

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

G.P., Appellant

and

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

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**Docket No. 15-1360
Issued: September 25, 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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 1, 2015 appellant filed a timely appeal from April 15 and May 11, 2015 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ The Board notes that during the pendency of this appeal, OWCP issued a June 8, 2015 decision affirming the April 15, 2015 decision denying appellant's compensation claim. This decision, however, is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. *See Terry L. Smith*, 51 ECAB 182 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

² 5 U.S.C. § 8101 *et seq.*

³ The Board also notes that appellant submitted additional evidence to OWCP following the May 11, 2015 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, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

ISSUE

The issue is whether appellant has met her burden of proof to establish disability for the period January 19 to February 10, 2015 causally related to his July 10, 2013 employment injury.

FACTUAL HISTORY

This case was previously before the Board.⁴ The facts and circumstances as outlined in the prior Board decision are incorporated herein by reference. The relevant facts are set forth below.

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

On December 20, 2013 appellant underwent authorized right ankle arthroscopy surgery and stopped work again. OWCP paid benefits.

Appellant returned to full-time limited duty on January 2, 2014. By letter dated January 16, 2014, OWCP advised him that his wage-loss compensation benefits had been terminated because it was determined that his actual wages met or exceeded the wages of the job he held at the time of injury. It informed appellant that he was still entitled to medical benefits for his July 10, 2013 employment injury.

On February 4, 2014 appellant filed a Form CA-7 requesting disability compensation for the period January 30 to 31, 2014.

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 as a result of his right ankle condition.

On May 6, 2014 appellant returned to full duty.

On September 15, 2014 the Board affirmed the March 17, 2014 denial of appellant's disability compensation claim because the medical evidence was insufficient to establish that he was disabled from work from January 30 to 31, 2014 causally related to his accepted right ankle condition.

Following the Board's decision, appellant continued to receive authorized medical treatment and physical therapy. On December 5, 2014 he was treated by Dr. Jeff Jackson, a foot and ankle surgeon, who documented that appellant initially injured his right ankle in July 2013 and still complained of foot and ankle pain while walking or standing. Upon examination, he observed pain on palpation across the anterior aspect of the right ankle, pain at right subtalar

⁴ Docket No. 14-1150 (issued September 15, 2014).

joint with palpation, pain with plantarflexion, and pain to the right styloid process. Appellant's sensation was intact and pedal pulses were palpable. Dr. Jackson reported that November 21, 2014 x-rays revealed no acute fracture and malalignment, but a plantar calcaneal spur was noted. He also reported that a January 22, 2014 magnetic resonance imaging (MRI) scan of the right ankle demonstrated effusions of the right ankle and subtalar joints without any additional internal derangement of these joints. Dr. Jackson diagnosed tenosynovitis of the foot and ankle and possible reflex sympathetic dystrophy (RSD) of the right foot and ankle.

In a January 20, 2015 narrative report, Dr. Jackson noted appellant's complaints of right ankle pain when standing or after prolonged walking. He provided examination findings similar to the December 5, 2014 report and diagnosed tenosynovitis of the foot and ankle, pain in the joint involving ankle and foot, effusion of the right subtalar and ankle joint, and possible RSD of the right ankle.

Dr. Jackson further reported in a January 20, 2015 treatment note that appellant suffered from right ankle pain. He requested that appellant be off work for two to three weeks to allow recovery.

In various CA-7 forms dated January 27 and February 9 and 23, 2015, appellant requested disability compensation for the period January 19 through February 10, 2015. In the time analysis form, he indicated that he stayed home per doctor's orders.

On February 10, 2015 appellant was treated again by Dr. Jackson who related that appellant suffered from right ankle pain and tendinitis since a July 2013 employment injury. Dr. Jackson discussed appellant's medical treatment and stated that MRI scans and x-rays did not show any significant abnormal findings. Upon examination, he observed pain on palpation across the anterior aspect of the right ankle at the anterior tibialis, extensor hallucis longus, and extensor digitorum longus, pain at the proximal most aspect of the anterior tibialis, pain at the right subtalar joint with palpation, and pain noted at the lateral right ankle ligaments. Sensation was intact and pedal pulses were palpable. Dr. Jackson also reported minimal discomfort along the peroneal tendons of the right foot and ankle and minimal pain with plantarflexion of the right ankle. He diagnosed tenosynovitis of the right foot and ankle, right ankle enthesopathy, and possible RSD right ankle.

In a February 10, 2015 treatment note, Dr. Jackson reported that appellant had the same duty status as listed in his December 9, 2014 report. He reported that appellant could return to work on February 11, 2015.

On February 11, 2015 appellant returned to work with restrictions.

By letters dated February 17 and March 3, 2015, OWCP advised appellant that the medical evidence failed to demonstrate that he was disabled from work from January 19 to February 10, 2015 as a result of his accepted ankle condition. It requested that he submit medical evidence to support total disability for the period claimed.

