

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

C.K., Appellant	)	
	)	
and	)	Docket No. 12-1550
	)	Issued: March 4, 2013
DEPARTMENT OF THE NAVY, NAVAL AIR	)	
SYSTEMS COMMAND, Orlando, FL, Employer	)	
	)	

*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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 12, 2012 appellant filed a timely appeal of a June 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 her burden of proof to establish that she was entitled to wage-loss compensation for the period March 15, 2011 through January 27, 2012, causally related to her employment-related conditions.

**FACTUAL HISTORY**

On November 18, 2010 appellant, then a 56-year-old administrative assistant, filed a traumatic injury claim alleging that on November 16, 2010 she tripped over uneven pavement in the employing establishment controlled parking lot while walking to her car at the end of the

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

workday. She fell on both hands, sustained injuries to both knees, the spine, ribs on the right side and both hips. Appellant stopped work on November 16, 2010.

Appellant received treatment from Dr. John Dao, Board-certified in family medicine, who advised on December 4, 2010, that appellant sustained a moderate injury when she fell at work on "November 15, 2010." Dr. Dao diagnosed a sprain of the thoracic and contusion of the knee and advised that appellant's pain was improving. On December 9, 2010 he advised that her pain was worsening. Dr. Dao assessed a lumbar strain. He also set forth appellant's work restrictions.

On December 28, 2011 appellant telephoned OWCP requesting that her case be adjudicated and accepted so that medical expenses could be paid. On January 3, 2012 OWCP asked her to provide additional evidence.

On January 23, 2012 OWCP accepted the claim for lumbar sprain and contusion of the left knee.

On January 27, 2012 appellant filed claims for compensation (Form CA-7) claiming disability compensation for the period March 16, 2011 to January 27, 2012. She stated that she worked for five months after her injury but that the pain continued and that she stopped work around March 15, 2010.

Appellant provided a December 14, 2011 certificate of disability from Dr. Maribel Aviles, Board-certified in family medicine, who advised that appellant was medically unable to perform her essential work duties due to unresolved symptomatology, including cervicalgia, headaches, debilitating body pains, depression and memory loss. Dr. Aviles explained that, due to her chronic unresolving physical and psychological impairments, she advised appellant not to return to her work duties as she was currently incapacitated and disabled until further notice.

A December 21, 2011 whole-body bone scan report from Dr. Henry Floyd, a Board-certified diagnostic radiologist, revealed a history of fibrous dysplasia of left greater wing of sphenoid, interval increased uptake of activity involving approximately right eighth, ninth and tenth ribs poster medially in a linear fashion likely representing uptake in fracture sites and increased uptake of activity also now seen involving proximal to mid left foot not seen previously which were secondary to reaction to previous trauma, degenerative change, arthritis versus other.

By letter dated February 3, 2012, OWCP requested that appellant submit additional factual and medical evidence to support her claim for disability. It allotted her 30 days within which to submit the requested information.

In a February 8, 2012 letter, the employing establishment challenged the claim for compensation. It asserted that the time lost from work was not related to appellant's work injury. The employing establishment alleged that she had not provided medical evidence to support that the time off from work was due to accepted condition and noted that she had various medical conditions which were not work related. It also provided a January 18, 2012 notice of proposed removal for failure to maintain a work schedule.

By decision dated March 6, 2012, OWCP denied the claim for compensation for the period March 15, 2011 to January 27, 2012. It advised appellant that the evidence of record failed to establish disability for the claimed period.

In a March 2, 2012 statement, received by OWCP on March 9, 2012, appellant indicated that she was requesting that her claim be expanded to include additional conditions. She noted that her pain continued and was exacerbated by her employment duties. Appellant indicated that her physicians “have not allowed me to return to work.” She submitted medical evidence previously of record.

On March 10, 2012 appellant requested a review of the written record. She resubmitted medical evidence previously of record.

By decision dated June 26, 2012, OWCP’s hearing representative affirmed the March 6, 2012 decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,<sup>2</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>3</sup>

As used in FECA, the term “disability” means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.<sup>4</sup> When 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 her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>5</sup>

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.<sup>6</sup> Findings on examination are generally needed to support a physician’s opinion that an employee is disabled for work. When a physician’s statements regarding an employee’s ability to work consist only of repetition of the employee’s complaints that 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.<sup>7</sup> The Board will not require OWCP to pay compensation for

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<sup>2</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

<sup>5</sup> *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

<sup>6</sup> *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

<sup>7</sup> *G.T.*, 59 ECAB 447 (2008); *see Huie Lee Goal*, 1 ECAB 180, 182 (1948).

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.<sup>8</sup>

### ANALYSIS

OWCP accepted appellant's claim for lumbar sprain and contusion of the left knee. In support of her claim for disability for the period beginning from March 15, 2011 through January 27, 2012 she provided several medical reports.

Appellant provided a December 14, 2011 certificate of disability from Dr. Aviles who indicated that appellant was medically unable to perform her essential work duties due to unresolved symptomatology, including cervicalgia, headaches, debilitating body pains, depression and memory loss. Dr. Aviles explained that, due to her chronic unresolving physical and psychological impairments, she advised appellant not to return to her work duties as she was currently incapacitated and disabled until further notice. The Board notes that these conditions were not accepted by OWCP.<sup>9</sup> Dr. Aviles furthermore did not provide any specific support that appellant's disability was causally related to her employment.<sup>10</sup> Likewise, the December 21, 2011 whole-body bone scan report from Dr. Floyd is insufficient to establish appellant's claim as he did not address whether the claimed disability was causally related to appellant's accepted contusions.

Appellant also submitted medical records from 2010, including December 4 and 9, 2010 reports from Dr. Dao. However, these reports are insufficient to establish a claim for disability beginning March 15, 2011, as they substantially predate the period of claimed disability. They also do not support total disability as they indicate that appellant could work within restrictions.

Although appellant alleged that she was disabled for the period March 15, 2011 through January 27, 2012 as a result of her accepted employment injury, the medical evidence of record does not establish that her claimed disability during the above timeframe was related to her accepted employment injuries. The Board finds that appellant has failed to submit rationalized medical evidence establishing that her disability for the period March 15, 2011 through January 27, 2012 was causally related to her accepted employment injury, and thus, she has not met her burden of proof.

On appeal, appellant notes that her physician's placed her off work and that was the reason she did not return to work. However, as noted above, the medical evidence is insufficiently rationalized to support time off from work due to the accepted conditions.

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<sup>8</sup> *G.T., id.; Fereidoon Kharabi, supra* note 6.

<sup>9</sup> For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship. *G.A.*, Docket No. 09-2153 (issued June 10, 2010).

<sup>10</sup> *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Appellant may submit 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 meet her burden of proof to establish that she had disability for the period March 15, 2011 through January 27, 2012 causally related to her employment-related conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2013  
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