

ISSUE

The issue is whether appellant has met his burden of proof to establish disability for the periods February 4, 1982 through December 15, 1986 and January 1, 2000 through January 7, 2006, causally related to his February 4, 1982 accepted employment injuries.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior orders and decisions are incorporated herein by reference. The relevant facts are set forth below.

OWCP accepted that on February 4, 1982 appellant sustained a sprain, neuroma, and non-union fractured sesamoid of the second metatarsal phalangeal joint of the right foot when he stepped out of a mail truck onto a medium-sized rock while in the performance of duty. It authorized right foot surgery, which was performed on August 8, 1983. On November 28, 1983 and September 23, 1985 appellant underwent unauthorized right foot surgeries.

Following further OWCP proceedings the Board, by decision dated October 20, 2005, affirmed an OWCP hearing representative's March 1, 2004 merit decision affirming an April 3, 2003 decision denying appellant's claim for a recurrence of disability commencing October 4, 2002 and OWCP's April 15, 2004 nonmerit decision denying appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a), September 9, 2004 merit decision denying modification of the denial of his recurrence claim, and November 19, 2004 nonmerit decision again denying appellant's request for reconsideration pursuant to section 8128(a).⁴

On February 13, 2018 appellant filed a claim for compensation (Form CA-7) requesting compensation for disability for the periods February 4, 1982 through December 15, 1986 and January 1, 2000 through January 7, 2006. No evidence was submitted with appellant's claim.

In a development letter dated March 14, 2018, OWCP advised the employing establishment that based on the record, appellant was paid continuation of pay (COP) for the period February 12 through 18, 1982. It requested that the employing establishment review its personnel records to determine the correct period in which appellant was entitled to COP, and authorize COP for the dates he was temporarily totally disabled, or no work was available due to his work injury.

In a separate development letter of the same date, OWCP informed appellant about the periods he had received COP and compensation for leave buy back. Regarding the additional claimed periods of disability, it requested that he submit evidence verified by the employing establishment indicating that it was unable to accommodate his work restrictions. OWCP also requested that appellant submit medical evidence showing that his disability due to his unauthorized November 28, 1983 and September 23, 1985 right foot surgeries and work

³ *Order Dismissing Appeal*, Docket No. 04-1309 (issued June 29, 2004); and Docket No. 05-0820 (issued October 20, 2005), *petition for recon. denied*, Docket No. 05-0820 (issued May 11, 2006).

⁴ Docket No. 05-0820, *id.*

restrictions were causally related to his accepted right foot conditions. Regarding the claimed period October 2, 2002 through January 7, 2006, it advised him to refer to the appeal rights that accompanied the Board's October 20, 2005 decision. Both the employing establishment and appellant were afforded 30 days to submit the requested evidence. Appellant did not submit responsive evidence.

In a letter dated April 11, 2018, the employing establishment responded to OWCP's development letter, noting that it was unable to provide the requested COP records. It noted that it was informed by accounting services that the records only went back to 1993.

By decision dated April 17, 2018, OWCP denied appellant's claim for disability for the periods February 4, 1982 through December 15, 1986 and from January 1, 2000 through January 7, 2006. It noted that he had not responded to its March 14, 2018 development letter.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden proof to establish the essential elements of his or her claim by the weight of the evidence.⁶ 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.⁷ Whether a particular injury caused an employee to become disabled from work and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁸

The claimant must submit medical evidence showing that the condition claimed is disabling.⁹ The evidence submitted must be reliable, probative, and substantial.¹⁰ The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty, and must include objective findings in support of its conclusions.¹¹ Subjective complaints of pain are insufficient, in and of themselves, to support payment of continuing compensation.¹² Likewise, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of continuing compensation.¹³

⁵ *Supra* note 2.

⁶ *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁷ *Id.*

⁸ *Amelia S. Jefferson*, *supra* note 6; *William A. Archer*, 55 ECAB 674 (2004).

⁹ 20 C.F.R. § 10.115(f).

¹⁰ *Id.* at § 10.115.

¹¹ *Id.* at § 10.501(a)(2).

¹² *Id.*

¹³ *Id.*

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁴ Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment injury. 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.¹⁵ Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁶

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.¹⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability for the periods February 4, 1982 through December 15, 1986 and January 1, 2000 through January 7, 2006, causally related to his February 4, 1982 employment injuries.

Preliminarily, the Board notes that it is unnecessary for it to consider the evidence appellant submitted prior to the issuance of OWCP's last merit decisions which the Board considered in its October 20, 2005 decision and found insufficient to establish disability. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁸

In a development letter dated March 14, 2018, OWCP requested that appellant submit factual evidence in support of his claim for disability from work. It also requested that he submit medical evidence to establish his disability from work during the claimed periods. Appellant did not, however, respond to OWCP's request with any additional evidence. He has the burden of

¹⁴ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁵ *T.W.*, Docket No. 18-0890 (issued October 26, 2018).

¹⁶ *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁷ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁸ *See B.R.*, Docket No. 17-0294 (issued May 11, 2018).

proof to submit evidence supporting disability in the form of lost wages for the periods claimed.¹⁹ Appellant did not submit such evidence, and thus, has not met his burden of proof.²⁰

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability for the periods February 4, 1982 through December 15, 1986 and January 1, 2000 through January 7, 2006, causally related to his February 4, 1982 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2019
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

¹⁹ See *A.L.*, Docket No. 16-1092 (issued May 9, 2017).

²⁰ See *J.D.*, Docket No. 18-0034 (issued May 22, 2018).