

duty on December 12, 2012. She noted on the claim form that a loaded wire container was rolled over her foot, causing abrasions on top of her right foot. The attending physician, Dr. Kenneth Aquilino, a Board-certified internist, submitted a Form CA-17 (duty status report) dated January 2, 2013 diagnosing a right foot contusion. He opined that appellant would be disabled at least two or three weeks. Dr. Aquilino also diagnosed lumbar degenerative disc disease. In a March 13, 2013 report, he noted that the lumbar condition was longstanding and appellant's low back pain had been getting worse over the past two years. Dr. Aquilino reported that appellant's physical limitations had been compounded by the December 12, 2012 foot injury, but could not say whether the foot injury had affected the back condition.

The record indicates that appellant stopped working and did not return. In a May 20, 2013 letter, appellant indicated that she had received a notice of termination of employment from the employing establishment on December 26, 2012.² She asserted that her supervisor had a personal issue against her.

On August 1, 2013 OWCP advised appellant that it had accepted her claim for right foot contusion. Appellant submitted a claim for compensation (Form CA-7) on September 25, 2013 claiming compensation commencing January 26, 2013. She continued to submit CA-7 forms claiming ongoing wage-loss compensation.

By two decisions dated December 4, 2013, OWCP denied appellant's claims for compensation for the periods January 26 to September 18, and September 19 to October 20, 2013, as the submitted evidence failed to support the claimed periods of disability.

By report dated December 23, 2013, Dr. Aquilino reported that appellant continued to have chronic right foot pain and was not able to work.

OWCP issued two decisions dated February 24, 2014, denying claims for compensation from October 20 to November 19, and November 20 to December 20, 2013 due to insufficient medical evidence.

The record contains a right foot magnetic resonance imaging (MRI) scan dated February 25, 2014 from Dr. William Glucksman, a radiologist. He reported no evidence for osteomyelitis and no definite significant abnormality. Dr. Aquilino submitted a March 26, 2014 report indicating that appellant continued to have right foot pain, and he encouraged her to seek treatment with a podiatrist or orthopedic surgeon.

By decision dated April 24, 2014, OWCP denied a claim for compensation from December 21, 2013 to January 20, 2014 as the evidence was insufficient to establish her claim. In a letter dated May 12, 2014, appellant, through counsel, requested a hearing before an OWCP hearing representative.

Appellant was seen by Dr. Thomas Rossi, a Board-certified orthopedic surgeon, on April 28, 2014. Dr. Rossi provided a history that she had sustained a right foot injury at work on

² The record contains a notice of removal dated December 26, 2012 for failure to maintain regular attendance and failure to respond to official correspondence.

December 12, 2012 and provided results on examination. He diagnosed a crush injury to her foot, reported appellant's condition had shown marked improvement with some residual swelling pain and tenderness. Dr. Rossi noted the negative MRI scan results and concluded that he was not sure anything could be done with the right foot.

In two decisions dated June 27, 2014, OWCP denied appellant's for compensation for the periods January 20 to February 18 and February 19 to March 20, 2014. It also issued two decisions dated October 20, 2014, denying appellant's claims for compensation for the periods April 20 to May 19 and May 20 to June 18, 2014. Appellant had again failed to provide sufficient evidence to support her claims.

Appellant, through counsel, timely requested hearings with respect to the June 27 and October 20, 2014 OWCP decisions.

Appellant submitted an October 21, 2014 report from Dr. Aquilino, in which he related that she continued to be off work due to chronic right foot pain that "apparently arose" as a result of her December 12, 2012 injury. Dr. Aquilino opined that her "chronic right foot pain currently appears to be due to some type of reflex sympathetic dystrophy (RSD) that arose directly in relation to her injury and, as discussed on numerous occasions with the patient, is best managed in conjunction with orthopedics and physical and occupational therapy." He further opined that appellant continued to be disabled.

By decision dated December 23, 2014, an OWCP hearing representative affirmed the April 24, June 27, and October 20, 2014 OWCP decisions. She found that the reports from Dr. Aquilino were speculative and without objective findings.

In a report dated November 26, 2014, Dr. Aquilino again opined that appellant had chronic right foot pain that appears to be due to some sort of RSD. He also asserted in a separate report dated November 26, 2014 that he had never released her to return to work.

