

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

R.D., Appellant)	
)	
and)	Docket No. 15-163
)	Issued: March 19, 2015
U.S. POSTAL SERVICE, POST OFFICE, Anaheim, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 3, 2014 appellant filed a timely appeal from an October 1, 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 entitlement to compensation for wage loss for the period April 10 to November 1, 2013 causally related to his April 10, 2013 employment injury.

FACTUAL HISTORY

On May 17, 2013 appellant, then a 43-year-old city letter carrier, filed an occupational disease claim indicating that he injured his left ankle and lower back due to years of repetitive movement. He first realized his condition was caused or aggravated by his employment on

¹ 5 U.S.C. §§ 8101-8193.

April 10, 2013. Appellant stopped work prior to the claimed date of injury as he was removed from the employing establishment effective April 15, 2013 for cause. He was employed at Central Parking System from May 30 to July 2, 2013 as a full-time lead attendant. On July 12, 2013 OWCP accepted appellant's claim for lumbar sprain and left ankle sprain.

Appellant's physicians Dr. Edward Mittleman, a Board-certified internist, Dr. D. Domenic Signorelli, a Board-certified neurologist, Dr. Maliheh Massih, a Board-certified physiatrist, and Dr. Serge Obukhoff, a Board-certified neurosurgeon, have provided diagnoses of multiple lumbar disc herniation, multiple lumbar level spinal stenosis, lumbar radiculopathy with left foot drip, left ankle multiple ligamentous sprains, left ankle multiple ligamentous tenosynovitis, tear of the calcaneofibular ligament, left peroneal neuropathy, and underlying peripheral polyneuropathy demyelinating in nature.

In his initial report dated April 24, 2013 and progress reports thereafter, Dr. Mittleman opined that appellant was able to work modified duty with restrictions.

In an October 3, 2013 report, Dr. Steven M. Ma, a Board-certified orthopedic surgeon and second opinion examiner, noted that appellant had not worked since February 20, 2013 because no light duty was available. He noted that when appellant was initially seen at the Performance Medical and Rehabilitation Center, Inc. he was given work restrictions, but light-duty work was not available. Dr. Ma noted the history of injury, appellant's medical course, and his review of the records. He noted examination findings and provided an impression of nonindustrial neurologic condition of the lower extremities confirmed by the diagnostic studies. Dr. Ma stated that appellant had diffuse muscle loss of his entire left leg from the left hip down to his toes. He noted weakness about his right leg, but not as severe as his left leg. Dr. Ma indicated that appellant's left foot drop was due to severe neurologic problems involving all the muscles and nerves of his left leg and was due to a nonindustrial problem involving the entire left leg. He indicated that appellant's medical condition has not had further testing, had not been diagnosed yet, and opined that his severe weakness and severe pain was greater than what any back condition could cause. Dr. Ma indicated his agreement with appellant's physicians that appellant was able to work with restrictions and opined that he was able to perform sedentary work for eight hours a day with restrictions. He completed a work capacity evaluation noting appellant's restrictions.

On October 31, 2013 appellant filed a claim for compensation (Form CA-7) requesting total disability compensation benefits from April 10 through November 1, 2013. The employing establishment noted that he was off work pending removal.

On November 6, 2013 OWCP forwarded a copy of Dr. Ma's second opinion report to appellant's physician, Dr. Mittleman, for comment, noting that Dr. Ma opined that appellant had a severe neuropathy of his lower extremity that was not related to his work. In a November 6, 2013 letter, it advised appellant that Dr. Ma's second opinion report had been forwarded to Dr. Mittleman for comment and that he had 30 days in which to submit the requested documents. No response was received from Dr. Mittleman.

By letter dated December 5, 2013, OWCP advised appellant that additional evidence was needed to establish disability for work during the period claimed and that there was a conflict in the medical evidence between his treating physicians and the second opinion examiner as to the

cause of his medical conditions. Appellant was accorded 30 days to submit the requested information.

