

**United States Department of Labor
Employees' Compensation Appeals Board**

P.Y., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 12-921
Issued: February 4, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On March 19, 2012 appellant filed a timely appeal of a February 15, 2012 decision of the Office of Workers' Compensation Programs (OWCP), which affirmed as modified OWCP's July 21, 2011 decision, which denied appellant's request for disability for the period August 19, 2010 through March 29, 2011. Pursuant to the Federal Employees' Compensation Act¹ (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 her burden of proof in establishing that she was disabled for intermittent times from August 19, 2010 through March 29, 2011 as a result of her employment-related conditions.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 8, 2010 appellant, then a 45-year-old letter clerk, filed an occupational disease claim alleging that standing as well as pushing heavy equipment caused chronic left plantar fasciitis and tarsal tunnel syndrome in the performance of duty. Appellant became aware of her condition on June 24, 2009. She did not stop work. The employing establishment noted that she was working her regular-job assignment seven hours a day instead of eight hours. OWCP accepted the claim for plantar fasciosis, heel spur and posterior tarsal tunnel syndrome (TTS) on the left.

Appellant submitted CA-7 forms requesting wage-loss compensation for intermittent disability for the periods: August 5 through 7, 2009, August 4 through 20, 2010, September 20 through 22, 2010, October 4 through 5, 2010, December 22 through 31, 2010, January 17 and February 14, 2011 and March 24 through 25, 2011.

In an August 18, 2010 disability certificate, Dr. Vincent Sollecito, a podiatrist, noted treating appellant for a tarsal tunnel release and plantar fasciitis since March 12, 2010.² He advised that she could only work four hours per day. On September 8, 2010 Dr. Sollecito indicated that appellant could work up to six hours a day. In a September 22, 2010 disability certificate, he noted that appellant could return to work on September 23, 2010. Dr. Sollecito asked that she be excused from work on September 20 and 21, 2010 due to “intolerable” left foot pain. He continued to treat appellant.

On October 5, 2010 Dr. David Wu, a Board-certified diagnostic radiologist, noted that on October 4, 2010 he administered a calcaneocuboid joint injection. An October 5, 2010 return to work note, signed by an office manager, indicated that appellant could return to work on October 5, 2010 without restrictions. Dr. Wu provided another note on December 30, 2010 indicating that appellant could return to work on January 3, 2011 with no restrictions.

In a January 17, 2011 return to work note, Dr. Sollecito stated that appellant could work seven hours per day five days per week. In a January 29, 2011 report, he advised that he treated appellant on dates that included: August 4, 18, September 8, 30, October 21, November 20, December 27, 2010 and January 17, 2011. Appellant’s symptoms included a painful left heel, aggravated by walking and numbness on the dorsum of her feet. July 13, 2010 nerve conduction studies revealed left lateral plantar neuropathy secondary to entrapment of the posterior tibial nerve. Dr. Sollecito diagnosed left foot plantar fasciitis, heel spur and superior posterior tunnel syndrome. He stated that appellant could only work seven hours per day because “her foot hurts.” Dr. Sollecito explained that, despite release of the inferior and superior tarsal tunnel and Baxter’s nerve by removal of the heel spur, she had continued weight-bearing pain on hard surfaces. He stated that “[appellant] does not have this level of discomfort when she is at home or shopping. It is possible that her particular occupation can aggravate an existing tarsal tunnel syndrome or with the continued weight bearing on hard surfaces create an environment where the tarsal tunnel syndrome occurs.” Dr. Sollecito opined that “[i]t is impossible for me to state with any certainty that her job caused the tarsal tunnel syndrome or plantar fasciitis.” He noted

² OWCP authorized the March 12, 2010 left foot surgery performed by Dr. Sollecito.

that appellant did not have the symptoms prior to working. Dr. Sollecito stated that she could work for seven hours, but had pain. He advised that appellant's condition could recur as the nerve can become scarred and recommended that she seek work that would not require standing for prolonged periods on hard surfaces. Dr. Sollecito opined that her continued responsibilities on the hard surfaces and the prolonged weight bearing would cause additional pain. A February 14, 2011 disability slip from him revealed that appellant was under his care for left tarsal tunnel surgery and she could return to work on February 15, 2011.

In a March 24, 2011 e-mail, the employing establishment, in response to an inquiry from OWCP regarding whether appellant lost time from work due to the employment injury, noted that she continued to work regular duty.

In a March 28, 2011 report, Dr. Sollecito indicated that appellant "had to leave work on Thursday, after three hours. [Appellant's] foot did hurt on Wednesday, but on Thursday she actually had to leave because of the pain. [She] denies any trauma. [Appellant] believes [that] her pain may be related to the cold weather." Reported findings included a positive Tinel's sign. Dr. Sollecito diagnosed postoperative tarsal tunnel decompression and possible entrapment of lateral branch of calcaneal nerve left foot. He performed a trigger point injection. In a March 28, 2011 return to work note, Dr. Sollecito stated that he saw appellant that day for pain related to tarsal tunnel decompression. Appellant was not able to work from March 24 to 29, 2011. In a March 29, 2011 return to work note, Dr. Sollecito indicated that she could work seven hours a day five days a week. He repeated this in an April 11, 2011 return to work note.

