United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 18-0934**
	)	**Issued: May 8, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Wayne, AK, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 2, 2018 appellant filed a timely appeal from a February 1, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish intermittent disability for the period September 21, 2015 to February 3, 2017 causally related to his accepted employment conditions.

FACTUAL HISTORY

On January 29, 2007 appellant, then a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that on November 20 2006 he realized that he sustained left

[1] 5 U.S.C. § 8101 *et seq.*

heel and hip pain while in the performance of duty. He stopped work on December 5, 2006. Appellant resumed his letter carrier route on January 30, 2007. The employing establishment noted that he was taking leave when his injury occurred. On May 1, 2008 OWCP accepted the claim for degeneration of lumbar or lumbosacral intervertebral disc and calcaneal spur on the left.

In a March 18, 2010 report, Dr. Richard Ennis, a Board-certified orthopedic surgeon, noted that appellant was treated for plantar fasciitis from January 31, 2007 until March 10, 2010. He advised that appellant had little relief from his various treatment modalities. Dr. Ennis indicated that there was a new therapy called autologous conditioned plasma therapy, which involved an injection and little down time. He requested authorization for the treatment in lieu of surgery.

The record reflects that appellant accepted an offer of modified-limited duty on June 18, 2010.

On December 8, 2010 Dr. Ennis noted that appellant had complaints of continued pain in the left heel and lumbar spine. He noted that appellant walked an hour and a half each day at the employing establishment.

On January 12, 2017 appellant filed a claim for compensation (Form CA-7) for intermittent leave without pay (LWOP) for the period September 21, 2015 to January 6, 2017. The employing establishment explained that he was requesting 2,171 hours for injured on duty (IOD) and LWOP for the above dates. However, there was no medical evidence to support the entire absence for a claim-related condition.

In a January 24, 2017 development letter, OWCP informed appellant the medical evidence in the file did not substantiate that the disability was caused by the work-related condition between September 21, 2015 and January 6, 2017. It explained that the most recent medical evidence was dated December 8, 2010. However, the physician did not offer any opinion that appellant was disabled or partially disabled due to his work injury. OWCP advised appellant that he must submit medical evidence which explained how his accepted conditions had worsened such that he was no longer able to perform the duties of his position. It afforded him 30 days to submit the additional evidence.

On February 3, 2017 OWCP received a letter from a Mary Ann O'Hara, an advanced practice registered nurse. Ms. O'Hara noted that the encounter date was November 18, 2016 and explained that according to the findings obtained at the medical facility, there was no reason appellant could not work. OWCP also received a September 15, 2015 work excuse note from a physician with an illegible signature, which indicated that he could return to full-duty work on September 21, 2015 without restrictions.

On February 3, 2017 OWCP received a statement from appellant indicating that the reason for his recurrence claim was that there was no work available. Appellant explained that his claim was not due to a worsening of he accepted work-related condition. He enclosed a September 21, 2015 note that he wrote and requested light duty. Appellant also enclosed a September 24, 2015 response from the employing establishment advising him that he was accommodated for a limited-duty work assignment prior to his request for light duty. He was advised that they could not accommodate his light-duty request.

On February 7, 2017 appellant filed a Form CA-7 for intermittent LWOP for the period January 7 through February 3, 2017. The employing establishment explained that he was requesting 160 hours for LWOP for the above dates. However, there was no medical evidence to support the absence for IOD/LWOP.

In a February 14, 2017 development letter, OWCP informed appellant that it had not received any medical evidence to support his claim for compensation for the period January 7 through February 3, 2017. It noted that the medical evidence in the file did not substantiate that the disability was caused by the work-related condition because it had not received any medical evidence. OWCP advised appellant that he must submit medical evidence which explained how his accepted conditions had worsened such that he was no longer able to perform the duties of his position. It afforded appellant 30 days to submit the additional evidence.

