

ISSUE

The issue is whether appellant has established disability commencing September 9, 2014, causally related to his accepted July 25, 2014 employment injury.

FACTUAL HISTORY

On July 29, 2014 appellant, then a 56-year-old marine machinery mechanic, filed a traumatic injury claim (Form CA-1) alleging that on July 25, 2014 he sustained contusions and bruises when he hit his legs on staging. He stopped work on the date of injury and did not return.

In support of his claim, appellant submitted July 25 and 28, 2014 MedStar Health notes documenting treatment for wounds of the right medial lower leg and left lateral lower leg.

In an August 20, 2014 MedStar Health note, an office coordinator reported that appellant had been under the care of Dr. Francis Velez, a Board-certified general surgeon, since July 25, 2014 and was unable to carry out normal work functions as his legs required elevation at all times.

In a September 29, 2014 note, Dr. Joseph Orlando, a treating physician, reported that appellant was advised to stay at home for three weeks due to the nature of his wound.

In an October 20, 2014 note, Dr. Velez reported that appellant was under his care and was to remain off work until further notice.

On October 21, 2014 appellant filed claim for compensation forms (Form CA-7) for ongoing leave without pay commencing September 9, 2014.

In a November 3, 2014 note, Dr. Velez reported that appellant was receiving continued medical treatment and should remain off work until further notice.

By letter dated November 4, 2014, OWCP notified appellant that his claim was initially administratively handled to allow for medical payments, as his claim appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of appellant's claim had not been formally considered and was now reopened because a claim for wage loss had been received. Appellant was advised that the evidence of record was insufficient to establish a diagnosed condition which was causally related to his workplace incident. OWCP notified appellant of the medical and factual evidence needed and afforded him 30 days to respond.

By decision dated November 10, 2014, OWCP accepted the claim for bilateral knee and lower leg contusions.

In medical notes dated December 1 through 22, 2014, Dr. Velez reported that appellant had been under treatment since July 25, 2014 and was to remain off work until further notice. He explained that appellant's treatment required elevation of his legs and compression wraps.

By letter dated January 5, 2015, OWCP informed appellant that the medical evidence of record was insufficient to support his claim for ongoing compensation for the period commencing September 9, 2014. Appellant was advised to submit medical evidence establishing disability as a result of the accepted bilateral knee/leg contusions. He was afforded 30 days to submit this additional evidence.

In response to OWCP's request for further medical evidence, appellant submitted a July 24, 2014 emergency department report from Dr. Mouhamad Annous, a Board-certified surgeon. Dr. Annous reported that appellant presented as a triage walk-in because of an open left lower extremity wound which was bleeding. Appellant was diagnosed with ulceration of the left anterior lower leg and ulceration of the right anterior lower leg. His wounds were cleaned and dressed.

In a July 25, 2014 report, Dr. Velez reported that appellant presented to the emergency room the previous day with painful ulcers of both lower extremities. Appellant reported that these ulcers may have been going on for about two weeks. Dr. Velez noted that appellant was morbidly obese with considerable edema in both lower extremities. He identified wounds on the left anterior tibial surface and left lateral lower leg. On the right lower leg Dr. Velez noted a nearly circular ulcer of the medial calf. He debrided the ulcers and instructed appellant to keep his legs elevated as much as possible. Dr. Velez further recommended significant weight loss in order to heal appellant's wounds.

In an October 15, 2014 operative report, Dr. Annous diagnosed traumatic venostasis ulceration of the left lower extremity and performed excisional debridement.

In medical notes dated January 28 and February 4, 2015, Dr. Velez reported that appellant had been under treatment since July 25, 2014 and was to remain off work until further notice. He explained that his treatment required elevation of his legs and compression wraps.

By decision dated February 9, 2015, OWCP denied appellant's claim for ongoing wage-loss compensation commencing September 9, 2014, finding that the medical evidence of record failed to establish that he was disabled as a result of his accepted July 25, 2014 employment injury. It noted that his ulcers were a preexisting condition as his medical treatment preceded the alleged date of injury.

On March 5, 2015 appellant requested an oral hearing before an OWCP hearing representative.

