

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

S.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Santa Clarita, CA, Employer**

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**Docket No. 13-2069
Issued: February 21, 2014**

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
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On September 9, 2013 appellant filed a timely appeal from a July 8, 2013 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 the claim.

ISSUES

The issues are: (1) whether appellant is entitled to compensation for disability from November 5, 2012 through March 1, 2013 causally related to her accepted employment injuries; and (2) whether OWCP met its burden of proof to terminate appellant's medical benefits.

FACTUAL HISTORY

On September 10, 2012 appellant, then a 31-year-old mail carrier, filed a traumatic injury claim alleging overexposure to the sun on September 4, 2012 caused second degree burns to her

¹ 5 U.S.C. § 8101-8193.

hands and arms. OWCP accepted the claim for resolved bilateral second-degree sunburn and subsequently expanded the claim to include temporary aggravation of other dermatitis due to solar radiations (photodermatitis). It paid medical benefits.

On November 20, 2012 appellant filed a claim (Form CA-7) for compensation for the period commencing November 5, 2012. Subsequent forms indicated compensation was being claimed through March 1, 2013.

In a September 24, 2012 report, Dr. Taha M. Ahmad, a Board-certified internist, discharged appellant from care and released her to full unrestricted work with no need for further medical care and no ratable impairment. Hyperpigmentation was noted in region of previous skin sunburn.

In a November 5, 2012 report, Dr. Kristine M. Hirschfield, a Board-certified internist, diagnosed photodermatitis and opined that the rash on appellant's arms with mild hyperpigmentation had resolved. She opined that no further medical treatment was needed and provided restrictions of working indoors. In a November 12, 2012 report, Dr. Hirschfield noted a clearing rash on the hyperpigmented area on appellant's arms with no other lesions or suspicious lesions noted. She recommended that appellant work in shade/indoors.

In a December 4, 2012 letter, OWCP requested that Dr. Hirschfield provide a complete narrative report describing appellant's current medical condition and disability status, including whether the work restriction of limiting appellant to shade/indoor work has been lifted. In a December 6, 2012 letter, it informed appellant of the information required to establish a recurrence of disability claim. Appellant was provided 30 days in which to submit the requested factual and medical evidence.

On December 6, 2012 OWCP received a factual statement from appellant.

In an October 22, 2012 report, received on December 18, 2012, Dr. Jennifer J. Choi, a Board-certified family practitioner and an osteopath, stated that appellant suffered from photosensitivity due to sunlight and is allergic to sunscreen. She advised that working outdoors puts appellant at risk for sunburn and other potential complications and recommended that appellant work in an indoor environment.

OWCP referred appellant to Dr. Bernard I. Raskin, a Board-certified dermatologist, for a second opinion examination to determine the nature and extent of the work-related injury. In a February 21, 2013 report, Dr. Raskin noted the history of injury, reviewed the statement of accepted facts and medical record, and provided examination findings. He confirmed that the aggravation of photodermatitis had resolved and the only residual was mild hyperpigmentation of the skin, which he stated would gradually resolve with continued sun avoidance. Dr. Raskin opined that appellant was totally disabled through the date of his examination. He further opined that she should be returned to an indoor occupation and would then no longer be disabled. Dr. Raskin recommended that appellant avoid sun exposure.

In an April 3, 2013 letter, OWCP provided Dr. Hirschfield a copy of the second opinion report and requested that she provide clarification regarding the continued disability even after resolution of the accepted photodermatitis. In an April 9, 2013 letter, Dr. Hirschfield stated that

she concurred completely with all the findings regarding appellant. She indicated that it was a temporary rash and if appellant was placed in indoor work, she would not be disabled.

On April 10, 2013 OWCP requested that Dr. Raskin clarify the opinion he provided in his February 21, 2013 report regarding when the aggravation had resolved and clarify if the restriction of working indoors was prophylactic in nature or based on objective findings or residuals of the accepted work exposure of September 4, 2012. In a May 15, 2013 addendum report, Dr. Raskin advised that the date for total resolution of the aggravation of photodermatitis had resolved on November 15, 2012 and, subsequent to that date, appellant was released by her treating physician. He further clarified that the restriction that appellant only work indoors was prophylactic in nature and was given to avoid further recurrence of her underlying photodermatitis.

In a June 5, 2013 report, Dr. Hirschfield indicated that appellant was seen for an ongoing recurrent rash with sunlight exposure. She noted that on the initial visit appellant's rash was improving with residual scarring and hyperpigmentation since she had been off work. Dr. Hirschfield noted that appellant was advised to avoid prolonged exposure to sunlight to avoid further rash and scarring.

By decision dated July 8, 2013, OWCP denied appellant's claim for compensation for disability for work during the period November 5, 2012 through March 1, 2013 due to the September 4, 2012 work injury. This decision also terminated appellant's medical benefits.

