



## **FACTUAL HISTORY**

On December 1, 2009 appellant, then a 43-year-old, correctional officer, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury to her left leg, which was later confirmed by a magnetic resonance imaging (MRI) scan to be a severe left calf muscle tear while in the performance of duty on October 29, 2009.<sup>3</sup>

On December 22, 2009 OWCP requested additional evidence from appellant in support of her claim and allotted 30 days for submission.

Appellant submitted an attending physician's report dated December 22, 2009 by Dr. David D. Book, a Board-certified orthopedic surgeon, who diagnosed tear of left gastrocnemius calf muscle.

On January 21, 2010 appellant filed a claim for compensation (Form CA-7) for leave without pay for the period January 27 to February 12, 2010.

By decision dated January 26, 2010, OWCP accepted appellant's claim for sprain of unspecified sites, knee and leg, left.

On January 26, 2010 OWCP requested additional evidence from appellant in support of her claim for wage-loss compensation, including rationalized medical evidence substantiating temporary total disability and why she was unable to perform any full-duty or light-duty work during the period claimed.

In a February 18, 2010 medical report, Dr. Eric Shepherd, a Board-certified orthopedic surgeon, advised appellant to return to light duty, if available, on February 22, 2010 with the following restrictions: no repetitive squatting or climbing, no stairs or running and sedentary duties only.

In a March 30, 2010 medical report, Dr. Shepherd diagnosed left calf tear, chronic edema and venous insufficiency. He advised appellant to return to work on February 22, 2010 with slightly modified restrictions: no climbing, limited stooping and bending, no prolonged standing or walking and no kneeling or squatting.

By decision dated April 7, 2010, OWCP denied appellant's claim for disability for the period January 27 to February 12, 2010 on the grounds that the medical evidence submitted was not sufficient to support temporary total disability for the period claimed.

In a May 6, 2010 narrative statement, appellant reported that she was at home due to medical orders for the period January 27 to February 12, 2010 and was in a wheelchair for approximately two and a half months due to her October 29, 2009 employment injury.

On June 7, 2010 appellant requested reconsideration of OWCP's April 7, 2010 decision and submitted additional evidence. In a May 24, 2010 medical report, Dr. Book indicated that he treated appellant from November 3, 2009 through January 19, 2010 and opined that she was

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<sup>3</sup> Appellant was stepping up into her husband's truck when the injury occurred.

totally disabled from January 27 to February 12, 2010 as she was utilizing crutches for ambulation while healing from the October 29, 2009 tear of the gastrocnemius tendon. He noted that, at the time of his final evaluation, appellant was still healing from the October 29, 2009 employment injury. Dr. Book indicated that appellant's work duties included lifting 25 pounds up to three hours a day while kneeling, bending, twisting, pushing, pulling, and walking up to five hours a day and opined that appellant was not able to fulfill her work requirements during the period January 19 to February 16, 2010. Further, he reported that he had recommended a strengthening program "to allow her to regain the appropriate strength to be able to perform her duties as a correctional officer. Dr. Book noted that she returned to work on February 12, 2010, which was about three weeks after his final evaluation and about the time he estimated her recovery.

By decision dated July 26, 2010, OWCP denied modification of the April 7, 2010 decision.<sup>4</sup>

### **LEGAL PRECEDENT**

Section 8102(a) of FECA<sup>5</sup> sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general the term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."<sup>6</sup> This meaning, for brevity, is expressed as disability for work.<sup>7</sup> Appellant, for each period of disability claimed, 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 proved by the preponderance of the reliable probative and substantial medical evidence.<sup>8</sup>

Disability is 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 his or her federal employment, but who nonetheless 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 under FECA and is not entitled to compensation for loss of wage-earning capacity. When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, the employee is entitled to compensation for any loss of wage-earning capacity resulting from the employment

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<sup>4</sup> By decision dated September 23, 2010, OWCP denied appellant's claim for disability compensation for the period July 1 to September 27, 2010. On October 1, 2010 appellant requested an oral hearing. By decision dated February 10, 2011, OWCP accepted her petition to withdraw her hearing request.

<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984); 20 C.F.R. § 10.5(f).

<sup>7</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>8</sup> *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

injury.<sup>9</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

The Board finds that the case is not in posture for a decision.

In his May 24, 2010 medical report, Dr. Book opined that appellant was totally disabled from January 27 to February 12, 2010 due to her accepted employment-related injury. OWCP had found his report insufficient due to the fact that he had last seen appellant on January 19, 2010 and had not prepared a medical report at that time. It acknowledged that at that visit Dr. Book provided appellant a note stating that she was to return to work on February 22, 2010. Although he had not treated appellant after January 19, 2010, he noted the incident of stepping into her husband's truck which had been accepted as a work injury and that it was later clarified through an MRI scan to be a gastrocnemius tendon tear. Dr. Book recalled that he had treated appellant for the October 29, 2009 employment injury and, based on his review of her record, opined that she would have been unable to fulfill her work duties of lifting, kneeling, bending, twisting, pushing, pulling, and walking as she was using crutches while healing from the October 29, 2009 tear of the gastrocnemius tendon during the period January 19 to February 16, 2010. He added that, at his final examination of appellant, which was approximately three weeks before her return to work, he had recommended a strengthening program to facilitate appellant's return to work to perform the duties of a correctional officer.

The Board has reviewed Dr. Book's May 24, 2010 medical report and finds that he clearly attributed her disability from employment during the time in question to the accepted left calf injury. The Office has not accepted a gastrocnemius tear; it has accepted sprain of unspecified sites, knee and leg, left. Nevertheless, it has accepted an injury to appellant's left calf due to the incident of getting into the truck. Dr. Book's opinion reflects knowledge of the incident, that he had treated appellant during the early stages of the injury, and provides rationale as to why she would have been unable to work as a result of that injury. The report is not completely rationalized as to why appellant's diagnosed condition prevented her from performing her specific work duties, but it sufficiently described the incident, generally describes the injury and discusses how the two are related. Consequently, while the medical evidence from Dr. Book is not sufficiently rationalized to meet her burden of proof to establish that she was disabled from January 27 to February 12, 2010 due to her accepted conditions, it raises an inference of causal relationship sufficient to require further development by OWCP.<sup>11</sup> Accordingly, the Board will remand the case to OWCP.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP

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<sup>9</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>10</sup> *Fereidoon Kharabi*, *supra* note 8.

<sup>11</sup> *See L.D.*, Docket No. 09-1503 (issued April 15, 2010).

shares responsibility in the development of the evidence to see that justice is done.<sup>12</sup> On remand, OWCP should further develop the medical record to determine whether appellant was disabled from employment during this period due to her accepted employment injury and clarify what specifically is the accepted injury. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 26, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 21, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> See Phillip L. Barnes, 55 ECAB 426 (2004).