By decisions dated January 16, 2015, OWCP denied appellant's claims for compensation for the periods July 20 to August 19, 2014, and September 22 to October 21, 2014.³ Appellant requested a hearing before an OWCP hearing representative in a letter dated January 22, 2015. In a decision dated February 13, 2015, OWCP denied her claim for compensation for the periods October 22 to November 20, 2014. By decision dated March 13, 2015, it denied a claim for compensation for the period November 21 to December 20, 2014. Appellant also requested a hearing regarding this decision in a letter dated March 18, 2015.

A hearing was held on July 13, 2015. Appellant's counsel argued that OWCP should further develop the issue of whether an RSD condition was causally related to the December 12, 2012 employment injury.

³ A third decision dated January 16, 2015 was issued denying compensation from April 20 to May 19, 2014. By decision dated June 24, 2015, an OWCP hearing representative vacated this decision, noting that this period had already been adjudicated in the December 23, 2014 hearing representative decision.

In a February 26, 2015 report, Dr. Aquilino noted that he was not a pain specialist. He opined that because of the December 12, 2012 employment injury appellant “most likely has some type of RSD as a result of her injury, but as I am not a pain specialist, I cannot say that that particular diagnosis is exactly what she has. I did advise [appellant], if possible, to seek the professional opinion of a licensed and certified pain specialist for further evaluation regarding this.” Appellant’s counsel submitted an April 30, 2015 letter requesting that OWCP expand the claim to include RSD.

By decision dated October 1, 2015, an OWCP hearing representative affirmed the January 16, 2015 decisions. With respect to the periods July 20 to August 19, and September 22 to October 21, 2014, she found that the medical evidence was insufficient to establish the claim. The hearing representative noted that counsel had requested that OWCP expand the claim to include RSD and it would be appropriate for OWCP to further develop the issue with a second opinion examination.

In a decision dated November 13, 2015, an OWCP hearing representative affirmed the March 13, 2015 OWCP decision. For the period November 21 to December 20, 2014, she found that the evidence was insufficient to establish the claim. The hearing representative also noted that OWCP had not adjudicated the request to expand the claim and should complete any necessary development.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁵

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶ Findings on examination are generally needed to support a physician’s opinion that an employee is disabled for work. When a physician’s statements regarding an employee’s ability to work consist only of repetition of the employee’s complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁷ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Id.*

disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

To establish a causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.¹¹

ANALYSIS

In the present case, OWCP accepted that appellant sustained a right foot contusion in the performance of duty on December 12, 2012. Appellant has been claiming compensation for wage loss since January 26, 2013.

Appellant has the burden of proof to establish an employment-related disability for the periods claimed. The Board finds that the evidence of record is of diminished probative value and insufficient to establish the claim. Dr. Rossi saw appellant prior to the claimed periods and he did not discuss any disability from work. He noted that a February 25, 2014 MRI scan was essentially negative.

There are numerous reports from Dr. Aquilino in the record, but none of these reports provide a rationalized medical opinion as to an employment-related disability for the periods claimed. Dr. Aquilino reported on October 21 and November 26, 2014 that it appeared that appellant had some sort of RSD and remained off work. He did not discuss the diagnosis or objective findings supporting the diagnosis. Dr. Aquilino did not provide an opinion supported by medical rationale relating a disabling diagnosed condition to the employment injury. In a February 26, 2015 report, he again indicated that he felt appellant had some sort of RSD, but he emphasized that he was not a pain specialist and she should seek the opinion of a pain specialist. The opinion is speculative and there is no medical rationale to support causal relationship between disability and the December 12, 2012 employment injury.¹²

On appeal, counsel briefly argues that with respect to the November 13, 2015 decision the hearing representative should have held the decision in abeyance until the issue of expansion of the claim was resolved. However, it is appellant's burden of proof to establish a period of employment-related disability, and she reviewed the relevant evidence of record. For the reasons

⁸ *Id.*

⁹ *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹² Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value and are insufficient to meet appellant's burden of proof. *Carolyn F. Allen*, 47 ECAB 240 (1995).

discussed above, the evidence was insufficient to establish an employment-related disability for the periods claimed.

Appellant has one year from the date of this decision to request reconsideration of the October 1 or November 13, 2015 decisions and submit new evidence or argument regarding the issues presented, 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 an employment-related disability for July 20 to August 19, September 22 to October 21, or November 21 to December 20, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 13 and October 1, 2015 are affirmed.

Issued: April 27, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board