



## **FACTUAL HISTORY**

On October 7, 2005 appellant, then a 42-year-old electronic technician, filed a traumatic injury claim (Form CA-1) alleging that on October 5, 2005 he sustained an injury to his left great toe in the performance of duty while moving some mail processing equipment and a machine fell on his toe. He stopped work on October 6, 2005. OWCP accepted appellant's claim for left foot closed fracture of one or more phalanges and left bursitis. It also paid compensation for intermittent wage loss. OWCP subsequently accepted that appellant suffered a recurrence of disability beginning February 3, 2014. Appellant resumed work on February 8, 2014 in a limited-duty capacity. On March 19, 2014 his podiatrist, Dr. Angelo Pace, advised that he could perform his regular duties, full time. OWCP compensated appellant for intermittent wage loss due to attending medical appointments.

In a September 26, 2016 prescription note, Dr. Pace excused appellant from work for the period September 23 through 28, 2016. He diagnosed chronic recurrent left great toe arthritis.

Dr. Pace also provided a September 26, 2016 duty status report (Form CA-17). The CA-17 noted an October 5, 2005 date of injury when a loose panel from an optical character recognition (OCR) machine fell on appellant's left great toe. Dr. Pace reported clinical findings of joint space narrowing and chronic arthritis pain. He noted appellant's occupation as an electronic technician, and further indicated that he was currently working and able to perform his full-time, regular work.

On September 29, 2016 appellant filed a claim for compensation (Form CA-7) for total disability for the period September 23 to 28, 2016. The employing establishment verified (Form CA-7a) that appellant used 8 hours of sick leave on September 23, 2016, and 8 hours of leave without pay (LWOP) on September 24 and 27, 2016, for a total of 16 hours LWOP. Appellant returned to work on September 28, 2016.

By development letter dated October 3, 2016, OWCP acknowledged receipt of appellant's Form CA-7 claiming wage-loss compensation for the period September 23 to 28, 2016. It requested additional evidence to establish that he was unable to work during the claimed period as a result of his October 5, 2005 employment injury. OWCP explained that Dr. Pace's September 26, 2016 disability slip would not suffice because arthritis of the left great toe was not an accepted condition. Appellant was afforded 30 days to submit this evidence.

OWCP subsequently received a September 26, 2016 narrative report from Dr. Pace. Dr. Pace related that appellant was treated for complaints of chronic pain in the left hallux interphalangeal (IP) joint, which resulted from a previous work-related injury that occurred in April 2006 when a panel from a machine fell on his left great toe. He indicated that appellant developed chronic arthritis with joint space narrowing that periodically resulted in bouts of pain and swelling. Dr. Pace noted that appellant was working full time on modified duty, but had to periodically stop working during flare-ups to allow the pain to subside. He reviewed appellant's history and conducted an examination. Dr. Pace observed pain to palpation of appellant's dorsal left hallux IP joint and mild swelling. Range of motion of appellant's left hallux IP joint revealed pain and crepitus. Dr. Pace diagnosed left capsulitis and arthritis. He indicated that appellant could continue to work full-time modified duty. Dr. Pace noted that appellant's complaints of pain made it difficult for him to work and necessitated time away from work to recover.

By decision dated November 15, 2016, OWCP denied appellant's claim for wage-loss compensation for the period September 23 to 28, 2016. It found that Dr. Pace's "[October 31, 2016]" medical memorandum referenced an April 2006 date of injury, whereas the current claim was accepted for an October 5, 2005 employment injury.<sup>3</sup>

On December 2, 2016 appellant requested reconsideration. He submitted the appeal request form that accompanied OWCP's November 15, 2016 decision, as well as a November 22, 2016 letter. In the accompanying letter, appellant indicated that on October 31, 2016 he received further information from Dr. Pace.<sup>4</sup> He resubmitted Dr. Pace's September 26, 2016 narrative report.

By decision dated January 10, 2017, OWCP denied modification of the November 15, 2016 decision.<sup>5</sup> It found that the medical evidence of record was insufficient to demonstrate that appellant was unable to work during the claimed period as a result of the October 5, 2005 employment injury. OWCP noted that the medical evidence submitted did not address the specific dates in question nor provide rationalized medical evidence to support disability due to appellant's accepted conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish 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.<sup>7</sup> 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.<sup>8</sup>

Whether a particular injury causes an employee to be disabled from 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.<sup>9</sup> Findings on examination are generally

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<sup>3</sup> OWCP mistakenly identified the date of Dr. Pace's narrative report. While the report is dated September 26, 2016, Dr. Pace electronically signed it on October 31, 2016.

<sup>4</sup> Additionally, appellant noted that he had not been paid for February 23, 2016. The record indicates that on September 24, 2016, appellant separately filed a claim for compensation (Form CA-7) for lost wages incurred on February 23, 2016. That period of compensation was the subject of a November 23, 2016 merit decision, which appellant had yet to receive when he prepared his November 22, 2016 request for reconsideration.

