United States Department of Labor
Employees' Compensation Appeals Board

M.L., Appellant	)	
and	)	**Docket No. 10-1625**
	)	**Issued: May 2, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, St. Louis, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 3, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated January 10 and May 17, 2010. Pursuant to the Federal Employees' Compensation Act[1] 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 met his burden of proof in establishing that he is entitled to compensation for wage loss from February 3 to March 11, 2009.

FACTUAL HISTORY

Appellant, a 62-year-old nurse, filed a claim for benefits on March 4, 2009, alleging that he twisted his right ankle on February 2, 2009 while reaching to unplug an IVAC machine.

[1] 5 U.S.C. § 8101 *et seq.*

In a March 11, 2009 report, Dr. John B. Weltmer, Board-certified in orthopedic surgery, stated that he treated appellant for a right ankle injury which he sustained on February 2, 2009. He advised that the injury occurred when appellant was reaching to unplug a four infusion pump; his ankle buckled with a classic inversion injury. Appellant asserted that his ankle improved after about a week but that, as of February 9, 2009, he began to experience increased pain and tenderness. He subsequently went off work and returned to work on March 4, 2009. Dr. Weltmer stated that appellant still had pain while going up and down stairs and while walking on an incline. He noted that x-rays of appellant's right ankle were negative for any acute or chronic pathology. Dr. Weltmer advised that appellant had an ankle sprain, right side lateral aspect, which appeared to have resolved.

Appellant submitted work excuse forms dated February 4 and March 10, 2009 indicating that he should be excused from work from February 3 to 6, 2009, returning to work on February 7, 2009 and from March 4 to 10, 2009, returning to work on March 12, 2009. The forms were signed by a registered nurse.

In a March 11, 2009 Form CA-17 duty status report, Dr. Weltmer stated that appellant had sustained a right ankle injury on February 2, 2009 and indicated that appellant could return to work on March 12, 2009 without restrictions.

In an April 1, 2009 report, Dr. Weltmer advised that appellant had returned to work without restrictions and was not having any problems with any gait antalgia, ankle pain or instability. He stated that appellant's ankle had no swelling, no medial or lateral tenderness and was stable to varus/valgus stress and anterior drawer. Dr. Weltmer noted that there was still some tenderness at the peroneal tendons with stressing but that otherwise he showed good power in all motor units.

On April 21, 2009 the Office accepted appellant's claim for right ankle sprain resolved.

In an employing establishment e-mail dated April 21, 2009, it was indicated that appellant worked light duty from February 7 to March 11, 2007 and returned to full duty on March 12, 2009.

By decision dated April 21, 2009, the Office found that appellant was not entitled to continuation of pay. It determined that his notice of traumatic injury was not timely filed within the 30-day period following the employment injury.

On April 24, 2009 appellant requested an oral hearing.

In a May 11, 2009 e-mail, the employing establishment indicated that its April 21, 2009 e-mail had incorrectly stated that appellant had been placed on light duty from February 7 to March 11, 2007. It asserted that he was never placed on light duty because he chose not to come to work until he could see an outside physician of his own choosing. The employing establishment stated that appellant did not consult a physician until March 11, 2009, when he was released to full duty with no restrictions.

By decision dated June 8, 2009, an Office hearing representative set aside the April 21, 2009 decision, finding that appellant's March 4, 2009 claim for continuation was filed in a

timely fashion. He noted that appellant signed the Form CA-1 on March 4, 2009, which was within 30 days of the date appellant sustained his injury on February 2, 2009. The hearing representative further found, however, that there was an inconsistency in the record as to appellant's work status following the work injury, noting that the April 21 and May 11, 2009 e-mails from the employing establishment had provided differing accounts as to whether he worked light duty from February 7 to March 11, 2009. He stated, therefore, that it was not clear as to whether he was entitled to continuation of pay based on disability for work. The hearing representative remanded for the Office to clarify appellant's work/disability status from February 7 to March 11, 2009 and to issue a *de novo* decision regarding his entitlement to continuation of pay for this period.

By e-mail dated June 17, 2009, the employing establishment provided a summary of appellant's work attendance and leave for the period February 2 through March 12, 2009. The summary indicated that after he sustained the February 2, 2009 work injury, he took six and one half hours of sick leave on February 3, 2009; eight hours of sick leave on February 4 and 6, 2009; an off day on February 5, 2009; and returned to full duty on February 7, 2009. The e-mail stated that appellant took two hours of sick leave on March 4, 2009 and then did not work again -- requesting sick leave until he could see Dr. Weltmer, which he did on March 11, 2009 -- until March 12, 2009, when he returned to full duty.

By decision dated June 18, 2009, the Office awarded four hours of total disability for March 11, 2009 based on Dr. Weltmer's March 11, 2009 reports, which indicated that appellant had been examined by his treating physician on that date and that he could return to work on March 12, 2009. However, it denied compensation for continuation of pay for the period February 3 to March 11, 2009, finding that appellant failed to provide rationalized medical evidence supporting that he was totally disabled throughout this period.

