

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

V.W., Appellant)	
)	
and)	Docket No. 12-1180
)	Issued: November 21, 2012
)	
DEPARTMENT OF THE ARMY,)	
INSTALLATION MANAGEMENT AGENCY)	
(COMMAND), Fort Bragg, NC, Employer)	

Appearances:
Appellant, pro se
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 May 7, 2012 appellant filed a timely appeal of the January 13 and April 27, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying her claim for disability compensation. 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 established that she was totally disabled from August 2 to October 7, 2011 due to her July 7, 2010 employment injury.

FACTUAL HISTORY

OWCP accepted that on July 7, 2010 appellant, then a 58-year-old transportation assistant, sustained a left ankle sprain when she twisted her left foot while exiting her car on her return to work from lunch. She stopped work on April 4, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

On October 4, 11 and 20, 2011 appellant filed claims for wage-loss compensation (Form CA-7) from August 2 to September 23, September 26 to October 7, and October 10 to 21, 2011, respectively.

In a September 9, 2010 prescription, Dr. Sandra R. Sheehan, a podiatrist, prescribed physical therapy to treat appellant's reflex sympathetic dystrophy (RSD). Reports and notes from physical therapists addressed the treatment of appellant's left ankle pain and stiffness from September 14 to October 12, 2010.

In a June 7, 2011 prescription, Dr. Denise C. Thomas, an attending podiatrist, placed appellant off work from June 7 to 13, 2011. In a June 15, 2011 prescription, she placed appellant off work for an additional six weeks.

By letter dated October 28, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish that she was disabled during the claimed period due to her accepted work injury. It requested that she submit a rationalized medical opinion from an attending physician explaining the causal relationship between her disability and accepted injury.

On November 4, 2011 appellant filed a Form CA-7 for the period commencing October 24, 2011.

Notes from Adam Autry, a physical therapist, addressed the treatment of appellant's left ankle pain and stiffness from June 24 to October 12, 2011. In a June 22, 2011 report signed and certified by Dr. Thomas, Mr. Autry again addressed the treatment of appellant's left ankle condition.

In an October 28, 2011 report, Dr. Thomas discharged appellant from her care and advised that she could return to her regular work duties which included minimal walking. In a December 1, 2011 disability certificate, she advised that appellant was evaluated on that date. She scheduled a follow-up appointment due to her workers' compensation injury.

On November 18, 2011 appellant filed a Form CA-7 for the period November 7 to 18, 2011. On December 1, 2011 she filed a Form CA-7 for the period November 21 to 24, 2011.² In CA-7 forms dated December 5, 2011 appellant requested wage-loss compensation for the period November 26 to December 3 and December 5 to 16, 2011. A time analysis form (CA-7a) also dated December 5, 2011 indicated that she used 1.45 hours of leave without pay (LWOP) on December 1, 2011 to attend a doctor's appointment. A December 13, 2011 Form CA-7a indicated that on December 5, 2011 appellant used 2.45 hours of LWOP to obtain a doctor's note. On December 14, 2011 she used 1.3 hours of LWOP to attend a medical appointment.

In a December 5, 2011 report, Dr. Walter B. Greene, a Board-certified orthopedic surgeon, advised that appellant could return to work on December 6, 2011. In a December 12, 2011 report, he obtained a history of the accepted employment injury and appellant's medical treatment. Dr. Greene listed findings on physical and x-ray examination. He diagnosed ankle pain of an uncertain etiology.

² On November 25, 2011 appellant returned to full-time modified-duty work with restrictions.

An unsigned letter dated December 14, 2011 which contained the typed name of Dr. Stanley K. Gilbert, Jr., a Board-certified orthopedic surgeon, requested that appellant be excused for two hours to undergo a nerve conduction velocity (NCV) study. The results of a December 14, 2011 NCV study of the bilateral lower extremities were normal.

On December 21, 2011 appellant filed a Form CA-7 for the period December 19 through 30, 2011. A December 28, 2011 Form CA-7a indicated that she used 1.3 hours of LWOP on December 21, 2011 per a doctor's note.

In reports dated December 21, 2011, Dr. Greene reviewed the December 14, 2011 NCV study results and noted appellant's complaint of left ankle pain. He addressed her treatment plan.

On December 30, 2011 OWCP paid compensation for 5.05 hours of disability for appellant's medical appointments on December 5, 14 and 21, 2011.

In a January 13, 2012 decision, OWCP denied appellant's claim for wage-loss compensation from August 2 to October 7, 2011, finding that the medical evidence did not establish that she was totally disabled during the claimed period due to her accepted injury.

By letter dated February 5, 2012, appellant requested reconsideration.

In an April 4, 2011 disability certificate, Dr. Sheehan advised that appellant could not work on that date.

