

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

T.H., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Grand Prairie, TX, Employer**

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**Docket No. 11-1150
Issued: December 15, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 13, 2011 appellant filed a timely appeal from the February 18, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed the denial of her disability claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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's February 11, 2010 employment injury caused disability for work from April 12 to 24, 2010.

FACTUAL HISTORY

On February 11, 2010 appellant, then a 39-year-old human resource specialist, sustained an injury in the performance of duty when she slipped while trying to lift a door stop with her

¹ 5 U.S.C. § 8101 *et seq.*

foot.² OWCP accepted her claim for degeneration of lumbar or lumbosacral intervertebral disc, thoracic lumbosacral neuritis or radiculitis and displacement of lumbar intervertebral disc without myelopathy. Appellant stopped work on February 23, 2010 and received 45 days of continuation of pay through April 9, 2010.

Appellant filed a claim for disability compensation for the period April 12 to 24, 2010.

On April 19, 2010 Dr. Frederick D. Todd, II, the attending neurosurgeon, noted that appellant was recently discharged from physical therapy to an independent home exercise program. He noted that she was doing very well and had responded favorably to conservative therapy modalities. Dr. Todd released her to work with no restrictions effective April 21, 2010, encouraged appellant to continue with her home exercise program and discharged her from care.

OWCP denied appellant's disability claim in a September 13, 2010 decision. It found that she had not submitted any medical evidence discussing whether she was disabled for the period claimed as a result of her February 11, 2010 employment injury.

Appellant requested a review of the written record by OWCP's hearing representative. She submitted a September 30, 2010 report from Dr. Todd, who noted that she was hospitalized from March 3 to 8, 2010 for severe back pain radiating into the lower extremities. Appellant was clinically diagnosed with a herniated nucleus pulposus at the L4-5 level with narrowing of the spinal canal and impingement upon the thecal sac. She was treated conservatively with steroids and physical therapy. Dr. Todd stated that appellant responded favorably: "With positive results [she] has reached maximum medical improvement and may return to work on April 20, 2010."

In a decision dated February 18, 2011, OWCP's hearing representative affirmed the denial of appellant's disability claim. The hearing representative found that Dr. Todd failed to report that appellant was disabled and unable to work from April 12 to 24, 2010, as she claimed.

On appeal, appellant notes that she remained in physical therapy through April 15, 2010, and the earliest Dr. Todd could see her was April 19, 2010. She argues that her OWCP-approved physician was not responsive, and she was forced to go to the emergency room on March 2, 2010. Appellant feels that she is not at fault for going beyond the 45 days of continuation of pay allowed federal employees and, therefore, she should be compensated for her wage loss from April 12 to 24, 2010.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the evidence,⁴ including that she sustained an injury in the performance of duty and that any specific

² The record does not make clear whether appellant fell or caught herself midway or struck her back against the corner of her desk.

³ 5 U.S.C. § 8102(a).

⁴ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

disability for work for which she claims compensation is causally related to that employment injury.⁵

The claimant must submit a rationalized medical opinion that supports a causal connection between her claimed disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury, and must explain from a medical perspective how the claimed disability is related to the injury.⁶

ANALYSIS

The issue raised by appellant's claim for disability compensation is whether the February 11, 2010 employment injury caused disability for work from April 12 to 24, 2010. This is a medical issue that requires a physician's sound medical opinion. The Board finds that the record contains no medical opinion directly addressing the period claimed.

The attending neurosurgeon, Dr. Todd, explained that appellant was hospitalized with severe back pain from March 3 to 8, 2010, but that is not the period at issue. He stated that she responded favorably to conservative measures, but did not address whether she was totally disabled for work from April 12 to 24, 2010.

Appellant's claim covers the period after the expiration of her continuation of pay until she returned to work following Dr. Todd's release. Although, Dr. Todd released her to return to work without restrictions effective April 21, 2010 does not establish that she was totally disabled for work until that date. As he noted, when he saw appellant on April 19, 2010 she was doing very well and was recently released from physical therapy.

Dr. Todd did not address the period for which appellant claims compensation. Without a sound medical opinion establishing that appellant was, in fact, totally disabled for work from April 12 to 24, 2011, the evidence does not support her claim for compensation. The Board finds that she has not met her burden of proof. The Board will, therefore, affirm OWCP's February 18, 2011 decision.

Appellant's complaints about the lack of responsiveness from her OWCP-approved physician or from OWCP in general, do not diminish her burden of proof to submit the required medical evidence. She raises the argument that she remained in physical therapy through April 15, 2010, the implication being that this prevented her from returning to work. Appellant also explains that she could not see Dr. Todd until April 19, 2010, suggesting that she was not cleared to return to work through that date. Again, the issue is a medical one that she cannot resolve with personal explanations. Appellant did not submit a narrative report from Dr. Todd discussing her disability status from April 12 to 24, 2010 and its relationship to the February 11, 2010 employment injury. Because Dr. Todd released her to return to work without restrictions effective April 21, 2010, he would have to explain any continuing absence from work.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her February 11, 2010 employment injury caused total disability for work from April 12 to 24, 2010. No physician has directly addressed the period for which she claims compensation.

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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