United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 16-0807**
	)	**Issued: August 26, 2016**
DEPARTMENT OF THE NAVY, Pearl Harbor, HI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 10, 2016 appellant, through counsel, filed a timely appeal of a February 2, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish total disability for intermittent periods beginning June 19, 2014 causally related to his accepted June 13, 2014 employment injury.

FACTUAL HISTORY

On August 4, 2014 appellant, then a 35-year-old metal inspector and painter, filed a traumatic injury claim (Form CA-1) alleging that on June 18, 2014, while performing penetrant testing on a submarine, he crouched forward and felt a burning sensation in his left ankle. He stopped work on June 19, 2014 and returned to light duty on July 2, 2014.

In an August 12, 2014 statement, appellant noted that on June 18, 2014 he was performing liquid penetrant testing and was crouched down. He noted that when the inspection was complete he had a burning sensation in his left ankle which he thought was gout. Appellant was unable to work on June 19, 2014 because of his ankle pain and gout and sought treatment from his physician on June 20, 2014. Appellant's physician opined that appellant's condition was probably gout or arthritis. Appellant reported that he was unable to work the following week and sought treatment from an orthopedist who diagnosed left ankle tendinitis. Testing showed a tear of the posterior tibialis of the left ankle. Appellant indicated that he was scheduled to return to light duty on Monday, August 18, 2014.

In a June 20, 2014 medical certificate, Dr. Harry M. Acuna, a Board-certified internist, noted that appellant was treated for gout and arthritis on June 19, 2014 and could return to work on June 23, 2014.

On July 1, 2014 Dr. Antonio B. Cordero, a Board-certified orthopedist, treated appellant for left foot pain. He noted that appellant had flexible flatfeet and was treated for high uric acid relating to gout. Upon descending a ladder at work, appellant reported having pain in the medial aspect of the left foot and ankle. He noted difficulty bearing weight on his left foot and was currently working light duty. Dr. Cordero noted findings on examination of flatfeet with collapsed arches and tenderness of the left foot along the course of the posterior tibialis tendon. He diagnosed posterior tibialis tendinitis of the left foot secondary to flatfeet and aggravated by high uric acid. Dr. Cordero recommended shoe inserts, physical therapy, and continued light duty for a week.

In certificates of professional care dated July 22 and August 2, 2014, Dr. Cordero noted that appellant was treated for posterior tibialis tendinitis of the left foot. He noted that appellant was advised to stay home from July 1 to August 17, 2014 and could return to light duty on August 18, 2014. Appellant was instructed to minimize climbing vertical ladders. He attended physical therapy twice a week and experienced persistent foot pain.

A June 24, 2014 left ankle x-ray revealed no abnormalities. A magnetic resonance imaging (MRI) scan of the left ankle dated August 1, 2014 showed a small focal vertically oriented longitudinal split tear of the tibialis posterior tendon at the level of the medial malleolus, mild tendinitis, and increased fluid around the tendon consistent with tenosynovitis.

After OWCP requested additional evidence, appellant submitted an undated report from Dr. Acuna who treated appellant on August 20, 2014 for a left ankle injury that occurred on June 18, 2014 when he was performing liquid penetrant testing on a submarine. Dr. Acuna noted that appellant was treated for gout and arthritis. He reviewed an August 1, 2014 MRI scan of the left ankle which revealed a tear of the posterior tibialis. Dr. Acuna diagnosed split tear of the posterior tibialis tendon. In medical certificates dated August 18 and 27, 2014, he noted appellant's treatment for anxiety, palpitation, and left ankle injury. Dr. Acuna returned appellant to work on August 28, 2014 with restrictions.

On September 2, 2014 Dr. Cordero diagnosed posterior tibialis dysfunction syndrome of the left foot with the MRI scan showing essentially a tear of the posterior tibialis tendon and opined this was a progressive condition that would not heal, but would worsen due to appellant's gout, obesity osteogenesis imperfecta, age and prolonged standing and walking in his job.

On September 16, 2014 OWCP denied appellant's claim as he had failed to establish an injury or condition causally related to accepted work incident.

