

ISSUE

This issue is whether appellant has met her burden of proof to establish disability from work for the period April 9 through May 24, 2019, causally related to her accepted employment injury.

FACTUAL HISTORY

On August 17, 2016 appellant, then a 39-year-old city carrier assistant 1, filed an occupational disease claim (Form CA-2) alleging that she developed a bilateral heel condition due to factors of her federal employment, including walking and standing on hard surfaces for long periods of time. OWCP accepted the claim for bilateral plantar fasciitis/fibromatosis. Appellant stopped work on August 24, 2016. OWCP paid her wage-loss compensation on the supplemental rolls through December 28, 2018.

Appellant accepted a modified job offer on December 31, 2018. The duties of the position included mounted delivery for six hours per day and Express Mail delivery for two hours per day. Appellant subsequently stopped work on April 9, 2019.

In a report dated April 11, 2019, Dr. Mohammed Bazzi, a podiatrist, noted that appellant was seen for complaints of bilateral foot pain and was currently attending physical therapy. Appellant's physical examination revealed bilateral mid-arch heel tenderness on palpation, no edema, decreased bilateral arch foot deformity, good bilateral ankle range of motion, and bilateral hammertoe syndrome. A review of x-ray interpretations revealed bilateral plantar calcaneal central tubercle spurring and no fracture. Dr. Bazzi diagnosed history of plantar fasciitis, pain and heel spur syndrome. He recommended that appellant wear orthotics in good supportive shoes and related surgical options, including plantar fasciotomies bilaterally, were discussed if all conservative measures failed.

In a May 21, 2019 note, Dr. Stanley Frencher, a Board-certified internist, prescribed physical therapy two to three times per week for appellant's bilateral plantar fasciitis.

On June 3, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work during the period April 9 through May 24, 2019.

In a development letter dated June 4, 2019, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of medical evidence required and afforded her 30 days to submit the necessary evidence.

In response, appellant submitted physical therapy notes dated June 3, 2019.

OWCP also received a May 21, 2019 report by Dr. Harry Kezelian, a podiatrist, who noted that appellant was seen for complaints of on and off bilateral foot pain over the past two years. Dr. Kezelian detailed physical findings including pain on palpation of plantar fascia insertional area into the inferior calcaneal area, greater on the left than the right, and along with increased edema. He diagnosed heel spur syndrome with bilateral plantar fasciitis, greater on the left than the right, which had been present for a very long time and had not been improving. Dr. Kezelian related that appellant's feet had been immobilized and she was given a box brace to use daily.

In a narrative report dated June 4, 2019, Dr. Kezelian noted that appellant worked as a mail carrier, but was not working at this time due to pain in her feet. He noted that she had heel spur syndrome with plantar fasciitis bilaterally, which had been present for a very long time and had not improved. Dr. Kezelian related that appellant had been prescribed a controlled ankle motion (CAM) walker boot to use on which ever foot bothered her the most. He explained that, if physical therapy did not help, she would be given a below the knee cast and, if that did not help, surgery would be recommended.

In a June 4, 2019 note, Dr. Frencher diagnosed plantar fasciitis and found that appellant was disabled from work due to this condition beginning April 9, 2019.

On June 11, 2019 appellant filed a Form CA-7, claiming wage-loss compensation for disability from work during the period May 25 through June 7, 2019.

On June 28, 2019 appellant filed a Form CA-7, claiming wage-loss compensation for disability from work for the period June 8 through 21, 2019.

On July 15, 2019 OWCP received an undated report from Dr. Frencher detailing dates appellant was seen either by him or her podiatrist for bilateral foot pain complaints, and noting the treatment provided. Dr. Frencher indicated that she was seen by him on April 9, 2019, by Dr. Bazzi on April 11, 2019, and subsequently by Dr. Kezelian. He reported that appellant was receiving physical therapy and awaiting surgical treatment. Dr. Frencher opined that she was totally disabled from work due to her bilateral plantar fasciitis.

By decision dated July 23, 2019, OWCP denied appellant's claim for wage-loss compensation for disability from work for the period April 9 through May 24, 2019 and continuing.

Following the denial of her claim, appellant submitted reports dated June 21 and 28, 2019 from Dr. Kezelian. Dr. Kezelian diagnosed bilateral heel spur syndrome with plantar fasciitis, which had been present for a long time and was not improving. He noted appellant's pain complaints on examination. On June 21, 2019 Dr. Kezelian related that immobilization of her feet had been performed, and she would continue using the box brace. He also related that appellant must use the CAM walker boot 24 hours, 7 days per week except to take a shower and drive in her car. Dr. Kezelian again related that if her condition did not improve, she would require surgical treatment. On June 28, 2019 he reported that appellant had been wearing the CAM walker boot all the time, but that it was not helping. Dr. Kezelian related that since her condition had not improved surgery was discussed.

