

became aware of its relation to her work on July 29, 2010. Appellant was terminated from employment on September 16, 2010.

By letters dated June 16, 2011, OWCP advised appellant and the employing establishment that additional factual and medical evidence was needed.

In a letter dated June 22, 2011, Frank Nagle, a health and resource management specialist, with the employing establishment controverted the claim. He explained that appellant had a history of being a less than a stellar employee and was issued a letter of termination on September 16, 2010. Mr. Nagle noted that her termination was found to be just and proper. Appellant never informed the employing establishment that she had a problem with her feet related to her employment duties. Although she requested light duty because of her feet and provided a medical report, the condition was not associated with her job duties. Mr. Nagle contended that appellant's claim was filed in retaliation for her termination.

By decision dated July 20, 2011, OWCP denied appellant's claim. It found that the medical evidence did not establish that her left foot condition was related to established work-related events.

On March 22, 2012 counsel requested reconsideration and submitted medical evidence. In a June 13, 2011 report, Dr. Jefferey S. Katz, a podiatrist, noted that appellant was seen on July 29, 2010 with complaints of a painful left foot. Examination showed a painful swollen area behind the left second toe, which was present for approximately one month. Appellant denied any other joint pain and took medication for her pain and tried staying off the foot as much as possible. She described the pain as shooting and throbbing at times, through the tip of the second toe. Dr. Katz noted that appellant denied any recent injuries to the left foot. Appellant demonstrated a cavus high arched poor shock absorbing foot type and had a prior surgical history of left bunionectomy in February 2003. She was also diagnosed with acute capsulitis of the left second metatarsal phalangeal joint and neuritis/neuroma of the left first intermetatarsal space. Appellant was seen for evaluation from July 29, 2010 through January 6, 2011. Dr. Katz stated that x-rays obtained on July 29, 2010 revealed: no fractures or dislocations; evidence of previous bunion surgery resulting in a mild elongation of the second metatarsal bone in relation to the first metatarsal bone; no narrowing of the joint space at the second metatarsal phalangeal joint; no irregularity at the second metatarsal phalangeal joint and no osseous pathology was noted. Appellant's treatment included local anesthetic and steroid solution injections, therapeutic nerve blocks, shoe modifications, orthotic therapy, nonsteroidal anti-inflammatory drugs, ice and rest. Dr. Katz stated:

“As a result of the cavus, high arched foot type, elongation of the second metatarsal bone in comparison to the first metatarsal bone and the type of duties the patient performs during the course of a workday. I feel that she is experiencing repetitive microtrauma to the left second metatarsal phalangeal joint. With a reasonable degree of certainty the condition that [she is experiencing] is due to the cavus high arched foot type and the activities she performs in the course of her performing work[-]related duties.”

By decision dated June 22, 2012, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision.

In a letter dated July 20, 2012, counsel requested reconsideration and provided additional evidence.

In a July 20, 2012 report, Dr. Katz explained that he reviewed the job duties that appellant performed over the 10 years preceding her injury. For six days a week, appellant walked a mail delivery route of approximately 8 to 10 miles. Dr. Katz related that her work shift was 8- to 10-hour shifts a day, depending on overtime, 6 to 7 hours of which were spent walking and standing for almost the entire shift on mostly concrete or asphalt. This involved carrying mail on a daily basis in a satchel typically weighing up to 35 pounds and at least one day a week weighing as much as 50 pounds. Dr. Katz stated that his opinion remained unchanged. He advised that the aforementioned duties caused appellant to experience repetitive microtrauma to the left second metatarsal phalangeal joint. This repetitive microtrauma with appellant's cavus, high arched foot type, caused her diagnosed acute capsulitis of the left second metatarsal phalangeal joint and neuritis/neuroma of the left first metatarsal space. As in his June 13, 2011 report, Dr. Katz' opinion was to a reasonable degree of medical certainty. A copy of a July 12, 2012 certification from appellant, which described her duties accompanied his report.

In an October 16, 2012 decision, OWCP accepted the claim for acute capsulitis of the second left metatarsal joint and neuritis/neuroma of the left first metatarsal space. It found that appellant was not entitled to wage-loss compensation as she did not stop work until her employment was terminated. OWCP found that the medical evidence did not support that she was disabled due to her medical condition.