On November 14, 2014 appellant requested reconsideration. He submitted a report from Dr. Gregory Morris, a podiatrist, dated October 24, 2014, who had treated appellant for left inner ankle and arch pain since June 18, 2014. Appellant reported being diagnosed with flatfeet, a tendon tear of the left foot, gout, and osteogenesis imperfecta. Dr. Morris noted that appellant had not worked for the past four months. He noted intact muscle strength, normal range of motion for the left ankle, flatfoot, intact sensation in both feet, and intact deep tendon reflexes. Dr. Morris diagnosed *pes plano* valgus and tendinitis tibialis. He advised that the increased stress and strain on the left ankle, his flatfoot type, obesity and increased weight bearing activity as a painter contributed to the deformity, and pain despite four months of rest from work.

In a December 30, 2014 report, Dr. Morris treated appellant for left ankle pain after injuring his foot and ankle at work on June 18, 2014 while he was standing all day performing liquid penetrant testing. A left ankle MRI scan in August 2014 showed a partial tear along the tendon. Dr. Morris noted that appellant had underlying medical conditions which made him prone to developing posterior tibial tendinitis which included congenital flatfoot deformity/*pes planus*, osteogenesis imperfect, gout, prolonged standing at work, and mild obesity.

In decisions dated February 9, 2015, OWCP vacated its September 16, 2014 decision and accepted the claim for left ankle tibial tendinitis.[3]

Appellant submitted claims for compensation (Form CA-7) for intermittent periods of total disability for the period June 19, 2014 to February 11, 2015. In attached CA-7a forms, time analysis forms, the employing establishment indicated the dates on which appellant did not work. In a March 13, 2015 telephone call memorandum, it confirmed that light duty was available and

[3] The other February 9, 2015 decision denied appellant's claim for continuation of pay (COP) because he had not submitted a written claim within 30 days of his June 18, 2014 employment injury. On March 10, 2015 requested an oral hearing regarding the COP denial. On December 28, 2015 an OWCP hearing representative affirmed the COP denial. Appellant has not appealed the December 28, 2015 to the Board.

that appellant had returned to work on July 2, 2014, but thereafter missed work and submitted claims for compensation.

Appellant submitted a June 30, 2014 medical certificate from Dr. Acuna, who treated appellant for left ankle pain and released him to work light duty on July 2, 2014. In a medical certificate dated September 10, 2014, Dr. Acuna notes treating appellant for left ankle pain and returning him to work on September 11, 2014. In a certificate of professional care dated September 2, 2014, Dr. Cordero treated appellant for a posterior tibialis tendon tear of the left ankle. He noted that appellant could continue light-duty work. In a September 25, 2014 report, Dr. Raymond Davidson, a Board-certified psychiatrist, requested that appellant be excused from work from September 11 to 26, 2014.

Appellant submitted a September 30, 2014 report from Dr. Jeffrey J.K. Lee, a Board-certified orthopedist, in which he referenced treating appellant for left medial ankle pain commencing on June 18, 2014. Dr. Lee noted that the August 2014 left ankle MRI scan was notable for a longitudinal tear of the posterior tibial tendon. He noted findings of bilateral *pes planus*, tenderness to the medial malleolus and diagnosed longitudinal left posterior tibial tendon tear. In a work status certificate dated October 21, 2014, Dr. Lee noted that appellant was unable to work from September 29 to October 26, 2014, but could return to light-duty work from October 27 to November 27, 2014. On February 24, 2015 he noted that appellant presented with an improved left ankle and noted medial ankle pain with walking. Dr. Lee diagnosed longitudinal left posterior tibial tendon tear. He continued light duty.

In a January 2, 2015 certificate of health care provider, Dr. Linda Ho, a podiatrist, treated appellant for an injury sustained on June 18, 2014. She noted that he was unable to perform his job functions which included prolonged standing. Dr. Ho diagnosed left foot posterior tibial tendinitis and tear progressing. She noted that appellant would be incapacitated from June 18, 2014 to January 4, 2015. In an undated medical referral form, Dr. Patrick Lowry, an employing establishment physician, placed appellant on restricted activity until March 12, 2015.

Additional reports from Dr. Morris included an October 31, 2014 note excusing appellant from work for the period October 24 to November 3, 2014 due to podiatric medical conditions. In notes dated November 26, 2014 to February 3, 2015, Dr. Morris noted that appellant was off work due to podiatric conditions for the period of October 24, 2014 to February 3, 2015. On February 10, 2015 Dr. Morris excused appellant from work due to a workers' compensation injury which occurred on June 18, 2014. Dr. Morris noted that he was unable to work as he was in a nonweight-bearing status from October 24, 2014 to February 10, 2015. On February 11, 2015 he noted that appellant was injured on June 18, 2014 and was released to light duty from October 24, 2014 to February 11, 2015.