At the July 31, 2015 hearing, appellant testified that he was out of work from July 24, 2014 through May 11, 2015 as a result of his work-related injury, having only recently returned. He clarified that his work injury occurred on July 24, 2014 and was incorrectly noted as July 25, 2014 on the Form CA-1. Appellant explained that on July 24, 2014 his injury occurred when he hit his legs on scaffolding at work, causing them to swell. At lunch time, he bumped his legs again on the inside of a wooden pallet, which caused his left calf to start bleeding. Appellant then sought emergency medical treatment that same date. The physician wrapped his laceration and informed him to stay off his feet and not work due to the swelling. Appellant explained that prior to the injury, both his legs would swell. His physician informed him that in order for his

lacerations to heal, he had to stay off his feet the whole time and keep his legs elevated. Appellant reported that, because of the periodic swelling in his extremities, his wound was not able to heal properly, resulting in his total disability for the last year and a half. He further noted undergoing operative treatment weekly to clean and wrap the wounds. The hearing representative informed appellant of the medical evidence necessary in order to establish his claim and the record was held open for 30 days.

In support of his claim, appellant submitted a July 29, 2015 statement from L.D., a coworker. L.D. reported that on July 24, 2014 appellant was walking past the pallets in the shop when he heard him yell "ouch". At that point they proceeded to eat lunch when they noticed a puddle of blood on the floor and appellant realized that his leg was bleeding. Appellant then left work to obtain immediate medical attention.

In a February 29, 2015 statement, K.C., appellant's marine machinery mechanic supervisor, reported that on July 24, 2014 appellant had to leave for medical treatment because his leg was bleeding excessively. He noted that appellant's Form CA-1 was incorrectly filed and the date of injury should have been noted as July 24, 2014. K.C. further explained that appellant's report of the incident was not taken until July 29, 2014 because he was charged with sick leave/idle time for July 24 and 25, 2014. Appellant indicated that he had hit his leg during the morning while assigned to work on the Coast Guard cutter, the William Tate. Though he did not think it was a major concern, a few other employees brought to his attention that blood was coming out of his boot from the area of his leg that was struck earlier that day. K.C. concluded that the details presented by appellant were consistent with his work assignment that day and the accounts from personnel who saw blood in the shop.

In reports dated July 25, 2014 through April 22, 2015, Dr. Velez detailed appellant's debridement of his bilateral lower extremity ulcers with multilayer compression dressings. He recommended weight loss and elevating appellant's legs as much as possible.

In a September 2, 2014 operative report, Dr. Robert James Spence, a Board-certified plastic surgeon, reported that appellant was treated by Dr. Velez for bilateral lower extremity leg ulcers with no history of prior ulcers. He noted that appellant was obese and had chronic bilateral lower extremity edema. Dr. Spence reported that appellant struck his legs while at work, causing a wound that led to chronic ulcerations. He performed debridement into subcutaneous tissue of the bilateral lower extremity chronic ulcers and scheduled appellant to return in six days when Dr. Velez was back from holiday. In an April 22, 2015 report, Dr. Velez reported that appellant no longer had any open wounds and his ulcer on the left lateral leg had healed completely. Wound care discharge instructions dated July 25, 2014 through April 29, 2015 were also submitted documenting appellant's lower extremity treatment.

In medical notes dated October 20, 2014 through March 11, 2015, Dr. Velez reported that appellant was receiving treatment requiring compression wraps and could not work due to his need to elevate his legs.

In a May 14, 2015 note, Dr. Velez reported that appellant had completed his wound care treatment and could resume his full-time duties.

By decision dated October 22, 2015, OWCP's hearing representative affirmed the February 9, 2015 decision finding that the medical evidence of record failed to establish that appellant was disabled commencing September 9, 2014, as a result of his accepted July 25, 2014 employment injury.

LEGAL PRECEDENT

Under FECA,⁴ the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ Whether a particular injury causes an employee to be disabled and the duration of that disability are medical issues which must be proven 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 consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, 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 without any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁹ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹¹

⁴ *Supra* note 2.

⁵ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

⁷ *G.T.*, 59 ECAB 447 (2008).

⁸ *Id.*

⁹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹¹ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he was entitled to disability compensation commencing September 9, 2014, as a result of his accepted July 24, 2014 employment injury.

OWCP accepted that appellant sustained bilateral contusions of the knee and lower leg as a result of the alleged employment incident. While appellant's Form CA-1 noted the date of injury as July 25, 2014, he later testified that the date was incorrectly recorded as the injury occurred on July 24, 2014. K.C., appellant's supervisor, confirmed the date acknowledging that the Form CA-1 was incorrectly filed as the injury occurred on July 24, 2014. He further explained that appellant sought medical treatment in the emergency department on July 24, 2014 and remained out of work the remainder of July 24 and 25, 2014.