By letter dated June 19, 2009, appellant asserted that he never requested light duty and was never informed by the employing establishment that he would be placed on light duty. He stated that the pain from his accepted right ankle injury had become so severe that he was unable to walk more than 25 yards and only with the use of a cane during the period February 7 through March 11, 2009. Appellant stated that he did not initially file the Form CA-l claim following his injury because he did not consider the injury significant to the point of causing him to use more than a week of sick leave.

On June 20, 2009 appellant requested an oral hearing, which was held on November 5, 2009. He resubmitted the March 11 and April 1, 2009 reports from Dr. Weltmer. Appellant did not submit any new medical evidence.

By decision dated January 10, 2010, an Office hearing representative affirmed the June 18, 2009 decision, finding that appellant did not provide sufficient medical evidence in support of his claim. He found that there was no documentation that Dr. Weltmer had examined appellant or that he had placed appellant on medical disability for the right ankle prior to March 11, 2009. The hearing representative further stated that Dr. Weltmer did not actually support that appellant was disabled from all work for the dates prior to March 11, 2009, merely relating what appellant told him regarding his work status.

In a letter received by the Office on February 16, 2010, appellant requested reconsideration. He submitted a February 3, 2009 x-ray report, which indicated that he had an inversion of the right ankle with lateral collateral ligament injury.

By decision dated May 17, 2010, the Office denied modification of the June 18, 2009 decision.

LEGAL PRECEDENT

It is the employee's burden of proof to establish disability during the period of time for which wage-loss compensation is claimed. The term "disability" is defined by implementing regulations as "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] The Board has long held that whether a particular injury causes an employee disability for employment is a medical question which must be resolved by competent medical evidence.[3]

ANALYSIS

The Office accepted that appellant sustained a right ankle sprain on February 2, 2009. Appellant sought treatment from Dr. Weltmer on March 11, 2009, at which time he diagnosed a right ankle sprain and released appellant to return to work on March 12, 2009. Thus, the Office properly found in its June 18, 2009 decision that appellant was entitled to four hours of compensation for March 11, 2009 based on the accepted condition of right ankle sprain, as he obtained appropriate medical treatment for this condition on that day.[4] However, Dr. Weltmer's March 11 and April 1, 2009 reports did not provide a probative, rationalized medical opinion establishing that appellant was disabled for work due to the accepted right ankle condition for the period February 7 through March 11, 2009.[5] He noted in his March 11, 2009 report, that appellant complained of increased right ankle pain due to his ankle as of February 9, 2009 and experienced pain while going up and down stairs and while walking on an incline. However, "pain" is a subjective finding and does not establish disability for work. The February 3, 2009 x-ray report indicates that appellant sustained a right ankle inversion with lateral collateral ligament injury, but did not indicate that this injury resulted in any specific periods of disability. By April 1, 2009, Dr. Weltmer reported that appellant had fully recovered from his February 2, 2009 work injury and that he was capable of working full duty with no restrictions.

[2] 20 C.F.R. § 10.5 (f).

[3] *See Donald E. Ewals*, 51 ECAB 428 (2000).

[4] Appellant is entitled to compensation for any time missed from work due to medical treatment for an employment-related condition. Office procedures at Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Authorizing Medical Payments*, Chapter 5.201.18b (October 1990) provides "If a [appellant] has returned to work following an accepted injury or the onset of an occupational disease and must leave work and lose pay or uses leave to undergo treatment, examination or testing, compensation should be paid for wage loss under 5 U.S.C. § 8105 while undergoing the medical services and for a reasonable time spent traveling to and from the location where services were rendered."

[5] *William C. Thomas*, 45 ECAB 591 (1994).

As noted above, to establish entitlement to compensation, an employee must establish through competent medical evidence that disability from work resulted from the employment injury.[6] The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.[7] Appellant has the burden to demonstrate his disability for work based on rationalized medical opinion evidence. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[8] There is no such evidence in this case. Dr. Weltmer did not offer any opinion or supporting medical rationale regarding the date that appellant's disability began or his disability for work for any additional periods. His opinion does not contain any medical rationale explaining how or why appellant's right ankle condition was affected by or related to factors of employment during the period February 3 through March 11, 2009.[9] The reports from Dr. Weltmer failed to establish that appellant was disabled for work during this period.

The Board also notes that appellant did submit disability slips from a nurse. However, as a nurse practitioner is not a physician under the Act, the reports from appellant's attending nurse cannot be considered as competent medical evidence by the Board.[10]

Appellant has thus failed to submit such evidence which would indicate that his right ankle condition caused any wage loss for any additional periods. He has not provided a rationalized opinion supporting his disability for work for the period in question. The evidence establishes that appellant did not return to work as he awaited a medical examination, this circumstance is not sufficient to establish disability for work.

The Office properly denied appellant's claim for wage-loss compensation.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he was entitled to compensation for wage loss from February 3 to March 11, 2009.

[6] *Donald E. Ewals, supra* note 3.

[7] *Paul E. Thams*, 56 ECAB 503 (2005).

[8] *Howard A. Williams*, 45 ECAB 853 (1994).

[9] *Id.*

[10] 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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