

required by his job.¹ On September 18, 1981 appellant's left leg was amputated below the knee. The procedure was accepted as related to his employment injury.

The Office accepted that on May 9, 2005 appellant sustained contusions and abrasions to his left residual leg due to a fall on that date.² He stopped work on June 25, 2005 and claimed that he sustained total disability for the period June 25 to July 18, 2005, due to his May 9, 2005 employment injury.

In a May 12, 2005 note, Dr. Robert W. Trauscht, an attending Board-certified family practitioner, stated that appellant should not work until "re-eval[uation] of prosthesis and med[ications]." In a June 3, 2005 form report, he listed the date of injury as May 9, 2005 and indicated that swelling of appellant's residual left leg due to that injury "aggravated fit of prosthesis." Dr. Trauscht indicated that appellant was disabled from May 9, 2005 until an unknown period. In a June 7, 2005 report, Dr. Todd Kuiken, an attending Board-certified physical medicine and rehabilitation physician, stated that Dopplers testing showed that appellant had deep vein thrombosis in his residual left leg, which came up into the popliteal fossa. He noted that appellant reported that the edema in his residual leg had decreased but he could not get into his prosthesis.³

In a June 20, 2005 report, Dr. Uma Shah, an attending Board-certified physical medicine and rehabilitation physician, described the May 9, 2005 injury and noted appellant's complaints of swelling and pain in his residual left leg. She diagnosed chronic left residual leg pain which was worsening, deep vein thrombosis and left osteomyelitis. In a July 6, 2005 report, Dr. Peter Orris, an attending Board-certified internist, noted that he was reviewing appellant's records, a process expected to take two weeks and indicated that he should not return to work until this evaluation was complete. In a July 18, 2005 note, Dr. Shah stated that appellant was undergoing treatment for stump pain which was aggravated by a fall on May 9, 2005. She indicated that he could return to sedentary duty.

In a July 19, 2005 note, Dr. Trauscht noted that appellant was undergoing treatment for stump pain and deep vein thrombosis, which was aggravated by a fall on May 9, 2005. He indicated that appellant could return to sedentary duty.⁴ In another July 19, 2005 note,

¹ The claim was accepted under file number 50-0012145. Appellant had preexisting service-related injuries to his left leg, including gunshot wounds to the left thigh and a predisposition to develop neurotrophic ulcers of the left foot. It appears that he was not wearing his prosthesis at the time of his May 9, 2005 fall and that he fell on the end of his residual left leg.

² The claim was accepted under file numbered 11-2028989 but file number 50-0012145 now serves as the master file for appellant's case. After the initial acceptance of his claim, appellant began to work as an audio-visual production officer for the employing establishment, a position which required extensive walking. Since May 2003, appellant worked in a limited-duty position as an audio-visual production officer. He was not required to walk more than 100 feet or stand for more than 30 minutes per day. Appellant tended to use a nonmotorized wheelchair to move around his office. He also was able to ambulate on crutches for shorter distances.

³ The record contains the findings of a May 27, 2005 venous duplex scan showing that appellant had deep vein thrombosis in the popliteal vein of his left residual leg. Appellant was treated with Lovenox and Coumadin medications.

⁴ Appellant returned to limited-duty work for the employing establishment on July 19, 2005.

Dr. Trauscht stated that appellant was seen at his direction on June 6, 2005 by Mary Muellner, a certified physician's assistant and he was instructed to remain off work until he was evaluated by physicians at the Department of Veterans Affairs. He stated, "I concurred with this recommendation completely." In an August 16, 2005 note, Dr. Orris noted that appellant sustained a fall on May 9, 2005 and stated, "At this time he injured his stump again and has subsequently had increased difficulty wearing his prosthesis due to swelling and pain. This condition was diagnosed recently to include a deep vein thrombosis in the area."

In March 2006, the Office referred appellant to Dr. Martin Saltzman, a Board-certified orthopedic surgeon, for an impartial medical examination. It indicated that there was a conflict in the medical evidence between Dr. Kuiken and Dr. Norman Aliga, a Board-certified physical medicine and rehabilitation physician, regarding whether he had employment-related complex regional pain syndrome prior to May 9, 2005 and whether his employment-related condition necessitated participation in a pain management program. In a May 17, 2006 report, Dr. Saltzman stated that appellant had complaints consistent with complex regional pain syndrome prior to May 9, 2005. He stated that, after May 9, 2005, appellant could not perform the regular duties of his audio-visual production specialist position.

In a May 25, 2006 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained total disability for the period June 25 to July 18, 2005 due to his May 9, 2005 employment injury.⁵ In a September 14, 2006 decision, an Office hearing representative set aside the Office's May 25, 2006 denying appellant's claim for employment-related disability from June 25 to July 18, 2005. He indicated that an additional report should be obtained from Dr. Saltzman to clarify whether appellant had total disability for the period June 25 to July 18, 2005 due to his May 9, 2005 employment injury.

