

authorized her to work limited duty. Appellant did not stop work. The claim was administratively accepted for limited medical expenses, and then closed. Initially, the record did not contain any medical documents after November 5, 2013.

On March 3, 2015 appellant notified OWCP *via* telephone that she continued to have problems with her right ankle. She stated that she had recently had an x-ray which showed a small fracture, and now she was off work for three weeks. OWCP advised appellant to complete a wage-loss claim (Form CA-7).

On March 4, 2015 appellant filed a Form CA-7 claiming 120 hours of disability compensation for the period March 2 to 20, 2015.

In a March 2, 2015 work excuse slip, Jessica Bursk, a nurse, noted that appellant was examined on March 2, 2015 by Dr. Mark S. Bailey, an orthopedic surgeon. She indicated that appellant should remain off work until March 20, 2015.

On March 13, 2015 OWCP advised appellant that her claim was initially adjudicated as a minor injury and was now reopened and formally accepted for right ankle sprain.

By letter dated March 13, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish total disability beginning March 2, 2015 as a result of the November 2, 2013 employment injury. It afforded her 30 days to submit additional medical evidence that she was unable to work during the claimed period as a result of her employment injury.

Appellant submitted several medical reports dated April 29 to December 11, 2014 from Dr. Joseph M. LaCava, a podiatric surgeon. Dr. LaCava related that appellant was examined for symptomatic neuroma in her right foot and reviewed the treatment appellant had received. He noted that her symptoms were much less intense and seemed to be resolving on a daily basis. In a December 11, 2014 report, Dr. LaCava indicated that appellant complained of increasing pain levels the past four days. Upon examination, he observed pain on palpation of the lesser metatarsal heads or metatarsophalangeal joint (MTPJ) plantar plates with stable digital exams evident with modified Lachman stressing. Range of motion testing revealed painful plantar flexion of the right ankle and painful dorsiflexion of the right ankle. Dr. LaCava noted that an x-ray of the right ankle revealed no fractures or dislocations and mild, arthritic changes with any osteochondral lesions. Neurological examination revealed a palpable mass of the second right, left inter-digital space. Dr. LaCava diagnosed Morton's neuroma, right, left second interspace, reduction in pain, and right ankle sprain.

In a January 6, 2015 report, Dr. LaCava noted that appellant complained of pain to the lateral side of the right ankle and swelling for the past several weeks. Upon examination, he observed moderate pain upon dorsi and plantar flexion of the right ankle. No significant foot or ankle deformities were noted bilaterally. Dr. LaCava diagnosed ankle sprain.

Dr. Bailey also treated appellant and noted in a March 2, 2015 report that in 2013 appellant had sustained a right ankle sprain at work. Appellant related that her right ankle had given her trouble since then and that she had suffered another injury approximately two months previously. Dr. Bailey noted that appellant went to the emergency room last weekend and was

noted to have changes consistent with an old fracture. Upon examination, he observed marked swelling over appellant's lateral ankle on the right side and tenderness to palpation over the distal fibula, anterior talofibular ligament, and calcaneofibular ligament. Dr. Bailey reported that x-rays revealed what appeared to be a subacute and healing distal fibula fracture/avulsion type fracture off the right ankle with significant soft tissue swelling. He diagnosed subacute chronic ankle injury from a 2013 injury. Dr. Bailey explained that appellant had been dealing with this fracture for quite some time and did not show any signs of getting better. He recommended a magnetic resonance imaging (MRI) scan examination. In a March 2, 2015 work excuse note, Dr. Bailey indicated that appellant could return to work on March 23, 2015.

In a March 17, 2015 progress note, Dr. Bailey reported that appellant had been immobilizing her ankle for chronic ankle sprains that happened at work a couple of years ago. Appellant related that she was somewhat better after immobilizing it, but she still had a lot of swelling and difficulty walking. Dr. Bailey recommended an additional right ankle MRI scan examination.