In prescriptions dated April 11 to September 19, 2011, Dr. Thomas placed appellant off work for intermittent periods of disability commencing April 11, 2011. On June 15 and September 19, 2011 she prescribed physical therapy to treat her left Achilles tendinitis and ankle pain. In an October 28, 2011 prescription, Dr. Thomas referred appellant to Dr. Greene for a second opinion evaluation and treatment related to her chronic left ankle pain. In a February 8, 2012 report, she noted that she treated appellant for a partial Achilles tendon tear which required strict nonweight bearing. Dr. Thomas stated that she may have completely ruptured her Achilles tendon with continued and prolonged weight bearing. She released her from work from April 1 through October 28, 2011 to facilitate healing based on her numerous complaints of inability to perform work-related activity secondary to increased pain that affected the extremity. Dr. Thomas stated that appellant was discharged from her care and she could return to work with no limitations.

In an April 27, 2012 decision, OWCP found that appellant was entitled to four hours of wage-loss compensation for medical appointments and physical therapy on August 4, 5, 9, 10, 11, 18, 19, 24, 25 and 29, September 7, 14, 19, 27, 28 and 29 and October 4 and 6, 2011. It, however, found that the medical evidence was insufficient to establish her entitlement to wage-loss compensation for other dates of total disability from August 2 through October 7, 2011 causally related to her accepted July 7, 2010 employment injury.

LEGAL PRECEDENT

With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to

the employment injury.³ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵ The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.⁷ The Board, however, will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.⁸ To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁹

ANALYSIS

OWCP accepted that appellant sustained a left ankle sprain on July 7, 2010 while working as a transportation assistant. Appellant claimed compensation for disability from August 2 through October 7, 2011. On January 13 and April 27, 2012 OWCP approved appellant's claims for compensation for medical appointments on intermittent dates from August 4 through October 6, 2011; however, it denied her claims for compensation for total disability from August 2 through October 7, 2011 on the grounds that the evidence was insufficient to establish that the claimed disability was due to her accepted left ankle injury. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability and the accepted condition.¹⁰ The Board finds that she did not submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted injury.

Prescriptions and reports from appellant's attending physician, Dr. Thomas, are insufficient to establish appellant's claim. She advised that appellant had tendinitis and a partial torn Achilles tendon of the left ankle for which she prescribed physical therapy. Dr. Thomas opined that she was unable to work during intermittent periods from April 1 to October 28, 2011. On October 28, 2011 she released appellant to return to regular work duties which involved

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁹ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 5.

¹⁰ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

minimal walking. Dr. Thomas did not provide a medical opinion addressing whether appellant's diagnosed conditions, treatment and disability were causally related to the accepted July 7, 2010 employment-related injury. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.¹¹ The Board finds, therefore, that Dr. Thomas' prescriptions and reports are insufficient to establish appellant's burden of proof.

Dr. Sheehan's September 9, 2010 prescription is insufficient to establish appellant's claim as she did not provide an opinion addressing whether the physical therapy she ordered to treat her RSD or whether her claimed disability were causally related to the accepted employment injury.¹² While Dr. Sheehan advised in an April 4, 2011 disability certificate, that appellant was unable to work on that date she did not provide any medical opinion addressing the causal relationship between her disability and the accepted injury.¹³ For the stated reasons, the Board finds that this evidence is insufficient to establish appellant's claim.

Dr. Greene's reports listed physical examination findings and diagnostic test results. He reviewed the normal December 14, 2011 NCV study results. Dr. Greene found that appellant had ankle pain of an uncertain etiology for which medical treatment was necessary. He opined that she could return to work on December 6, 2011, but did not provide an opinion addressing whether her disability for work was causally related to the accepted July 7, 2010 employment injury.¹⁴ Further, the Board notes that pain is a symptom, not a compensable medical diagnosis.¹⁵ For the reasons stated, the Board finds that Dr. Greene's reports are insufficient to establish appellant's claim.

The unsigned letter of December 14, 2011 which contained the typed name of Dr. Gilbert has no probative value in establishing that appellant has any employment-related disability during the claimed period, as it is not clear whether a physician as defined under FECA prepared the report. It is well established that medical evidence lacking proper identification is of no probative medical value.¹⁶

The reports and notes from appellant's physical therapists are of no probative value as a physical therapist is not a physician as defined under FECA.¹⁷

Appellant failed to submit rationalized medical evidence establishing that her disability from August 2 through October 7, 2011 resulted from residuals of her accepted employment-related left ankle condition.

¹¹ See *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Robert Broome*, 55 ECAB 339 (2004); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹⁶ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁷ See 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

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 failed to establish that she was totally disabled from August 2 to October 7, 2011 due to her July 7, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 27 and January 13, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 21, 2012
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