OWCP received a July 6, 2017 report from Dr. Terry L. Barnett, a chiropractor. Dr. Barnett indicated that appellant was released to work without restrictions, effective September 21, 2015.

By decision dated August 31, 2017, OWCP denied appellant's claim for total disability compensation for the periods September 21, 2015 through January 6, 2017 and January 7 through February 3, 2017. It found that no medical evidence was received to support that his claim for disability was causally related to the accepted work-related medical condition.

On November 3, 2017 appellant requested reconsideration and submitted additional evidence.

In a June 7, 2017 report, Dr. Mark Wright, a Board-certified psychiatrist, explained that appellant was released to return to work on September 21, 2015 with no restrictions. He explained that was from a general surgery standpoint. Dr. Wright indicated that appellant was released to return to the level of work restrictions that had been previously indicated by his primary care physician.

In a July 21, 2017 report, Dr. Ennis noted that appellant had persistent pain in his low back and in both of his feet without any significant activity. He explained that appellant received treatment for degenerative disc disease of the lumbar spine, some degenerative disc disease of the hip, and for Achilles tendinitis/plantar fasciitis. Dr. Ennis also indicated that appellant had pain in both heels, worse on the left than the right, and when going up and down steps.

OWCP also received a duplicate copy of the September 15, 2015 work excuse note with an illegible signature, which released appellant to full-duty work without restrictions.

By decision dated February 1, 2018, OWCP denied modification of the August 31, 2017 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,[3] including that any specific condition or disability from work for which compensation is claimed is causally related to that employment injury.[4]

Under FECA, 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 injury.[5] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[6]

Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.[7] Findings on examination are required to support a physician's opinion that an employee is disabled from work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she experienced too much pain to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[8] The Board will not require OWCP to pay compensation for disability in the absence of 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.[9]

ANALYSIS

The Board finds that appellant has not established that he was entitled to wage-loss compensation for the period September 21, 2015 through January 6, 2017 and January 7 through February 3, 2017 causally related to his accepted conditions.

In a June 7, 2017 report, Dr. Wright released appellant to work on September 21, 2015 with no restrictions. He indicated that appellant was released to return to the level of work

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[2] *Id.*

[3] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

[6] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

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

[8] *G.T.*, 59 ECAB 447 (2008); *see Huie Lee Goal*, 1 ECAB 180,182 (1948).

[9] *G.T., id.*; *Fereidoon Kharabi, supra* note 7.

restrictions that had been previously indicated by his primary care physician. Dr. Wright did not offer an opinion on disability. Thus, his opinion is of no probative value on the issue of causal relationship.[10]

In a July 21, 2017 report, Dr. Ennis noted that appellant had persistent pain in his low back and in both of his feet without any significant activity. He explained that appellant received treatment for degenerative disc disease of the lumbar spine, some degenerative disc disease of the hip and for Achilles tendinitis/plantar fasciitis. While Dr. Ennis also indicated that appellant had pain in both heels, worse on the left than the right, and when ascending and descending steps, he did not offer any indication that appellant was disabled for any period of work.

Evidence that does not address appellant's accepted conditions and dates of disability, is insufficient to establish the claim.[11]

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.[12] Because appellant has not submitted rationalized medical opinion evidence to establish employment-related disability for the period September 21, 2015 through January 6, 2017 and January 7 through February 3, 2017 as a result of his accepted degeneration of lumbar or lumbosacral intervertebral disc and left calcaneal spur, the Board finds that he has not met his burden of proof to establish his claim for disability compensation.

On appeal appellant argues that he sustained a recurrence of disability commencing September 15, 2015. However, as explained above, the Board finds that the evidence of record is insufficient to establish his claim.

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 a recurrence of total disability for the period September 21, 2015 through January 6, 3017 and January 7 through February 3, 2017 causally related to his accepted employment conditions.

[10] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] *Id.; see also Jaja K. Asaramo*, 55 ECAB 200 (2004).

[12] *See Fereidoon Kharabi, supra* note 7; *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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