

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

L.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
GRAND RAPIDS, MI, Employer**

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**Docket No. 13-2099
Issued: March 26, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 30, 2013 appellant filed a timely appeal from a May 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 this case.²

ISSUE

The issue is whether appellant established that he sustained intermittent periods of disability from April 7 to August 23, 2012 as a result of his November 27, 2004 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the May 8, 2013 merit decision. The Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision. The Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP with a request for reconsideration.

FACTUAL HISTORY

OWCP accepted that on November 27, 2004 appellant, then a 47-year-old mail carrier, fractured his left ankle when he slipped and fell off a porch step. He stopped work and received compensation. OWCP accepted appellant's claim for left bimalleolar ankle fracture. Appellant returned to part-time duty on February 10, 2005 and to full duty on April 28, 2005. OWCP also accepted that he sustained recurrences of the November 27, 2004 employment injury on April 18, 2005 and May 25, 2007.

On October 1, 2008 appellant returned to work full time with restrictions of sitting for four hours a day and standing and walking for six hours a day.

By decision dated January 20, 2009, OWCP accepted appellant's claim for right hip degenerative joint disease, right hip iliopsoas bursitis, right quadriceps tendinopathy and prepatellar tendinopathy. Appellant continued to work full time with restrictions and received compensation for intermittent periods of disability.

In a decision dated April 11, 2012, OWCP accepted that on February 23, 2012 appellant sustained a recurrence of the November 27, 2004 injury. Appellant received compensation from February 23 to 24, 2012.

In a March 7, 2012 duty status report, Dr. Henry Youga, a Board-certified family practitioner, stated that on November 27, 2004 appellant fractured his left ankle as a city letter carrier. He diagnosed left ankle fracture and right hip degenerative disease. Dr. Youga advised that appellant could work full-time with restrictions of continuous standing for 1.5 hours, intermittent standing for 8 hours, continuous walking for 20 to 30 minutes and intermittent walking for 8 hours.

In forms dated February 7, 2013, appellant requested compensation for intermittent disability totaling 6.74 hours from April 7 to August 23, 2012.³

In a letter dated February 11, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish a recurrence of disability causally related to his accepted employment injury. It requested additional evidence to support his claim.

In a decision dated May 8, 2013, OWCP denied appellant's claim for 6.74 hours of compensation finding that the medical evidence failed to establish that he was unable to work beginning April 7, 2012 as a result of the November 27, 2004 employment injury.

³ Appellant requested compensation for the following dates: .1 hours on April 7, 2012; .13 hours on April 10 and 11, 2012; .4 hours on April 18, 2012; .37 hours on May 2, 2012; .73 hours on June 20, 2012; .19 hours on June 25, 2012; .16 hours on June 26, 2012; .21 hours on June 29, 2012; .22 hours on July 10, 2012; .21 hours on July 11, 2012; 1.15 hours on July 17, 2012; 1.00 hours on July 18, 2012; .15 hours on July 24, 2012; .35 hours on July 25, 2012; .59 hours on August 7, 2012; .3 hours on August 11, 2012 and .69 hours on August 15, 2012.

LEGAL PRECEDENT

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that he or she was disabled for work as a result of the accepted employment injury. 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 reliable, probative and substantial medical opinion evidence.⁴ Such medical evidence must include findings on examination and the physician's opinion, supported by medical rationale, showing how the injury caused the employee disability for his or her particular work.⁵

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁶ 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 his or her disability and entitlement to compensation.⁷

ANALYSIS

OWCP accepted that on November 27, 2004 appellant sustained a left ankle fracture in the performance of duty. It also accepted his claim for right hip degenerative joint disease, right hip iliopsoas bursitis, right quadriceps tendinopathy and prepatellar tendinopathy. The record reveals that appellant worked full time with restrictions and received compensation for intermittent periods of disability.

On February 8, 2013 appellant requested compensation for 6.74 hours of disability from April 7 to August 23, 2012. He did not submit any medical evidence with his claim. As noted, an employee cannot self-certify his or her disability or entitlement to compensation OWCP is not required to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.⁸ The Board notes that there is no medical evidence of record to establish that appellant was unable to work for the hours claimed as a result of his November 27, 2004 employment injury. The record does not establish that he attended any medical appointments on the dates that he requested disability compensation.⁹ The record does not establish that the employing establishment was unable to accommodate his work restrictions for any period of time on the dates claimed. Appellant did

⁴ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

⁵ *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁶ *Laurie S. Swanson*, 53 ECAB 517, 520 (2002); *see also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁷ *Amelia S. Jefferson*, *supra* note 4.

⁸ *Id.*

⁹ *See Sean O'Connell*, 56 ECAB 195 (2004).

not submit any evidence to establish intermittent periods of disability totaling 6.74 hours from April 7 to August 23, 2012. The report of Dr. Youga pre dates the period of disability sought. Absent such medical evidence, the Board finds that OWCP properly denied appellant's claim.

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 failed to establish that he sustained intermittent periods of disability from April 7 to August 23, 2012 as a result of his November 27, 2004 employment injury.

ORDER

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

Issued: March 26, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board