

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

R.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 15-0988
Issued: August 12, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 30, 2015 appellant filed a timely appeal from a November 19, 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.

ISSUE

The issue is whether appellant met his burden of proof to establish compensation for wage-loss benefits for the ongoing period commencing August 22, 2014.²

FACTUAL HISTORY

On June 30, 2014 appellant, a 57-year-old mail handler worked as an equipment operator. On that date he filed a traumatic injury claim alleging that he strained the sole of his left

¹ 5 U.S.C. §§ 8101-8193.

² See 20 C.F.R. § 501.2(c) (1). Appellant submitted new evidence on appeal. The Board has no jurisdiction to review new evidence on appeal that was not before OWCP at the time of its final decision.

foot/heel while trying to hook up a container to tow a motor on June 28, 2014. Appellant received care at St. Vincent Charity Hospital on June 29, 2014. He received continuation of pay until August 13, 2014. On August 11, 2014 Dr. Jeremy Perse, a podiatrist, indicated that appellant could return to his regular work on August 20, 2014. Appellant did not return to work.

On August 26, 2014 OWCP received a Form CA-7 from appellant claiming disability compensation for the period August 14, 2014 and continuing. In support of his claim, appellant submitted several CA-17 duty status reports. He also submitted progress notes from Dr. Joe Schoenberger, an osteopath, Dr. Leo Moysaenko, a general surgeon, and Gail Mangan, a nurse practitioner. These reports noted that appellant was under treatment for the additional foot conditions of: plantar fascia tear/rupture, fibroma; plantar fasciitis; and pes planus (flat feet).

On August 28, 2014 OWCP accepted the claim for left ankle sprain. In an August 28, 2014 letter, it noted that the evidence submitted with his wage-loss claim did not establish his disability for the claimed period. OWCP advised him that medical evidence establishing disability for work due to his accepted work injury for the claimed periods was needed. Appellant was accorded 30 days to submit the requested information.

In response, OWCP received medical records from Dr. Perse, a podiatrist. In his initial July 7, 2014 report, Dr. Perse noted the history in his injury that appellant experienced a dorsiflexed metatarsophalangeal joint complex while operating a tow motor at work and that he also felt an initial searing sharp pain to the plantar middle arch. Appellant presented to the clinic for left plantar foot pain following evaluation from St. Vincent Charity emergency room. Dr. Perse diagnosed a partial rupture of left mid substance plantar fascia. Appellant was provided a walking boot and was told to attempt weight bearing on a self-limiting basis. He received a written work excuse from work for one week. In an August 11, 2014 report, Dr. Perse found appellant in follow-up status post left plantar fascia rupture. He reported that appellant was currently stable and healing. Dr. Perse gave appellant a prescription for an orthotic device. There was discussion of possible removal of surgical hardware from the left fifth metatarsophalangeal joint where appellant had bunion reduction nine years earlier.

In a September 22, 2014 report, Dr. Anthony A. Matalavage, a podiatrist, noted appellant's allegations that he injured his left foot at work while pushing a cart. Appellant related that he felt sharp pain on the bottom of his left foot and noted bruising/swelling to the plantar foot. He reported that he was seen at St. Vincent Charity Hospital and had been told he tore his plantar fascia. Appellant was placed in a fracture boot for several weeks and given a prescription for custom orthotics. Dr. Matalavage diagnosed a left side plantar fascial tear from the original workers' compensation injury with subsequent development of plantar fibromatosis in the left arch all related to the injury. He requested that OWCP accept the conditions of plantar fascial ligament tear, plantar fibromatosis, and left foot pain as causally related to appellant's claim. In a September 21, 2014 report, Dr. Matalavage diagnosed work-related left plantar fascial tear/rupture, left plantar fibromatosis, and left foot pain. He advised that appellant was totally disabled from work from September 22 to December 31, 2014. On November 12, 2014 Dr. Matalavage requested approval for physical therapy for the condition of plantar fibromatosis left foot.