On April 13, 2015 OWCP received appellant's response to its March 13, 2015 development letter. Appellant noted that she never had swelling or pain in her right ankle until the November 2, 2013 employment injury and asserted that her right ankle had been a continuing source of swelling and pain that would not go away. She stated that she had worn a boot and brace, but her condition had not resolved. Appellant related that she underwent an x-ray and was told that she had a fracture in her right ankle. She described her job duties as standing, walking, dismounting, and driving. Appellant believed that the constant repetitive actions on her right ankle caused swelling since her original sprain and eventually the pain in her right ankle was chronic.

In a May 20, 2015 MRI scan report of the right ankle, Dr. Aaron Janos, a Board-certified radiologist, noted a history of right ankle pain. He reported extensive abnormal increased T2 signal intensity and enlargement of the peroneous longus tendon which extended inferiorly from the lateral malleolus. Dr. Janos also observed edema within the peroneous brevis tendon at the level of the lateral malleolus and minimal edema within the inferior aspect of the tibia. He diagnosed extensive tendinopathy with a partial thickness tear of the peroneous longus tendon and longitudinal split tear of the peroneous brevis tendon.

In a decision dated May 26, 2015, OWCP denied appellant's claim for disability compensation finding insufficient medical evidence of record to support her claim. It found that the medical evidence of record failed to establish that she was totally disabled from work on the claimed dates due to her accepted November 2, 2013 employment injury.

On June 19, 2015 OWCP received appellant's request for a review of the written record before an OWCP hearing representative. In a handwritten statement, appellant explained that her original sprain had caused her sporadic pain and constant swelling. She asserted that the original sprain never healed properly and eventually led to a break and torn tendon. Appellant noted that she would need surgery to fix the problem or have to always wear a brace. She believed that her right ankle condition was a workers' compensation issue because it occurred on the job and worsened on the job. Appellant resubmitted Dr. Bailey's March 2 and 17, 2015 reports.

Dr. Bailey continued to treat appellant. In a June 9, 2015 report, he related that the right ankle MRI scan examination revealed peroneus brevis and longus tears, degenerative signal and tendon tissue quality in the anterior talofibular ligament of her right ankle. Upon examination, Dr. Bailey observed tenderness over the peroneal tendons as the course around the distal fibula and pain with eversion of her ankle in the same area. He reported positive anterior drawer with her foot in slight plantarflexion and tenderness over her anterior talofibular ligament and calcaneofibular ligament with swelling and puffiness. Dr. Bailey diagnosed chronic degenerative tear of her anterior talofibular ligament from multiple sprains and subacute tears of her peroneus longus and brevis tendons in a longitudinal fashion.

By decision dated December 21, 2015, OWCP's hearing representative affirmed the May 26, 2015 decision which denied appellant's claim for wage-loss compensation.

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 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 proved by a preponderance of reliable, probative, and substantial medical opinion evidence.² Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee disability for her particular work.³ For each period of disability claimed, the employee must establish that she was disabled for work as a result of the accepted employment injury. 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 her disability and entitlement to compensation.⁴

ANALYSIS

OWCP accepted appellant's claim for right ankle sprain as a result of the November 2, 2013 employment injury. She continued to work. On March 4, 2015 appellant filed a claim for wage-loss compensation for the period March 2 to 20, 2015. By decisions dated May 26 and December 21, 2015, OWCP denied appellant's disability compensation claim finding insufficient medical evidence to establish that she was unable to work for the claimed period as a result of her November 2, 2013 employment injury.

² *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

³ *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁴ *Amelia S. Jefferson*, *supra* note 2.

In support of her disability claim, appellant submitted several medical reports and work excuse slips dated March 2 and 17 and June 9, 2015 from Dr. Bailey. Dr. Bailey related that in 2013 appellant had sprained her right ankle at work and that two months ago she suffered another injury. Upon examination, he observed swelling and tenderness to palpation in appellant's right ankle. Dr. Bailey indicated that x-rays of the right ankle revealed a subacute and healing distal fibula fracture with significant soft tissue swelling. He diagnosed subacute chronic ankle injury from a 2013 injury. Dr. Bailey explained that appellant had been dealing with this fracture for quite some time and did not show any signs of getting better. He recommended that appellant could return to work on March 23, 2015.