In an August 21, 2006 report, Dr. Saltzman stated that appellant fell directly on the end of his left residual leg on May 9, 2005 and noted that "subsequent to May 9, 2005 he has been unable to perform any type of work because of the aggravation of the complex regional pain syndrome condition that was present prior to the May 9, 2005 injury." He concluded that appellant could not perform the regular duties of his audio-visual production specialist position but that he was able to "continue sedentary work as he had performed prior to the May 9, 2005 work-related injury."

In a February 12, 2007 decision, the Office denied appellant's claim that he sustained total disability for the period June 25 to July 18, 2005 due to his May 9, 2005 employment

⁵ In another May 25, 2006 decision, the Office denied appellant's request for payment for a motorized wheelchair. In a December 21, 2006 decision, an Office hearing representative affirmed the Office's May 25, 2006 denying appellant's wheelchair request. Appellant has not appealed these decision to the Board and the matter is not currently before the Board.

injury. It found that the opinion of Dr. Saltzman showed that appellant did not have such employment-related disability for the period June 25 to July 18, 2005.⁶

LEGAL PRECEDENT

An employee who claims benefits under the Federal Employees' Compensation Act⁷ has the burden of establishing the essential elements of his claim.⁸ The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁹ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁰

ANALYSIS

In mid 1981, the Office accepted that appellant sustained an ulcer of the plantar aspect of his left fifth metatarsal due to the extensive walking required by his job. On September 18, 1981 appellant's left leg was amputated below the knee, a procedure which was accepted as related to his employment injury. The Office accepted that on May 9, 2005 appellant sustained contusions and abrasions of his left residual leg due to a fall on that date.¹¹ He stopped work on June 25, 2005 and claimed that he sustained total disability for the period June 25 to July 18, 2005 due to his May 9, 2005 employment injury.

The Board notes that, while none of the reports of appellant's attending physicians are completely rationalized, they are consistent in indicating that appellant had disability due to his May 9, 2005 employment injury during the claimed period and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference

⁶ The Office referred to Dr. Saltzman as an impartial medical specialist but he actually served as an Office referral physician regarding the main issue of the present case. At the time of referral to Dr. Saltzman, there was no conflict in the medical evidence regarding whether appellant sustained total disability for the period June 25 to July 18, 2005 due to his May 9, 2005 employment injury. Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

⁹ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹⁰ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹¹ After the initial acceptance of his claim, appellant began to work as an audio-visual production officer for the employing establishment, a position which required extensive walking. Since May 2003, appellant worked in a limited-duty position as an audio-visual production officer. He was not required to walk more than 100 feet or stand for more than 30 minutes per day.

between appellant's May 9, 2005 employment injury and the claimed period of disability and are sufficient to require the Office to further develop the medical evidence and the case record.¹²

In several reports, Dr. Trauscht, an attending Board-certified family practitioner, indicated that appellant had total disability due to his May 9, 2005 employment injury for all or part of period between May 9 and July 18, 2005. In a June 3, 2005 form report, he listed the date of injury as May 9, 2005 and indicated that swelling of appellant's residual left leg due to that injury "aggravated fit of prosthesis." Dr. Trauscht stated that appellant was disabled from May 9, 2005 until an unknown period. In a July 19, 2005 note, he noted that appellant was undergoing treatment for stump pain and deep vein thrombosis, which was aggravated by a fall on May 9, 2005. Dr. Trauscht indicated that appellant could return to sedentary duty. In another July 19, 2005 note, he stated that appellant was seen at his direction on June 6, 2005 by Ms. Mueller, a certified physician's assistant and he was instructed to remain off work until he was evaluated by physicians at the Department of Veterans Affairs. Appellant stated, "I concurred with this recommendation completely."

The record also contains May 17 and August 21, 2006 reports of Dr. Saltzman, a Board-certified orthopedic surgeon. The Office relied on Dr. Saltzman's opinion in denying appellant's claim but he did not provide an opinion regarding whether appellant had disability between June 25 and July 18, 2005 due to his May 9, 2005 employment injury. Rather, Dr. Saltzman only indicated that appellant could perform limited-duty work at the time of his examination in mid 2006.

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant had disability between June 25 and July 18, 2005 due to his May 9, 2005 employment injury. The Office should prepare a statement of accepted facts and obtain a medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he sustained total disability for the period June 25 to July 18, 2005 due to his May 9, 2005 employment injury. The case is remanded to the Office for further development to be followed by the issuance of an appropriate decision.

¹² See Robert A. Redmond, 40 ECAB 796, 801 (1989).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 12, 2007 decision is set aside and the case remanded to the Office for further proceedings consistent with the decision of the Board.

Issued: August 6, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board