Records from St. Vincent Charity Medical Center dated June 29, 2014 were received. Dr. Maureen E. Allanson, a podiatrist, diagnosed appellant with plantar fascia rupture to the

medial band of plantar fascia, stable; edema left foot 2/2 rupture, painful retained hardware left 1st MPJ from an old left foot bunionectomy. She also diagnosed hallux limitus left hallux status post head osteotomy; pain in limb.

Physical therapy notes from Amanda Sweeney, a physical therapist, dated October 20, 2014 provided an assessment of fibromatosis of the left plantar fascia along with multiple requests for authorization.

By decision dated November 19, 2014, OWCP denied appellant's claim for disability compensation for the ongoing period commencing August 22, 2014.³ It found that the medical evidence of file did not establish that appellant was disabled as a result of his accepted work-related medical condition of left foot sprain.

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 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 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 disability and entitlement to compensation.⁷

ANALYSIS

Appellant injured himself at work on June 28, 2014 and stopped work on or about July 7, 2014. He received continuation of pay until August 13, 2014, after which he filed a claim for wage-loss compensation. OWCP accepted the condition of left ankle sprain as being work related.⁸ In the decision dated November 19, 2014, it denied appellant's wage-loss claim for

³ The Board notes that appellant claimed wage-loss for disability as of August 14, 2014.

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 *Supra* note 4.

⁸ The Board notes that OWCP is developing Dr. Matalavage's request to expand the accepted conditions of appellant's claim to include the conditions of left plantar fascial tear, left plantar fibromatosis, and left foot pain. The Board does not have jurisdiction over that matter as a final adverse decision has not been issued.

disability compensation from August 22, 2014 and continuing because the medical evidence did not establish that appellant was disabled as a result of his accepted work-related condition.

The Board finds that appellant did not submit sufficient medical evidence to establish that he was disabled due to the accepted conditions caused by the June 28, 2014 work-related incident.

The Board notes that on July 7, 2014 Dr. Perse authorized appellant to stay off work for one week. This was covered during the continuation of pay period as was appellant's hospital visit on June 29, 2014. The Board finds that the reports received by OWCP after the continuation of pay period ended August 13, 2014 are insufficient to establish appellant's continued disability claim due to his accepted left foot sprain.

Dr. Matalage noted the history of injury, appellant's medical course, and presented examination findings. He diagnosed a left side plantar fascia tear resulting from the June 28, 2014 work-related injury. Dr. Matalage reported subsequent development of plantar fibromatosis in the left arch with left foot pain. He stated that appellant was totally disabled from September 22 to December 31, 2014, and did not address appellant's status as of August 22, 2014. Furthermore Dr. Matalage failed to provide medical rationale on how the diagnosed conditions were causally related to the accepted June 28, 2014 work injury. As the conditions diagnosed are not presently accepted conditions, his reports pertaining to appellant's disability are of little probative value on the issue of entitlement to wage-loss compensation.

The physical therapy notes from Ms. Sweeney document that appellant was receiving medical services, not that he was totally disabled for work.⁹ These reports are immaterial to the present claim as physical therapists are not considered physicians under FECA.

There is no other probative medial evidence of record to show that appellant was disabled on the dates claimed and which also explains how any disability is related to the June 28, 2014 work injury.

On appeal appellant argues that the medical evidence supports that he was totally disabled as a result of the work injury during the relevant period. He also asserts that he suffered additional conditions other than the accepted left foot sprain. However, for the reasons given, the medical evidence does not support 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 has not met his burden of proof to establish compensation for wage-loss benefits for the ongoing period commencing August 22, 2014.

⁹ Appellant is entitled to compensation for those hours of leave without pay that are shown to have been taken for treatment for the effects of the accepted employment-related conditions. *Daniel Hollars*, 51 ECAB 355 (2000).

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: August 12, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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