In an August 10, 2019 report, Dr. Frencher summarized appellant's history of injury and medical treatment provided by himself and her podiatrists. He related that, since her August 15, 2016 injury, her physicians had modified her work restrictions multiple times to determine the level of work she could perform without causing further injury. Dr. Frencher related that appellant was seen by him on April 9, 2019 and subsequently referred to Dr. Kezelian, who performed x-rays of her feet and confirmed plantar fasciitis in both feet, for which he prescribed a CAM walker boot. He explained that she had been instructed not to drive a vehicle or perform any work duties while wearing the CAM walker boot. Dr. Frencher opined that appellant was totally disabled from

performing her job duties due to the worsening of her bilateral foot plantar fasciitis. He concluded that the worsening of her condition was directly related to the amount of walking/standing she performed while working on hard surfaces.

On August 16, 2019 appellant requested reconsideration of the July 23, 2019 decision denying her claim for wage-loss compensation.

By decision dated August 19, 2019, OWCP denied appellant's claim for wage-loss compensation for the period April 9 through May 24, 2019.

On August 24, 2019 appellant requested reconsideration.

In support thereof, appellant submitted physical therapy notes covering the periods May 2 to June 3 and July 1 to 31, 2019 for treatment of plantar fascial fibromatosis.

On October 7, 2019 OWCP received progress notes dated August 2, 2019 from Dr. Kezelian. Dr. Kezelian diagnosed heel spur syndrome, with plantar fasciitis greater on the right side, which had been present for a long time. He noted appellant's pain complaints, that she was frequently using a CAM walker boot, and considering surgical options. Appellant's physical examination revealed pain on palpation of the right foot plantar fascia insertional area into the inferior calcaneal area.

By decision dated November 13, 2019, OWCP denied modification of the August 19, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury causes 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.⁶

³ *Supra* note 1.

⁴ *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁶ 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing employment, the employee is entitled to compensation for any loss of wages.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period April 9 through May 24, 2019, causally related to her accepted employment injury.

In support of her claim for disability, appellant submitted reports and notes from Dr. Frencher. In a June 4, 2019 note, Dr. Frencher found that she was disabled from work beginning April 9, 2019 due to her diagnosed plantar fasciitis. In an undated report received on July 15, 2019 he detailed dates appellant received medical treatment and opined that she was totally disabled from work due to her plantar fasciitis. Dr. Frencher's opinion, however, is conclusory in nature and does not provide rationale explaining why she was disabled due to the accepted bilateral plantar fasciitis. He did not provide medical rationale, based on objective findings, supporting disability from work during the claimed period causally related to the accepted employment injury.¹² Therefore, this report is of limited probative value and is insufficient to establish the disability claim.

In his report dated August 10, 2019, Dr. Frencher related that appellant's work restrictions had been modified to prevent further injury. However, he did not provide an opinion on causal relationship between the claimed disability and the accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's

⁷ *Id.* § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁹ *Supra* note 6 at § 10.5(f); *see D.N.*, Docket No. 19-1344 (issued November 6, 2020); *G.R.*, Docket No. 19-0940 (issued December 20, 2019). *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁰ *J.T.*, *supra* note 7; *S.L.*, *supra* note 6.

¹¹ *Id.*

¹² *See T.B.*, Docket No. 20-0255 (issued March 11, 2022).

condition or disability is of no probative value.¹³ This report is, therefore, insufficient to establish appellant's disability claim.

Appellant also submitted a medical report from Dr. Bazzi dated April 11, 2019 and reports from Dr. Kezelian dated May 21 to August 2, 2019. However, neither of these physicians provided an opinion as to whether she was disabled from work during the claimed period due to a worsening of the accepted bilateral plantar fasciitis. As noted above, medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.¹⁴ As such, this evidence is insufficient to establish the disability claim.

During the relevant time period, OWCP also received physical therapy notes. The Board, however, has held that treatment notes from physical therapists have no probative value as these providers are not considered physicians as defined under FECA.¹⁵

As the medical evidence of record is insufficient to establish disability from work during the claimed period causally related to the accepted employment injury, the Board finds that appellant has not met her burden of proof.¹⁶

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 her burden of proof to establish disability from work for the period April 9 through May 24, 2019, causally related to her accepted employment injury.

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

¹⁵ Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); see *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). See also *V.R.*, Docket No. 19-0758 (issued March 16, 2021) (a physical therapist is not considered a physician under FECA); *J.R.*, Docket No. 19-0812 (issued September 29, 2020) (an occupational therapist is not considered a physician under FECA).

¹⁶ Upon return of the case record, OWCP shall consider payment of up to four hours of compensation to appellant for lost time from work due to documented medical appointments to assess or treat symptoms related to the accepted employment injury. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *A.V.*, Docket No. 19-1575 (issued June 11, 2020). See also *K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, 55 ECAB 674 (2004).

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 31, 2023
Washington, DC

Alec J. Koromilas, 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