In a November 20, 2013 report, Dr. Mittleman reviewed Dr. Ma's second opinion report and agreed that appellant's peripheral neuropathy was not work related and that appellant had not sought medical care with regard to the peripheral neuropathy. He indicated that appellant had sought care in regards to the other pathology that was present and opined that his work activities performed in association with a peripheral neuropathy resulted in multiple left ankle ligamentous sprains with multiple ligamentous tenosynovitis. Dr. Mittleman indicated that Dr. Ma ignored the findings on several diagnostic tests which indicated ongoing left-side radiculopathy. In that report, as well as in a December 19, 2013 letter, he requested that appellant be examined by an impartial medical specialist.

In periodic reports dated December 5, 2013 onward, Dr. Mittleman continued to opine that appellant's conditions of exacerbation of lumbar region sprain, lumbar disc herniations with radiculopathy, and left ankle strain were causally related to appellant's work duties. He also continued to opine that appellant was capable of modified work.

Reports from Dr. Obukhoff were also received. In his January 17, 2014 report, Dr. Obukhoff disagreed with Dr. Ma's findings and requested that appellant's diagnoses be revised to include lumbar disc herniation with radiculopathy and lumbar canal stenosis with neurogenic claudication. He opined in all his reports that appellant was able to work modified duty, per his primary treating physician.

In an initial report of July 3, 2014, Dr. Gary L. Baker, a Board-certified anesthesiologist, provided pain medicine reevaluation for appellant's work-related lumbar radiculopathy. An August 18, 2014 periodic report was also received.

A copy of an October 4, 2013 arbitration award² was also received, regarding his claim for back pay, along with several diagnostic tests.

By decision dated October 1, 2014, OWCP denied appellant's claim for disability compensation for the period April 10 through November 1, 2013.

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 supported by reliable, probative, and substantial medical opinion evidence.³ Such medical evidence must

² The arbitration award found that just cause did not exist for management's emergency placement of appellant in an off-duty status without pay on February 20, 2013 and awarded appellant back pay from February 20, 2013 onwards.

³ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

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.⁴

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁵ 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.⁶

ANALYSIS

OWCP accepted appellant's claim for left ankle sprain/strain and lumbar spine sprain/strain. Appellant filed a claim for wage-loss compensation for the period April 10 to November 1, 2013, which OWCP denied. He has the burden to provide medical evidence establishing that he was partially or totally disabled on and after April 10, 2013 through November 1, 2013 due to his accepted work-related conditions.

The Board finds that appellant has failed to submit medical evidence in support of total disability during the period claimed. Dr. Mittleman stated in his medical report dated April 24, 2013 and in subsequent reports that appellant was able to work modified duty with restrictions. The second opinion examiner Dr. Ma agreed that appellant was capable of working eight hours a day with restrictions. While the file reflects there is a medical disagreement as to the extent of appellant's work conditions, there is no medical opinion evidence within the claimed period which states that appellant was totally disabled due to the accepted work conditions.⁷ In fact, none of the contemporaneous medical reports of file indicate that appellant had any employment-related disability for the period April 10 through November 1, 2013.

There is also no evidence that the employing establishment could not accommodate appellant during the claimed period. Appellant was placed off work in February 2013 pending removal for disciplinary reasons. He was not off work because he was totally disabled or because the employing establishment could not accommodate his work restrictions.

Appellant failed to submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that he was disabled for the period April 10 to November 1, 2013 due to his accepted work-related conditions.⁸ Accordingly, he has

⁴ *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁵ *Laurie S. Swanson*, 53 ECAB 517, 520 (2002). *See also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁶ *Amelia S. Jefferson*, *supra* note 3.

⁷ While the record includes medical reports which diagnose a myriad of medical conditions including multiple lumbar disc herniation, multiple level spinal stenosis, lumbar radiculopathy with left foot drop, left ankle tenosynovitis, tear of the calcaneofibular ligament, left peroneal neuropathy, and underlying peripheral polyneuropathy, OWCP has not issued a final decision as to whether any of these conditions have been established to be work related.

⁸ The remaining medical evidence of record postdated the period claimed and, thus, was not relevant to this claim.

failed to meet his burden of proof in establishing an employment-related disability and is not entitled to wage-loss compensation for the claimed period.⁹

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 entitlement to wage-loss benefits for periods of disability claimed from April 10 to November 1, 2013 causally related to his April 10, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2015
Washington, DC

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

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

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

⁹ The Board also notes that the record indicates that appellant worked as a toll attendant from May 30 to July 2, 2013, which negates a total disability status.