

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

S.H., Appellant)	
)	
and)	Docket No. 12-980
)	Issued: October 16, 2012
U.S. POSTAL SERVICE, POST OFFICE,)	
PREUSS STATION, Los Angeles, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 30, 2012 appellant filed an appeal from an October 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met his burden of proof to establish that he was entitled to disability compensation for intermittent periods from November 24, 2007 to March 15, 2008, July 26 to November 15, 2008 and February 17 to 22, 2009.

¹ 5 U.S.C. §§ 8101-8193.

On appeal appellant generally asserts that the medical evidence establishes his claim.²

FACTUAL HISTORY

On October 24, 2008 appellant, then a 57-year-old city carrier, filed an occupational disease claim alleging that standing and walking while delivering mail caused left heel pain. He had stopped work on October 7, 2008. The employing establishment indicated that appellant had worked modified duty from May 28 to June 3, 2008. On January 27, 2009 OWCP accepted the condition of left plantar fibromatosis and advised him that, if he had lost time from work, to file a Form CA-7, claims for compensation. Appellant submitted CA-7 claims for the periods November 24, 2007 to March 15, 2008, July 15 to November 15, 2008, and February 17 to 22, 2009 and time analysis forms showing intermittent periods of disability.

In letters dated March 16, June 29 and October 9, 2009 and July 30, 2010, OWCP informed appellant of the type of medical evidence needed to establish his claim to support wage loss. He submitted medical reports from Kaiser Permanente dated January 8, 2008 to February 17, 2009. These consisted of treatment notes completed by nurse practitioners, podiatrists and physicians and disability slips dated from January 8, 2008 to February 23, 2009.

On March 10, 2008 Dr. Enna Roa Serina, a Board-certified family physician, noted that appellant was a letter carrier and that he complained of left heel pain that had occurred since December 2007. She provided physical examination findings and diagnosed plantar fasciitis and essential hypertension. In an attached disability slip, the physical examination advised that appellant could not work from March 10 through 16, 2008.

On July 21, 2008 Dr. Chwi-Young Yang, Board-certified in family medicine, noted that appellant walked a lot at work and complained of left heel pain. He diagnosed plantar fasciitis. In an October 2, 2008 treatment note, Dr. Robert Afshin, Board-certified in family medicine, noted appellant's history of plantar fasciitis and complaint of recurrent foot pain. He stated that he suspected a recurrence of plantar fasciitis and advised that appellant should avoid pressure to the foot.

In an attached disability slip, Dr. Afshin indicated that appellant could not work from October 2 through 6, 2008. On October 7, 2008 Dr. Lisa Carole Andelin, a Board-certified family physician, noted appellant's complaint of heel pain. She provided a history that appellant had essential hypertension that was inadequately controlled and recommended that he return in seven days for a blood pressure check.

In a disability slip dated October 7, 2008, Dr. Andelin advised that appellant should not work from October 7 through 28, 2008. On a treatment note dated November 4, 2008, she advised that he was seen for blood pressure follow-up and diagnosed essentially hypertension and plantar fasciitis. On a disability slip, Dr. Andelin advised that appellant was unable to work

² Appellant also submitted medical evidence with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence reviewed by OWCP at the time it issued its final decision. 20 C.F.R. § 10.501.2(c)(1); *J.T.*, 59 ECAB 293 (2008).

on November 4 and 5, 2008 and could return to modified duty on November 6, 2008 through February 5, 2009 with a restriction that he could walk 50 minutes per hour and rest 10 minutes each hour, and could only work 8 hours a day. In a November 19, 2009 report, she noted that he had complained of left heel pain since November 2007, and that the symptoms were worse with walking and prolonged standing on a hard surface. Dr. Andelin provided examination findings of tenderness over the plantar insertion and diagnosed plantar fasciitis. She advised that appellant's foot condition was caused by recurrent prolonged walking and standing in his federal employment.

On February 17, 2009 Dr. Henry M. Chai, Board-certified in family medicine, noted appellant's history of plantar fasciitis and advised that his foot pain had gotten worse recently due to walking, carrying mail. He diagnosed plantar fasciitis. In a disability slip, Dr. Chai advised that appellant should be off work from February 17 through 22, 2009.

By decision dated October 6, 2011, OWCP denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that his absence from work was caused by the accepted condition.

LEGAL PRECEDENT

Under FECA, the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.³ Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA,⁴ and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁵ Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷ Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.⁸

³ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁴ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁵ *Donald E. Ewals*, 51 ECAB 428 (2000).

⁶ *Tammy L. Medley*, 55 ECAB 182 (2003); see *Donald E. Ewals*, *id.*

⁷ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he was totally disabled for the periods November 24, 2007 to March 15, 2008, July 26 to November 15, 2008, and February 17 to 22, 2009 due to the accepted left plantar fibromatosis.

Appellant submitted a number of treatment notes and reports completed by nurse practitioners. These reports, however, are of no probative value as nurse practitioners are not “physicians” as defined under FECA.¹² Dr. Yang did not provide an opinion regarding appellant’s ability to work.

Appellant also submitted a number of reports from Drs. Serina, Afshin, Andelin and Chai, all attending family physicians. Each physician provided a disability slip indicating that appellant could not work, covering the periods March 10 through 16, 2008 (Dr. Serina), October 2 through 6, 2008 (Dr. Afshin), October 7 through November 5, 2008 (Dr. Andelin) and February 17 through 22, 2009 (Dr. Chai). While each physician diagnosed plantar fasciitis in accompanying treatment notes in which they noted appellant’s complaints of heel pain and provided physical examination finding, none of the physicians provided an explanation as to why appellant could not work.

When a physician’s statements regarding an employee’s ability to work consist only of repetition of the employee’s complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation,¹³ and the Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹⁴ These reports are therefore insufficient to establish that appellant was totally disabled for the claimed periods. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² Section 8101(2) of FECA provides that “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); *see S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ *G.T.*, 59 ECAB 447 (2008).

¹⁴ *See Albert C. Brown*, 52 ECAB 152 (2000).

specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁵ As there is no rationalized medical evidence contemporaneous with the period of claimed disability, appellant failed to establish entitlement to wage-loss compensation for the periods.

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 did not establish that he was entitled to total disability compensation for the periods November 24, 2007 to March 15, 2008, July 26 to November 15, 2008, and February 17 to 22, 2009 due to the accepted left plantar fibromatosis. The Board further finds this case is not in posture for decision regarding whether he would be entitled to compensation for lost wages incidental to appropriate medical treatment.

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁵ *William A. Archer, supra* note 7.