In a March 16, 2015 letter, OWCP requested that appellant submit additional medical evidence establishing that the claimed disability was due to the accepted condition.

Appellant provided a July 1, 2014 certificate of professional care from Dr. Cordero who treated appellant for tendinitis of the left foot and release him to light duty from July 7 to 14, 2014. In a November 26, 2014 report, Dr. Morris treated appellant for left inner ankle and arch pain and diagnosed *pes plano* valgus and tendinitis tibialis. He noted that the increased

stress and strain on the left ankle, appellant's flatfoot type, obesity, and increased weight bearing activity contributed to the deformity and pain. Dr. Morris noted that appellant was excused from work until November 30, 2014. In reports dated December 10, 2014 to February 3, 2015, he noted an essentially normal examination and diagnosed *pes plano* valgus and tendinitis tibialis. Dr. Morris noted that appellant was medically clear to work light duty on December 22, 2014. A March 28, 2015 MRI scan of the lower extremity revealed a tendinotic posterior tibialis tendon with a longitudinal interstitial split tear, *pes plano* valgus, degenerative thickening of the spring ligament, mild tendinitis of the peroneus longus tendon, and mild distal Achilles tendinitis. In an April 3, 2015 report, Dr. Lee diagnosed interstitial left posterior tibial tendon tear and indicated that appellant could work light duty.

In a decision dated April 16, 2015, OWCP denied appellant's claim for compensation for the period beginning June 19, 2014 as the medical evidence fails to establish that appellant was disabled due to his accepted work-related medical conditions.

On April 22, 2015 appellant requested an oral hearing which was held before an OWCP hearing representative on October 9, 2015. He submitted reports from Dr. Lee dated February 24 to December 1, 2015, who noted that appellant presented with diminishing pain of the left ankle. Dr. Lee diagnosed interstitial left posterior tibial tendon tear. He continued light duty.

In a decision dated February 2, 2016, an OWCP hearing representative affirmed the decision dated April 16, 2015.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[4] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[5] The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.[6] To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.[7]

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. For each period of disability claimed, the employee has the burden

[4] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[5] *Id.*

[6] *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

of establishing that he or she was disabled for work as a result of the accepted employment injury.[8]

ANALYSIS

OWCP accepted appellant's claim for left ankle tibial tendinitis. Appellant stopped work on June 19, 2014. On March 12, 2015 appellant submitted CA-7 forms and claimed wage-loss compensation for total disability beginning June 19, 2014. The Board finds that the medical evidence is insufficient to establish that periods of total disability beginning June 19, 2014 were caused or aggravated by the accepted conditions.

Appellant was treated by Dr. Cordero on July 1, 2014 who diagnosed posterior tibialis tendinitis of the left foot secondary to flatfeet and aggravated by high uric acid. He continued light duty. Similarly, in certificates of professional care dated July 1 and September 2, 2014, Dr. Cordero noted that appellant could continue light-duty work. Even though he noted that appellant was still experiencing symptoms of left foot pain which affected his productivity, Dr. Cordero did not specifically address whether appellant had any employment-related disability beginning June 19, 2014 causally related to his June 18, 2014. Rather, Dr. Cordero opined that appellant could return to work light duty.[9] In certificates of professional care dated July 22 and August 2, 2014, he noted that appellant was treated for posterior tibialis tendinitis of the left foot and that appellant was advised to stay home from July 1 to August 17, 2014 and was able to return to light-duty work on August 18, 2014. Although these notes indicated that appellant had disability for work in July and August 2014, Dr. Cordero failed to provide a reasoned opinion explaining why appellant was disabled for any particular period due to the accepted work injury.[10] Similarly, on September 2, 2014, he diagnosed posterior tibialis dysfunction syndrome of the left foot with the MRI scan showing a tear of the posterior tibialis tendon. Dr. Cordero noted that appellant's condition was progressive and would worsen due to his gout, obesity osteogenesis imperfecta, age, and prolonged standing and walking in his job. However, this report does not specifically address whether appellant had any employment-related disability from June 19, 2014 causally related to his June 18, 2014 employment injury. The need for medical reasoning regarding the claimed periods of disability is particularly important as the medical evidence indicates that he had preexisting conditions, such as gout, affecting his left foot and ankle.