LEGAL PRECEDENT ISSUE 1

An employee 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.² For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.³ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁴ To meet his or her burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁵

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ Disability is, thus, not

² See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

³ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

⁴ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁵ *A.D.*, 58 ECAB 166 (2006); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁶ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ 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 and is not entitled to compensation for loss of wage-earning capacity.⁸ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages. The Board 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. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁹

The Board has held that whether a particular injury causes an employee to be disabled for work is a medical question that must be resolved by competent and probative medical evidence.¹⁰ The weight of medical opinion is determined on the report of a physician, who provides a complete and accurate factual and medical history, explains how the claimed disability is related to the employee's work and supports that conclusion with sound medical reasoning.¹¹

ANALYSIS -- ISSUE 1

Appellant claimed that she was totally disabled for work during the period November 5, 2012 through March 1, 2013. The medical evidence of record, as noted by Dr. Hirschfield in her November 5, 2012 report and Dr. Raskin in his May 15, 2013 report, confirm that the temporary aggravation of photodermatitis resolved on November 5, 2012 with residual scarring only. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed total disability commencing November 5, 2012 and the accepted conditions of resolved second-degree burn and temporary aggravation of other dermatitis due to solar radiation (photodermatitis).¹²

Both Dr. Hirschfield and Dr. Raskin provided restrictions that appellant only work indoors. However subsequent reports from the physicians indicate that the restriction was prophylactic in nature to avoid future injury. Dr. Raskin, in his report of May 15, 2013, clarified that the restriction that appellant only work indoors was prophylactic in nature and was given to avoid further recurrence of her underlying photodermatitis. In her June 5, 2013 report, Dr. Hirschfield stated that appellant was advised to avoid prolonged exposure to sunlight to

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *Merle J. Marceau*, 53 ECAB 197 (2001).

⁹ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ *See T.E.*, Docket No. 09-2040 (issued July 27, 2010); *Sedi L. Graham*, 57 ECAB 494 (2006).

¹² *Alfredo Rodriguez*, 47 ECAB 437 (1996).

avoid further rash and scarring. The Board has held that restrictions which are prophylactic in nature and based on fear of future injury are not compensable under FECA.¹³

Appellant did not submit rationalized medical opinion from her physicians finding her disabled for work on or after November 5, 2012 due to the accepted injuries. In her June 5, 2013 report, Dr. Hirschfield noted prophylactic restrictions against prolonged sunlight exposure, but did not find appellant disabled for work commencing November 5, 2012. Thus, the medical evidence submitted in support of her claim for wage-loss compensation for that period is insufficient to meet appellant's burden of proof.¹⁴ The Board notes that OWCP advised appellant by May 28, 2013 letter of the necessity of submitting rationalized medical evidence explaining how the accepted conditions caused the claimed period of disability. Appellant did not submit such evidence. Therefore, OWCP's July 8, 2013 decision denying the claimed period of disability is proper under the law and facts of the case.

On appeal, appellant asserts that the employing establishment could not accommodate her restrictions and she should be compensated for all or part of the time she was off work. These contentions are not relevant to the issue of whether the medical evidence established that appellant was disabled for work on or after November 5, 2012 due to the accepted employment injuries as her restrictions were prophylactic in nature. 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.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment OWCP must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.¹⁵

ANALYSIS -- ISSUE 2

OWCP accepted appellant's claim for resolved bilateral second degree sunburn and temporary aggravation of photodermatitis. As appellant's second-degree sunburn had already resolved at the time the claim was accepted, appellant was no longer entitled to medical treatment for this condition. In a September 24, 2012 report, Dr. Ahmad reported that appellant no longer required medical care, as did Dr. Hirschfield in her November 5, 2012 report. Both physicians noted hyperpigmentation but did not recommend medical treatment for this condition, which was not accepted as related to the employment injury. OWCP's second opinion physician, Dr. Raskin, concurred with appellant's treating physicians in his February 21 and April 10, 2013 reports. He found that appellant's accepted aggravation of photodermatitis had resolved. The

¹³ *Carlos A Marrero*, 50 ECAB 117 (1998); *Mary A. Geary*, 43 ECAB 300 (1991) (fear or possibility of further injury is not compensable).

¹⁴ *Alfredo Rodriguez*, *supra* note 12.

¹⁵ *T.P.*, 58 ECAB 524 (2007).

Board therefore finds that OWCP met its burden of proof to terminate authorization of medical benefits for appellant's accepted medical conditions.

CONCLUSION

The Board finds that appellant has failed to establish that she was totally disabled from November 5, 2012 through March 1, 2013 due to her September 4, 2012 employment injury. The Board also finds that OWCP met its burden of proof to terminate authorization of medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board