In a February 24, 2015 report, Dr. Jackson conducted a follow-up examination for appellant's July 2013 work-related injury. He discussed the medical treatment appellant received. Dr. Jackson noted that appellant had not been able to walk or function normally due to

constant pain, instability, and swelling of his right ankle after being released to full duty. He provided examination findings similar to his previous reports and diagnosed tenosynovitis of the foot and ankle, right ankle enthesopathy, and possible RSD right ankle.

Dr. Jackson indicated in a February 26, 2015 work capacity evaluation that appellant was able to work full time with restrictions of walking and reaching above the shoulders up to four hours, bending, stooping, squatting, and kneeling up to three hours, standing up to two hours, lifting up to 10 pounds, and no pulling or climbing.

Appellant was again treated by Dr. Jackson on March 4 and April 1, 2015 for a work-related right ankle injury. Dr. Jackson related appellant's complaints of instability to the outside of his right ankle when he walked or stood for long periods of time. He provided examination findings similar to his previous examinations and reported diagnoses of tenosynovitis of the foot and ankle, right ankle enthesopathy, and possible RSD right ankle.

In a decision dated April 15, 2015, OWCP denied appellant's disability compensation claim for the period January 19 to February 6, 2015 finding that there was insufficient medical evidence to establish that he was unable to work due to the accepted right ankle condition.

On May 8, 2015 OWCP received appellant's request for reconsideration. Appellant referred to the January 20, 2015 doctor's note which talked about pain. He discussed how Dr. Jackson also requested that he use a cam-walker boot to wear 24/7 except while sleeping, bathing, and driving, but his supervisor would not allow him to wear the cam-walker boot because there was a policy against open-toed boots in the workplace.

In a decision dated May 11, 2015, OWCP denied appellant's disability compensation claim for the period February 9 through 10, 2015 finding that the medical evidence was insufficient to establish that he was unable to work during that period due to his accepted right ankle condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his 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.⁵ Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee disability for his particular work.⁶ For each period of disability claimed, the employee must establish that he was disabled for work as a result of the accepted employment injury. The Board

⁵ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

⁶ *Dean E. Pierce*, 40 ECAB 1249 (1989).

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.⁷

ANALYSIS

OWCP accepted that on July 10, 2013 appellant sustained right ankle sprain and right ankle instability in the performance of duty. Appellant stopped work and returned to full-time full duty on May 6, 2014. On January 19, 2015 he stopped work again and requested disability compensation through February 10, 2015. By decisions dated April 15 and May 11, 2015, OWCP denied appellant's disability compensation claim finding insufficient medical evidence to establish that he was unable to work for the period January 19 to February 10, 2015 as a result of his July 10, 2013 employment injury.

Appellant submitted various reports dated December 5, 2014 to April 1, 2015 by Dr. Jackson. Dr. Jackson noted appellant's July 10, 2013 work-related injury and the medical treatment he received. Upon examination, he observed pain on palpation across the anterior aspect of the right ankle, pain at right subtalar joint with palpation, pain with plantarflexion, and pain to the right styloid process. Appellant's sensation was intact and pedal pulses were palpable. Dr. Jackson diagnosed tenosynovitis of the foot and ankle and possible RSD of the right foot and ankle. The Board notes that conditions he diagnosed have not been accepted by OWCP as causally related to the July 10, 2013 employment injury, and he offered no medical opinion as to how these diagnosed conditions were in fact causally related to the accepted injury. As previously noted, to establish a period of disability, not only must appellant submit findings on examination, but also a physician's opinion, supported by medical rationale, as to how the accepted injury caused the employee disability for his particular work.⁸

Dr. Jackson further noted in a January 20, 2015 treatment note that appellant suffered from right ankle pain and requested that he be off work for two to three weeks to allow recovery. While he reported that appellant should be off work for two to three weeks beginning January 20, 2015 to allow for recovery, he attributed appellant's inability to work to right ankle pain, which is not considered a compensable diagnosis.⁹ Dr. Jackson offered no medical rationale to explain how appellant became disabled or was unable to work from January 19 to February 10, 2015 due to the accepted July 10, 2013 employment injury. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ As none of Dr. Jackson's reports provide medical rationale for how the July 10, 2013 injury caused appellant's disability for the claimed period, these reports are insufficient to establish his disability compensation claim.

⁷ *Amelia S. Jefferson, supra* note 5.

⁸ *Supra* note 6.

⁹ *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

¹⁰ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

On appeal, appellant stated that he was claiming compensation for the period January 20 through February 10, 2015. He explained that the doctor prescribed an open-toed cam-boot for him to wear, but he was not allowed to wear the boot at work. As previously noted, an employee claiming disability must submit a physician's opinion with medical rationale that shows how the injury caused the employee disability for his particular work.¹¹ The Board finds that this argument does not demonstrate how appellant's July 10, 2013 employment injury resulted in his disability. Because appellant has failed to submit rationalized medical evidence establishing that his disability for the period January 19 to February 10, 2015 was causally related to his accepted employment injury he has not met his burden of proof to establish his claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he was disabled from work for the period January 19 to February 10, 2015 causally related to his July 10, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 11 and April 15, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 25, 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

¹¹ *Supra* note 6.