Notes from Dr. Morris dated October 31, 2014 to February 10, 2015, excused appellant from work from October 24, 2014 to February 10, 2015 due to a June 18, 2014 workers' compensation injury. Similarly, in reports dated October 24 to December 30, 2014, Dr. Morris treated appellant for left ankle pain, which developed after he injured his foot and ankle at work on June 18, 2014 after standing all day performing liquid penetration testing. He noted that appellant had underlying medical conditions which made him prone to developing posterior

[8] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[9] As noted, *infra*, the employing establishment indicated that light duty was available during the claimed period.

[10] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

tibial tendinitis which included congenital flatfoot deformity/*pes planus*, history of osteogenesis imperfect, gout, prolonged standing and walking at work, and mild obesity. Dr. Morris diagnosed *pes plano* valgus and tendinitis tibialis. He did not specifically explain how the June 18, 2014 employment injury caused any disability beginning June 19 or October 24, 2014. These reports do not clearly explain why appellant was totally disabled, or that he was undergoing medical treatment for his accepted condition,[11] for the claimed dates in question. Other reports from Dr. Morris indicate that appellant was able to work light duty.

Appellant submitted a September 30, 2014 report from Dr. Lee who treated him for left medial ankle pain commencing on June 18, 2014. Dr. Lee diagnosed bilateral *pes planus*, tenderness to the medial malleolus and longitudinal left posterior tibial tendon tear. In a work status certificate dated October 21, 2014, he noted that appellant was unable to work from September 29 to October 26, 2014, but could return to light-duty work on October 27, 2014. Although these notes indicated that appellant had disability for intermittent periods after June 18, 2014, Dr. Lee failed to provide a reasoned opinion explaining why appellant was disabled for any particular period due to the accepted work injury. Other reports from Dr. Lee either indicate that appellant could work light duty or do not specifically address whether appellant had any work-related disability beginning June 19, 2014 causally related to his June 18, 2014.[12]

Appellant submitted an undated physician's report from Dr. Acuna who treated appellant for a left ankle injury, which occurred on June 18, 2014 while he was performing liquid penetrant testing on a submarine. Dr. Acuna noted that appellant was treated for gout, arthritis, and a split tear of the posterior tibialis tendon of the left ankle. However, he failed to specifically address whether appellant had any employment-related disability beginning June 19, 2014 causally related to his June 18, 2014 employment injury.[13] Appellant submitted several medical certificates from Dr. Acuna dated June 20 to September 10, 2014 for treatment of gout, arthritis, left ankle pain, and left posterior tibial tear. Dr. Acuna noted that appellant could work with restrictions. These reports did not support that appellant's left ankle tibial tendinitis rendered him totally disabled for any particular period. Rather, these reports note that he could return to work with restrictions.

In a certificate of health care provider, Dr. Ho noted treating appellant for a June 18, 2014 injury to his left foot. She diagnosed left foot posterior tibial tendinitis and tear and opined that he would be incapacitated from June 18, 2014 to January 4, 2015. A September 25, 2014 report from Dr. Davidson requested that appellant be excused from work from September 11 to 26, 2014. Although these notes indicated that appellant was incapacitated from work on certain days, Dr. Davidson failed to provide a specific opinion on causal

[11] *See Amelia S. Jefferson*, 57 ECAB 183 (2005).

[12] Medical evidence which does not offer a clear opinion regarding the cause of an employee's condition/disability is of limited probative value on the issue of causal relationship. *See T.W.*, Docket No. 16-0527 (issued July 26, 2016); *see also supra* note 7, 8.

[13] *See supra* notes 7, 8.

relationship between the claimed period of disability and the accepted employment injury of June 18, 2014.[14]

The Board finds that the medical evidence fails to establish that the claimed period of disability was due to appellant's accepted employment injury of June 18, 2014. Appellant has failed to meet his burden of proof.

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 failed to establish that his disability for the period beginning June 19, 2014 is causally related to the June 18, 2014 accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[14] *Id.*