The Board notes that Dr. Bailey described appellant's 2013 right ankle sprain and provided examination findings. He diagnosed a 2013 ankle injury and explained that appellant had been dealing with this injury for quite some time. In the March 2, 2015 report, Dr. Bailey advised that appellant could return to work on March 23, 2015. Although he mentioned appellant's 2013 work injury and reported that she could not work from March 2 to 23, 2015, he did not provide any medical rationale explaining why she was unable to work from March 2 to 23, 2015 as a result of her November 2, 2013 employment injury. The Board has found that medical evidence that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁵ The Board also notes that, while Dr. Bailey mentioned a 2013 right ankle injury, he also mentioned another injury that occurred in January 2015. Thus, the Board finds that Dr. Bailey did not provide an unequivocal medical opinion explaining how appellant was unable to work from March 2 to 20, 2015 causally related to the November 2, 2013 employment injury. His reports, therefore, fail to establish appellant's claim.

Dr. LaCava also treated appellant. In reports dated April 29, 2014 to January 6, 2015, he reviewed appellant's history and related that he treated her for symptomatic neuroma in her right foot. In a December 11, 2014 report, Dr. LaCava noted that appellant had complained of increasing pain levels for the past four days. He provided findings on examination and diagnosed Morton's neuroma, right, left second interspace, reduction in pain, and right ankle sprain. In a January 6, 2015 report, Dr. LaCava again noted appellant's complaints of pain and swelling on the lateral side of her right ankle for several weeks. He conducted an examination and diagnosed ankle sprain. The Board notes that Dr. LaCava did not address the relevant issue of disability from employment and thus his reports are of diminished probative value.⁶

Likewise, the May 20, 2015 MRI scan examination of the right ankle by Dr. Janos also fails to establish appellant's disability claim as he does not address the issue of disability from employment. Accordingly, these reports are insufficient to establish appellant's disability claim.⁷

⁵ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

⁶ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁷ *Id.*

Appellant also submitted a March 2, 2015 work excuse slip by Ms. Bursk, a nurse, which indicated that appellant should remain off work until March 20, 2015. Although this work excuse slip addresses the period of disability, it is of no probative value to establish appellant's disability compensation claim as nurses are not "physicians" as defined under FECA.⁸

On appeal, appellant relates that she has had pain ever since her right ankle injury at work. She pointed out that the injury occurred at work, became progressively worse at work, and ultimately caused her to retire early. The issue of whether a claimant's disability is related to an accepted condition, however, is a medical question that must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.⁹ Although appellant alleged that she was disabled for the period March 2 to 20, 2015 as a result of her accepted employment injury, she did not submit such rationalized medical evidence establishing disability from March 2 to 20, 2015 causally related to the November 2, 2013 employment injury. The Board notes that rationalized medical evidence is particularly needed in this case as the record contains medical evidence which support that appellant has also sustained a right ankle fracture, which is not an accepted condition. Accordingly, appellant has not met her burden of proof to establish her claim for wage-loss compensation.

The Board finds, however, that the case is not in posture for decision regarding whether appellant is entitled to compensation on March 2 and 17, 2015 for medical treatment. OWCP's procedure manual provides that wages lost for compensable medical examination or treatment may be reimbursed.¹⁰ It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.¹¹ As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.¹²

The record contains medical evidence that establishes that for which she is currently requesting disability appellant received medical treatment on March 2 and 17, 2015 by Dr. Bailey. Because appellant was receiving medical treatment for her accepted right ankle sprain on these dates, the Board finds that she should be paid wage-loss compensation up to four

⁸ Section 8102(2) provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁹ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

¹¹ *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

hours for obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location. Appellant has submitted sufficient evidence to establish that she attended specific medical appointments related to the accepted conditions on March 2 and 17, 2015. Thus, the case will be remanded for OWCP to determine whether appellant is entitled to up to four hours of wage-loss compensation for these medical appointments and travel time.

CONCLUSION

The Board finds that appellant has not established total disability from work for the period March 2 to 20, 2015 causally related to the November 2, 2013 employment injury. The Board also finds that this case is not in posture for a decision as to whether appellant is entitled to wage-loss compensation for her March 2 and 17, 2015 medical appointments and shall be remanded to OWCP for further development of this issue.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside and remanded in part for further proceedings consistent with this opinion.

Issued: August 9, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board