

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 the accepted June 18, 2014 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. In an August 26, 2016 decision, the Board affirmed a February 2, 2016 OWCP decision.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to the present appeal are set forth below.

On June 18, 2014 appellant, then a 35-year-old metal inspector and painter, injured his left ankle while performing penetrant testing on a submarine. He stopped work on June 19, 2014 and returned to light-duty work on July 2, 2014. OWCP accepted appellant's claim for left ankle tibial tendinitis.

Appellant submitted claims for compensation (Form CA-7), for intermittent total disability for the period June 19, 2014 to February 11, 2015. The employing establishment indicated in time analysis forms (Form CA-7a) the dates on which appellant did not work. In a March 13, 2015 telephone call memorandum, it confirmed that light-duty work was available and that appellant returned to work on July 2, 2014, but thereafter missed work and submitted claims for compensation.

On April 16, 2015 OWCP denied appellant's claim for compensation as the medical evidence of record failed to establish any periods of employment-related disability.

Appellant requested a hearing before an OWCP hearing representative. In a decision dated February 2, 2016, an OWCP hearing representative affirmed the April 16, 2015 decision. Appellant appealed his claim to the Board, and on August 26, 2016 the Board affirmed the February 2, 2016 OWCP decision.⁴ The Board found that appellant did not meet his burden of proof to establish that his disability for the period beginning June 19, 2014 was causally related to the accepted June 18, 2014 employment injury.

On September 12, 2016 appellant, through counsel, requested reconsideration and submitted additional medical evidence. He submitted a February 1, 2016 report from Dr. Gregory Morris, a podiatrist, who treated him for a left inner ankle and arch condition which began on June 18, 2014 after standing all day at work while performing liquid penetration testing. Dr. Morris last treated appellant on October 24, 2014 for pain to his left ankle. He noted a left lower extremity magnetic resonance imaging (MRI) scan in August 2014 revealed a partial tear along the tendon. Dr. Morris indicated that appellant was treated conservatively by

³ Docket No. 16-0807 (issued August 26, 2016).

⁴ *See id.*

Dr. Antonio B. Cordero, a Board-certified orthopedist, for his left foot and ankle posterior tibial tendinitis and partial tear and underwent physical therapy which made his condition worse. He opined that appellant would most likely require surgery since he failed appropriate and exhaustive conservative treatment. Dr. Morris indicated that after surgery appellant would be in a cast for six weeks followed by a walking boot for four to six weeks followed by physical therapy. He indicated that a patient undergoing this surgical procedure would typically be able to progress back to normal activities and work with no restrictions. Dr. Morris noted that appellant had underlying medical conditions that may have made him prone to developing posterior tibial tendinitis, including congenital flatfoot deformity/*pes planus*, a history of osteogenesis imperfect, and gout. He further noted that appellant worked on his feet for extended periods of time and was mildly obese. Dr. Morris opined that all of these factors combined with the injury on June 18, 2014 caused his left ankle posterior tibial tendinitis/partial tear. He suggested that there was most likely some apportionment required for appellant's condition if covered under workers' compensation.

By decision dated October 31, 2016, OWCP denied modification of the decision dated February 2, 2016.

LEGAL PRECEDENT

A claimant has the burden of proof to establish that he or she is disabled from work as a result of an accepted employment injury.⁵ Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues.⁶ The issue of whether a particular injury causes disability from work must be resolved by competent medical evidence.⁷ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting causal relationship between the alleged disabling condition and the accepted injury.⁸

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 of proof to establish that he was disabled from work as a result of the accepted employment injury.⁹

⁵ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

⁷ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

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

ANALYSIS

OWCP accepted appellant's claim for left ankle tibial tendinitis. Appellant stopped work on June 19, 2014. On March 12, 2015 he submitted Form CA-7 claims for wage-loss compensation for total disability beginning June 19, 2014. OWCP denied appellant's claim for compensation and an OWCP hearing representative affirmed the denial decision. Appellant appealed to the Board and the Board affirmed the hearing representative's decision. Following the Board's August 26, 2016 decision,¹⁰ appellant requested reconsideration and submitted new medical evidence to OWCP which again denied his claim for compensation for total disability beginning June 19, 2014. The Board finds that the medical evidence of record is insufficient to establish that the claimed periods of total disability beginning June 19, 2014 were caused or aggravated by the accepted condition.

Appellant submitted a February 1, 2016 report from Dr. Morris who treated him for a left inner ankle and arch condition which began on June 18, 2014 after standing all day at work while engaging in liquid penetration testing. Dr. Morris last treated appellant on October 24, 2014 for left ankle pain. He noted an August 2014 MRI scan revealed a partial tear along the tendon and opined that appellant would most likely require surgery. Dr. Morris indicated that appellant had underlying medical conditions that may have made him prone to developing posterior tibial tendinitis including congenital flatfoot deformity/*pes planus*, a history of osteogenesis imperfect, and gout. He further noted that appellant worked on his feet for extended periods of time and was mildly obese. Dr. Morris opined that all of these factors combined with the injury on June 18, 2014 caused his left ankle posterior tibial tendinitis/partial tear. He indicated that there was most likely some apportionment required for appellant's condition if covered under workers' compensation. Dr. Morris did not specifically address how the June 18, 2014 employment injury caused any disability beginning June 19, 2014. This report did 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. The need for medical reasoning regarding the claimed periods of disability is particularly important as the medical evidence indicates that appellant had preexisting conditions, including congenital flat foot deformity, a history of osteogenesis imperfect, obesity and gout, affecting his left foot and ankle. A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.¹²

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

¹⁰ *Supra* note 3.

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

¹² *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

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 failed to meet his burden of proof to establish total disability for intermittent periods beginning June 19, 2014 causally related to the accepted June 18, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 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