

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

G.P., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Jacksonville, FL, Employer)

**Docket No. 14-1150
Issued: September 15, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 21, 2014 appellant filed a timely appeal from a March 17, 2014 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 met his burden of proof to establish that he was disabled for work from January 30 to 31, 2014 causally related to his accepted right ankle condition.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the March 17, 2014 decision. Since 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 along with a request for reconsideration.

FACTUAL HISTORY

On July 10, 2013 appellant, then a 53-year-old tractor trailer operator, filed a traumatic injury claim alleging that he injured his right ankle that day when he slipped on the stairs. He stopped work and returned to modified duty on July 27, 2013. OWCP accepted appellant's claim for right ankle sprain with right ankle instability. Appellant received authorized medical treatment and physical therapy.

On December 20, 2013 appellant underwent authorized right ankle arthroscopy surgery. He stopped work again and received disability compensation. On January 2, 2014 appellant returned to full-time modified duty as a mail clerk. His duties included casing and wasting mail for eight hours a day. The physical requirements of appellant's job included sedentary work and no driving.

Appellant continued to receive authorized medical treatment and physical therapy.

In a January 22, 2014 magnetic resonance imaging (MRI) scan report of the right ankle, Dr. Scott Wiedenmann, a Board-certified diagnostic radiologist, reported effusions of the ankle joint and subtalar joint without any additional internal derangement and tendinosis of the Achilles and plantar fascia tendons without tear.

In a January 27, 2014 report, Dr. Gregory Solis, a Board-certified orthopedic surgeon, related appellant's complaints of right ankle pain and underwent right ankle surgery on December 20, 2013. He reviewed appellant's history and noted no changes. Dr. Solis stated that he did not expect appellant to be 100 percent by this point but that most people at five weeks postsurgery would be markedly better. He reported that appellant could resume working with restrictions of minimal standing and walking and pushing, pulling and lifting up to 10 pounds.

In a January 27, 2014 work capacity evaluation, Dr. Solis noted appellant's diagnosis of right ankle sprain. He advised that appellant was not capable of performing his usual job but was able to work full time with restrictions of standing, pushing, pulling and lifting up to four hours; walking and climbing up to three hours; bending, stooping and kneeling up to two hours; and squatting up to one hour.

On February 4, 2014 appellant filed a Form CA7 requesting disability compensation for the period January 30 to 31, 2014. The employing establishment noted that it did not certify the time and that there was no medical evidence to support appellant's absence.

In a February 5, 2014 letter, Josephine Perron, a human resource management specialist at the employing establishment, controverted appellant's claim. She related that appellant stated that he was out of work due to "pain" and reported that there was no medical documentation which took him off work for the dates claimed.

By letter dated February 7, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim for disability compensation. It requested that he submit a narrative medical report, with objective findings, which demonstrated that he was unable to work for the period January 30 to 31, 2014 as a result of his accepted right ankle condition.

In a February 11, 2014 return to work note, Dr. Solis listed that appellant was unable to work from January 30 to 31, 2014.

In a February 12, 2014 letter, Ms. Perron noted that appellant took off work from January 30 to 31, 2014 stating that he was in too much pain to work. She advised appellant that his medical restrictions reflected that he could work so he could not just take off and get paid by OWCP. Ms. Perron contended that appellant failed to provide sufficient medical evidence explaining why he was unable to work from January 30 to 31, 2014.

In a February 24, 2014 report, Dr. Solis related appellant's complaints of right ankle pain and that appellant informed him that he was getting better gradually improving. He stated that appellant was working with restrictions and was concerned that climbing in and out of trucks would aggravate his condition. Dr. Solis reviewed his history and noted no changes. He opined that appellant should be improving postsurgery and that the intermittent activities he was performing at work should not cause any significant problems. Dr. Solis stated that he would not be able to put appellant on any more work restrictions since he expected the surgery itself to be completely healed. The physician reported that appellant was at the point where he was not going to do any harm to his ankle getting back to regular duties. Dr. Solis noted that he would keep appellant on his current work restrictions of no loading and unloading. He recommended more physical therapy and a follow-up examination in four weeks.