<sup>5</sup> OWCP initially denied modification by decision dated December 9, 2016. However, in a January 10, 2017 cover letter, it advised that the attached January 10, 2017 decision superseded its December 9, 2016 decision because the latter decision misspelled appellant's surname and failed to mention pertinent medical evidence previously omitted from OWCP's November 15, 2016 decision.

<sup>6</sup> *Supra* note 1.

<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>9</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

needed to support a physician's opinion that an employee is disabled for work.<sup>10</sup> When the physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings or disability being shown, the physician has not presented a medical opinion, supported by medical rationale, on the issue of disability or a basis for payment of compensation.<sup>11</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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.<sup>12</sup>

### ANALYSIS

OWCP accepted that on October 5, 2005 appellant sustained an injury to his left great toe in the performance of duty. Appellant accepted conditions including left foot closed fracture of one or more phalanges and left bursitis. OWCP paid compensation for intermittent wage loss, as well as compensation for temporary total disability for a brief period in February 2014. Appellant stopped work on September 23, 2016, and subsequently filed a claim for compensation (Form CA-7). The employing establishment verified his absence from work on September 23, 24, and 27, 2016. OWCP denied appellant's claim for wage-loss compensation for the above-noted period because the medical evidence submitted failed to establish that he was disabled from work as a result of his accepted employment injury. The Board finds that appellant has failed to establish total disability during the period September 23 to 28, 2016 due to the accepted October 5, 2005 employment injury.

In a September 26, 2016 narrative report, Dr. Pace related that appellant presented with complaints of chronic pain in the left hallux IP joint. He reported that appellant's symptoms were the result of a previous work-related injury that occurred in April 2006 when a panel from an OCR machine fell on appellant's left great toe. X-rays at the time revealed a non-displaced fracture at the base of the proximal phalanx. Dr. Pace further noted that appellant developed chronic arthritis with joint space narrowing that periodically resulted in bouts of pain and swelling, which could be exacerbated by increased activity. He explained that appellant's condition was managed with nonsteroidal anti-inflammatory drugs and working 8-hour days for a total of 40 hours per week "on modified activity." Dr. Pace further noted that during flare-ups, appellant had to periodically stop working to allow the pain to subside. On physical examination, he reported pain to palpation of appellant's dorsal left hallux IP joint and mild swelling. Range of motion of appellant's left hallux IP joint revealed pain and crepitus. Dr. Pace diagnosed left capsulitis and arthritis. He further indicated that appellant was to "continue on his modified work duty schedule," and that he was able to work a full 40-hour workweek. Dr. Pace also noted that appellant's current complaints of pain made it difficult for him to work. He reiterated that, as in the past, appellant could have periodic flare-ups which would necessitate time away from work to recover. Dr. Pace advised

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<sup>10</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>11</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>12</sup> *Amelia S. Jefferson*, *supra* note 9.

appellant to return on an as-needed basis. He also provided a September 26, 2016 prescription pad note that included a diagnosis of chronic recurrent left great toe arthritis, and indicated that appellant was medically advised to be off work September 23 to 28, 2016. In a September 26, 2016 duty status report (Form CA-17), Dr. Pace checked the corresponding boxes indicating that appellant was able to perform regular work on a full-time basis.

Although Dr. Pace's September 26, 2016 prescription pad note indicated that appellant was "medically advised" to be off work September 23 to 28, 2016, he did not attribute the period of disability to appellant's accepted conditions of left foot closed fracture of one or more phalanges and/or left bursitis. Instead, the reported diagnosis was chronic recurrent left great toe arthritis, which as noted, OWCP has not accepted as being causally related to the October 5, 2005 employment injury.<sup>13</sup> The Board further notes that the September 26, 2016 prescription pad report of disability is contradicted by the September 26, 2016 narrative report, as well as the September 26, 2016 duty status report (Form CA-17). In the latter two documents, Dr. Pace represented that appellant was capable of full-time work. Moreover, his September 26, 2016 Form CA-17 and narrative report similarly included diagnoses (arthritis, joint space narrowing, and/or capsulitis) that OWCP has not accepted as being causally related to the October 5, 2005 employment injury. As Dr. Pace failed to attribute appellant's disability to the accepted condition of left great toe fracture and/or left bursitis, his September 26, 2016 reports are insufficient to meet appellant's burden of proof with respect to the claimed period of disability.<sup>14</sup>

On appeal appellant alleges that he submitted a doctor's note by Dr. Pace which set forth the specific dates and medical advice to support his claimed period of disability. As explained above, Dr. Pace's report is insufficient to establish that appellant was unable to work during the claimed period as a result of his October 5, 2005 employment injury. 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 the employment injury and supports that conclusion with sound medical reasoning.<sup>15</sup> As appellant has not submitted such medical evidence in this case, he has not met his burden of proof to establish his claim for wage-loss compensation.

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 not met his burden of proof to establish total disability for the period September 23 through 28, 2016 due to his October 5, 2005 employment injury.

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<sup>13</sup> For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship. *See F.J.*, Docket No. 17-0147 (issued March 27, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>14</sup> *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

<sup>15</sup> *See G.B.*, Docket No. 16-1003 (issued December 5, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2018  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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