The record reflects that appellant sought treatment on the date of injury and submitted a July 24, 2014 emergency department report documenting treatment with Dr. Annous. While Dr. Annous' hospital report establishes treatment on the date of injury for an open lower extremity wound, he provided a diagnosis of bilateral lower extremity ulcers. However, the accepted conditions in this case are bilateral knee and lower leg contusions. Dr. Annous failed to provide any medical opinion explaining the cause of the diagnosed ulcer conditions. As such, his report lacks probative value in establishing appellant's claim for subsequent disability.¹²

Dr. Velez' medical reports dated July 24, 2014 through May 14, 2015 also fail to establish appellant's claim for disability compensation.¹³ In his July 25, 2014 report, he reported that appellant presented to the emergency room the previous day with painful ulcers of both lower extremities. Dr. Velez identified wounds on the left anterior tibial surface and left lateral lower leg, as well as an ulcer on the medial calf of the right lower leg. His subsequent reports documented treatment for bilateral lower extremity ulcers. While Dr. Velez opined that appellant was to remain off work during the specific period claimed, because he had to keep his legs elevated, he did not profess any knowledge of the specific workplace incident to provide a rationalized explanation as to why he could not work from July 25, 2014 through May 14, 2015.¹⁴ Moreover, Dr. Velez failed to explain why appellant was disabled and unable to complete his job functions as a result of the accepted condition of bilateral knee and lower leg contusions. Rather, he related appellant's disability to the diagnosis of bilateral lower extremity ulcers, yet failed to state any opinion addressing how the July 24, 2014 employment injury caused these conditions. The Board has held that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to the diagnosed medical condition.¹⁵ As such, the reports of Dr. Velez are insufficient to meet appellant's burden of proof.

¹² *T.M.*, Docket No. 06-0440 (issued August 7, 2006).

¹³ *R.W.*, Docket No. 13-0656 (issued July 16, 2013).

¹⁴ *A.J.*, Docket No. 13-0614 (issued July 9, 2013).

¹⁵ *John W. Montoya*, 54 ECAB 306 (2003).

Dr. Spence's September 2, 2014 report is also insufficient to establish appellant's claim. He diagnosed bilateral lower extremity leg ulcers and reported that appellant struck his legs while at work, causing a wound that led to chronic ulcerations. While Dr. Spence related appellant's ulcers to the employment injury, he failed to provide any details pertaining to the employment injury or explain why appellant's work-related wound would lead to chronic ulcerations. He failed to explain how appellant's ulcers are causally related to his accepted injury when Dr. Annous had noted in his report dated July 24, 2014 that appellant had diagnosed bilateral preexisting lower leg ulcerations and Dr. Velez had related in his July 25, 2014 report that appellant had reported that his lower extremity ulcers had been present for two weeks. As such Dr. Spence's opinion is not based upon a proper medical history because it fails to acknowledge the leg ulcerations present prior to the date of the accepted work injury.¹⁶ The Board further finds that Dr. Spence failed to provide a reasoned opinion, supported by a correct history of injury, in support of a finding that appellant became disabled commencing September 9, 2014 due to a workplace injury.¹⁷ Dr. Spence's report did not provide a rationalized explanation as to how appellant's current alleged disabling condition was causally related to the accepted employment injury and, as such, is insufficient to meet appellant's burden of proof.¹⁸

As previously noted, OWCP has not accepted appellant's claim for bilateral lower extremity ulcerations. For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment conditions.¹⁹ The issue of whether a claimant's disability is related to an accepted condition is a medical question which 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 injury and supports that conclusion with sound medical reasoning.²⁰ Because appellant has not submitted any reasoned medical opinion evidence to show that he was disabled commencing September 9, 2014 as a result of the accepted July 24, 2014 employment-related conditions, as opposed to a preexisting medical condition, the Board finds that he has failed to meet his burden of proof.²¹

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.

¹⁶ See *supra* note 11.

¹⁷ R.A., Docket No. 14-1327 (issued October 10, 2014).

¹⁸ S.S., Docket No. 10-0621 (issued November 23, 2010).

¹⁹ See *Amelia S. Jefferson*, 57 ECAB 183 (2005).

²⁰ See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

²¹ See *Fereidoon Kharabi*, *supra* note 6. (The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation).

CONCLUSION

The Board finds that appellant failed to establish disability commencing September 9, 2014, due to his accepted July 24, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2017
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