Appellant also submitted various hospital discharge and surgery reports dated December 20, 2013.

In a decision dated March 17, 2014, OWCP denied appellant's disability compensation claim. It found that the medical evidence failed to establish that he was unable to work for the period January 30 to 31, 2014.

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. The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of 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 reliable, probative and substantial medical opinion evidence.⁴

OWCP's procedure manual discusses the evidence necessary if recurrent disability for work is alleged within 90 days of return to duty. It is noted that the focus is on disability rather than causal relationship of the accepted condition to the work injury. The procedure manual states:

“The claims examiner should ask the claimant to submit a narrative statement from the attending physician which describes the duties which the employee cannot perform, and the demonstrated objective medical findings that form the basis for renewed disability for work.”⁵

³ *Paul E. Thams*, 56 ECAB 503 (2005).

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

⁵ Federal (FECA) Procedure Manual, Part 2 -- *Recurrences*, Chapter 2.1500.5 (June 2013).

The Board has held that if recurrent disability for work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.⁶ The Board will not require OWCP to pay compensation for 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.⁷

ANALYSIS

OWCP accepted that appellant sustained a right ankle sprain as a result of a July 10, 2013 employment injury and underwent surgery. Appellant stopped work and returned to modified duty on January 2, 2014. On February 4, 2014 he filed a claim for disability compensation from January 30 to 31, 2014. In a decision dated March 17, 2014, OWCP denied appellant's claim for disability compensation from January 30 to 31, 2014. The Board finds that appellant did not meet his burden of proof to establish that he was disabled from work from January 30 to 31, 2014 as a result of his accepted right ankle condition.

Appellant submitted various reports by Dr. Solis. In a January 27, 2014 report, Dr. Solis noted appellant's complaints of right ankle pain and accurately described appellant's history of injury. He stated that most people at five weeks postsurgery would be markedly better than appellant. Dr. Solis authorized appellant to work full time with restrictions of standing, pushing, pulling and lifting up to four hours; walking and climbing up to three hours; bending, stooping and kneeling up to two hours and squatting up to one hour. These restrictions would allow appellant to continue the sedentary modified position that he had performed since January 2, 2014.

In a February 11, 2014 return to work note, Dr. Solis listed that appellant was unable to work from January 30 to 31, 2014. The Board notes that although Dr. Solis listed dates for appellant's period of disability, he provided no opinion on the cause of appellant's inability to work. It is unclear as to whether appellant's inability to work was related to his accepted right ankle condition. Furthermore, Dr. Solis provided no evidence of objective findings to substantiate appellant's inability to work on the days in question. Appellant was properly notified by OWCP's letter of February 7, 2014 that he would have to submit medical evidence which contained objective medical findings and explained why he was unable to work on the dates in question.

The additional January 22, 2014 diagnostic report by Dr. Wiedenmann is also insufficient to establish appellant's disability compensation claim as he failed to mention any period of disability or explain, based on medical rationale, how appellant's alleged inability to work from January 30 to 31, 2014 resulted from his accepted right ankle condition.

On appeal, appellant states that, after he went to therapy on January 29, 2014, his right foot was swollen and he was unable to walk or drive for the next two days. The record before the Board however does not reflect that he submitted medical evidence to demonstrate that his

⁶ R.C., Docket No. 14-201 (issued May 8, 2014).

⁷ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

physical therapy prevented him from performing his modified-duty job from January 30 to 31, 2014. Appellant has not provided sufficient medical opinion explaining how objective medical physical findings support his disability. The Board finds that OWCP properly denied his 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 has not established that he was entitled to compensation for disability for the period January 30 to 31, 2014.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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