

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

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**J.B., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
FEDERAL EMERGENCY MANAGEMENT  
AGENCY, Alexandria, VA, Employer**

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**Docket No. 13-2157  
Issued: March 6, 2014**

*Appearances:*  
*James A. Bruni, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 23, 2013 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) decision dated May 1, 2013. 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 his burden of proof in establishing that he is entitled to compensation for wage loss from November 30, 2012 to January 15, 2013.

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

## **FACTUAL HISTORY**

Appellant, a 52-year-old damage estimator, filed a claim Form CA-1 for traumatic injury on November 30, 2012, alleging that he sustained a right foot infection after sand penetrated the skin on his right foot. OWCP accepted the claim for right great toe cellulitis.

On February 28, 2013 appellant submitted a Form CA-7 requesting compensation for wage loss for the period November 30, 2012 to January 15, 2013.

By letter to appellant dated March 15, 2013, OWCP requested additional factual and medical evidence to establish disability for work during the entire period claimed, including medical documentation to establish that he either had medical treatment or was unable to work as a result of his work injury for all dates claimed. It advised him that he had 30 days to submit the requested information.

Appellant submitted a blank Form CA-20 and numerous hospital records from November 27 and 30, 2012. The hospital records noted that he was seen in the emergency room on that day. Appellant was diagnosed with cellulitis of the foot and received wound care. It was noted that he could return to work in one week. The signatures on these records are illegible.

By decision dated May 1, 2013, OWCP denied appellant's claim for compensation for wage loss for November 30, 2012 to January 15, 2013.

## **LEGAL PRECEDENT**

It is the employee's burden of proof to establish disability during the period of time for which wage-loss compensation is claimed. The term "disability" is defined by implementing regulations as "the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total."<sup>2</sup> The Board has long held that whether a particular injury causes an employee disability for employment is a medical question which must be resolved by competent medical evidence.<sup>3</sup>

## **ANALYSIS**

OWCP accepted a claim for right foot cellulitis. It asked appellant to submit medical evidence to support the periods of disability claimed. Appellant, however, did not provide a probative, rationalized medical opinion establishing that he was disabled for work due to the accepted right foot cellulitis for the period November 30, 2012 through January 15, 2013.<sup>4</sup>

To establish entitlement to compensation, an employee must establish through competent medical evidence that disability from work resulted from the employment injury.<sup>5</sup> The Board

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<sup>2</sup> 20 C.F.R. § 10.5 (f).

<sup>3</sup> See *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>4</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>5</sup> *Supra* note 3.

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.<sup>6</sup> Appellant has the burden to demonstrate his disability for work based on rationalized medical opinion evidence. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>7</sup> There is no such evidence in this case. While appellant submitted hospital records dated November 30, 2012 which diagnosed great toe cellulitis and noted that he could return to work in one week, there is no medical explanation provided as to why his accepted condition would disable him from work for any period of time.

Appellant has thus failed to submit such evidence which would indicate that his right foot cellulitis condition caused any wage loss for any periods. Because he has not provided a rationalized opinion supporting his disability for work for the period in question, OWCP properly denied his claim for wage-loss compensation.

### **CONCLUSION**

The Board finds that appellant has not met his burden to establish that he was entitled to compensation for wage loss from November 30, 2012 through January 15, 2013.

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<sup>6</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>7</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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