance of her duties. The Office accepted her claim for bilateral planar fasciitis. Appellant accepted a modified assignment offer on May 22, 2008.

On March 24, 2009 appellant claimed wage-loss compensation for particular dates: 0.5 hours on February 7, 2009 ("unable to perform duties"); 8.0 hours on February 8, 2009 ("Dr. visit/unable to perform duties"); 7.62 hours on March 13, 2009 ("Dr. visit/unable to perform duties"); and 8.0 hours each on March 14 and 15 and March 18 through March 22, 2009 ("Dr. visit/unable to perform duties").

On January 26, 2009 Dr. John S. Anderson, the treating podiatrist, stated that he had treated appellant for nearly two years. Appellant was diagnosed with calcaneal exostosis and associated plantar fasciitis, and "she [ha]s not really gotten a significant amount better." Dr. Anderson found that she had reached maximum medical improvement. He added: "I believe the patient's subjective pain is just that, subjective in findings. I believe the objective aspect could be argued to an extent but I believe the patient is true in as far as her pain scale and the amount of pain due to the condition she suffers from."

In a February 11, 2009 disability slip, Dr. Anderson stated: "Seen today for bilateral food condition plantar fasciitis. Please excuse from being late February 7, 2009 and from not coming to work February 8, 2009. Incapacitated unable to perform duties."

A statement of account from Dr. Anderson's office showed the history of appellant's appointments. She was seen on January 31, February 11 and March 12, 2009. On March 12, 2009 Dr. Anderson noted that appellant was still having continued problems. Examination showed no change in neurovascular status. There was still some tenderness in the medial enthesis and at the insertion of the plantar fascia. Dr. Anderson noted mild swelling, pain on the lateral aspect in the area of the lateral column and limited range of motion. He diagnosed plantar fasciitis, lateral column equinus and diabetes. Dr. Anderson recommended continuing all conservative methods.

On March 24, 2009 Dr. Anderson's examination showed similar findings. He diagnosed radiculopathy, plantar fasciitis and diabetes. Dr. Anderson stated: "[Appellant] is going to be given notes for work, continue her protocol. She has no restrictions on her at work. [Appellant] will continue all this, and we will follow her back up after she acquires the orthotics and wears them for a month." On that day he wrote the following disability slip: "Patient unable to perform her duties from March 13, 2009 thru March 24, 2009 due to plantar fasciitis."

On June 23, 2009 the Office denied wage-loss compensation for particular dates. It found that none of the records on or prior to the claimed disability dates documented any disability for work.

At an October 26, 2009 telephonic hearing before an Office hearing representative, appellant testified that she was 30 minutes late for work on February 7, 2009 because she did not have time to finish her home therapy and ice her feet down, so "I decided to just get to work as soon as I could and ice my feet down when I got to work." She testified that she did not work at all on February 8, 2009 because her feet were bothering her. Appellant explained that her doctor was too booked to see her that day. She stated that on March 13, 2009 she was instructed to clock out and ice her feet in her car. Appellant called her doctor's office, but he was on vacation and would not be able to see her until March 24, 2009. She testified that she was then off work from March 14 through 22, 2009.

In a decision dated December 22, 2009, the Office hearing representative affirmed the denial of wage-loss compensation. She found that Dr. Anderson provided no objective findings or medical rationale to support that appellant was unable to perform her modified duties. The Office hearing representative added that appellant failed to explain why she did not simply wake up earlier on February 7, 2009 to give herself time to complete her home therapy before having to leave for work.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.[1] "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.[2]

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[3]

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.[4] Pain due to an employment-related condition can be the basis for the payment of compensation,[5] but the Board has held that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that she hurt 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.[6]

A claimant who has returned to work following an accepted injury or illness may need to undergo examination, testing or treatment. Such a claimant may be paid compensation for wage loss while obtaining the medical services and for a reasonable time spent traveling to and from

[1] 5 U.S.C. § 8102(a).

[2] 20 C.F.R. § 10.5(f).

[3] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[4] *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

[5] *Barry C. Peterson*, 52 ECAB 120 (2000) (affirming the denial of wage-loss compensation on particular dates).

[6] *John L. Clark*, 32 ECAB 1618 (1981).

the provider's location. Absence from work for the purpose of medical evaluation or treatment does not constitute a recurrence of disability.[7]

ANALYSIS

Appellant gave two reasons for missing work on the dates claimed: she had doctor's visits, and she was unable to perform her duties, but there is no evidence that she visited a doctor or obtained medical services on any of the dates at issue. She testified before the Office hearing representative that she was simply late for work on February 7, 2009 because she did not have enough time to finish her home therapy that morning. Appellant also testified that the doctor was too booked to see her on February 8, 2009. When she called for an appointment on March 13, 2009, she learned that her doctor was on vacation and would not be able to see her until March 24, 2009. So the record establishes that none of the disability claimed was for wage loss incurred while obtaining medical services for the accepted medical condition.

It appears that appellant's disability was instead the result of her own assessment that she was unable to perform her duties. The Office cannot allow employees to self-certify their disability for work and entitlement to compensation. An employee has the burden to establish by probative evidence that the accepted employment injury incapacitated her for work, and when, as here, the employee claims that she cannot perform her modified assignment, she must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.

There is no evidence that the employer changed appellant's modified assignment such that she could no longer perform her duties. Dr. Anderson, the treating podiatrist, completed a pair of disability slips asking the employer to excuse appellant's absence from work on the particular dates claimed, but neither his disability slips nor his narrative reports on March 12 or 24, 2009 documented a disabling change in the nature and extent of appellant's bilateral plantar fasciitis. He reported on January 26, 2009 that appellant's subjective pain was just that, subjective in findings. So it appears that Dr. Anderson provided disability slips shortly thereafter based on appellant's complaint that she hurt too much to work.

Without an explanation from Dr. Anderson that appellant had objective signs of disability for the dates at issue, the Board finds that his reports are insufficient to establish her claim. The Board will therefore affirm the Office's December 22, 2009 decision denying wage-loss compensation for particular dates.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she was disabled for work on February 7 or 8 or from March 13 to 22, 2009 as a result of her accepted employment injury.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (October 2009).

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2010
Washington, DC

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

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

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