In a letter dated October 11, 2013, counsel requested reconsideration. In an October 10, 2013 report, Dr. Katz noted that appellant was under his care since July 29, 2010 with the diagnosis of capsulitis/pain in the joint of the left second metatarsophalangeal and neuroma of the left first intermetatarsal space. Appellant also presented with a cavus, high arched foot deformity. Dr. Katz opined that her medical conditions interfered with her ability to efficiently perform her job duties as a city letter carrier. He noted that appellant's difficulties in complying with her regular job requirements were most likely caused by her medical conditions. Dr. Katz explained that, if she was allowed to perform light or modified duty, as opposed to her regular job duties, she would have been capable and successful in performing such duties efficiently. He indicated that appellant's exposure to the job duties outlined in his prior reports caused her to experience repetitive microtrauma to the left second metatarsophalangeal joint and neuritis/neuroma of the left first intermetatarsal space. As a result of appellant's foot type, appellant would not be able to resume her regular job duties. Dr. Katz explained that, if she was afforded a light-duty or modified-duty position, she should be able to resume employment. He recommended walking or standing limited to no more than 15 minutes per hours and squatting and pushing or pulling activities limited to approximately 75 pounds in containers with wheels. He completed a work capacity restriction. OWCP also received an August 21, 2013 supplemental certification from appellant describing her work duties.

By decision date December 9, 2013, OWCP denied modification of the prior decision. It found insufficient medical evidence to establish that appellant was disabled due to her medical condition as of September 16, 2010.

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.¹ 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.²

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.³ 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.⁴

The Board has held that when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA.⁵

ANALYSIS

On October 16, 2012 OWCP accepted appellant's claim for acute capsulitis of the second left metatarsal joint and neuritis/neuroma of the left first metatarsal space. It found that she was not entitled to compensation for wage loss. The employing establishment reported that appellant did not stop work until her employment was terminated on September 16, 2010 and there was insufficient medical evidence to support that she was disabled due to her medical condition.

In support of her claim, appellant submitted evidence from Dr. Katz. In an October 10, 2013 report, Dr. Katz opined that her left foot condition interfered with her ability to efficiently perform her job duties as a city letter carrier and added that her difficulties in complying with her regular job requirements were most likely caused by her medical conditions.

¹ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

² *Dean E. Pierce*, 40 ECAB 1249 (1989).

³ *Laurie S. Swanson*, 53 ECAB 517, 520 (2002). *See also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁴ *Jefferson*, *supra* note 1.

⁵ *See John I. Echols*, 53 ECAB 481 (2002); *John W. Normand*, 39 ECAB 1378 (1988).

He noted that, if appellant was allowed to perform light or modified duty as opposed to her regular job duties, she would have been capable and successful in performing those duties efficiently. Dr. Katz stated that her exposure to the job duties caused her to have repetitive microtrauma to the left second metatarsophalangeal joint and neuritis/neuroma of the left first intermetatarsal space. He opined that as a result of appellant's foot type, he did not believe that she would be able to resume her regular job duties. While Dr. Katz stated that her condition was work related, he did not offer any specific opinion as to her disability beginning September 16, 2010. He did not explain why appellant was able to perform her regular duties until she was terminated on September 16, 2010 or why, thereafter, she was disabled due to her accepted conditions. As noted, when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA.⁶ The opinion of Dr. Katz is of limited probative value and insufficient to establish compensable disability beginning September 16, 2010.

In subsequent reports, Dr. Katz did not specifically address appellant's disability beginning September 16, 2010 or provide an explanation as to why she was able to perform her regular work until the time of her termination for reasons unrelated to her accepted work injury. As the medical opinion evidence does not establish that the accepted employment injury caused total disability for work from September 16, 2010, the Board finds that she has not met her burden of proof. Accordingly, the Board will affirm OWCP's December 9, 2013 decision denying appellant's wage-loss compensation beginning September 16, 2010.

On appeal, counsel argued that the accepted condition supported that appellant was unable to complete her job duties and as a result she was terminated. However, as found above, the medical evidence is insufficient to establish appellant's claim for compensable disability. Furthermore, there is no factual evidence showing that her termination from her job was due to her accepted conditions. Appellant may submit evidence or argument with a written request for reconsideration 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 has not met her burden of proof in establishing that she was disabled commencing September 16, 2010, due to her accepted work-related injuries.

⁶ See *id.*

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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