In April 5 and 19, 2011 letters, OWCP notified appellant of the type of evidence needed to support her claims for intermittent compensation. In particular, it noted that Dr. Sollecito should provide a rationalized medical opinion to explain why she was not able to do full-time full duty but was able to shop.

In an April 28, 2011 report, Dr. Jeffrey R. Aschenbrenner, a podiatrist, noted caring for appellant from December 8, 2009 through February 8, 2010. He indicated that she was placed in a cast on December 17, 2009 for a left foot plantar fascial tear. Dr. Aschenbrenner stated that when appellant returned to light work on December 21, 2009 she was informed that she could not work with a cast and was off work until January 5, 2010. On appellant's next visit to his office, he placed her off work from January 25 through February 9, 2010 pending results of nerve studies. Dr. Aschenbrenner stated that appellant's care was then transferred to another physician.

By decision dated July 21, 2011, OWCP issued a revised decision and denied appellant's claim for compensation for disability for the period December 21, 2009 through April 8, 2011 on the grounds that the evidence did not contain sufficient rationalized medical evidence showing work-related disability on the dates and hours claimed.³

³ OWCP issued decisions on May 11, 24 and 25 and June 17, 2011 denying the various dates of compensation for disability for the period December 21, 2009 through April 8, 2011.

Appellant requested a telephonic hearing that was held on December 9, 2011. At the hearing, she explained that Dr. Aschenbrenner indicated that she could work light duty using a walking boot but, when she returned to work on December 21, 2009 with a boot, her supervisors advised that she could not work with the boot and sent her home. Appellant gradually increased to seven hours per day of light duty in September 2010 and then regular duty. In November 2010, she could do seven hours regular and one hour light duty and returned to regular duty in August 2011. Appellant stated that she was denied light duty. She explained Dr. Sollecitio's shopping remark pertained to limited grocery shopping and quick trips to Target. Appellant's representative noted that appellant's walking boot did not conform to the employer's footwear policy. OWCP received a copy of the employee handbook regarding the employer's footwear policy. It also received a copy of a June 22, 2010 letter from the employing establishment denying appellant's request for light duty.

In a February 15, 2012 decision, an OWCP hearing representative modified in part and affirmed in part the July 21, 2011 decision. He found that appellant was entitled to wage-loss compensation for periods claimed when no light duty was available beginning July 7, 2010. The hearing representative found that there was insufficient medical evidence to show that she was either being treated for her accepted condition or was totally disabled due to it on August 19 and 20, September 20, 21 and 22, October 5, 2010 and December 22 through 31, 2010. Appellant also did not establish entitlement to compensation for the periods January 17, February 14 and March 24 through 29, 2011.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the evidence.⁴ For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁶ 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 their disability and entitlement to compensation.⁷

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁵ See *Amelia S. Jefferson*, *supra* note 4. See also *David H. Goss*, 32 ECAB 24 (1980).

⁶ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁷ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ See *Viola Stanko (Charles Stanko)*, 56 ECAB 436 (2005); see also *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ 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.¹¹

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹² Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹³

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.¹⁴ Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.¹⁵ However, OWCP's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.¹⁶

OWCP's procedure manual provides that wages lost for compensable medical examination or treatment may be reimbursed.¹⁷ It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.¹⁸ As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical

⁹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ *Id.*

¹¹ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹² 20 C.F.R. § 10.5(f).

¹³ *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

¹⁴ 5 U.S.C. § 8103(a).

¹⁵ *Vincent E. Washington*, 40 ECAB 1242 (1989).

¹⁶ *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹⁷ *See Federal (FECA) Procedure Manual, Part 2 -- Claims, Computing Compensation*, Chapter 2.901.16 (December 1995).

¹⁸ *See also Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.¹⁹

ANALYSIS

The Board notes that OWCP found that appellant was entitled to wage-loss/disability compensation for time in which the employing establishment did not provide appropriate light duty or when she attended medical appointments with the exception of the following periods: August 19 and 20, September 20, 21, 22, October 5 and December 22 through 31, 2010, January 17, February 14 and March 24 through 29, 2011.²⁰

Regarding the dates of August 19 and 20, 2010, the most relevant report includes an August 18, 2010 disability certificate from Dr. Sollecito, advising that appellant could only work four hours per day. The Board notes that she received compensation for this routine medical appointment on August 18, 2010. The Board notes that there are no medical reports pertaining to the dates of August 19 and 20, 2010 and there is no rationalized medical evidence explaining the relationship between the accepted condition and total disability on these specific dates. For September 20, 21 and 22, 2010 appellant submitted a September 22, 2010 disability certificate from Dr. Sollecito who indicated that she could return to work on September 23, 2010. He requested that she be excused from work on September 20 and 21, 2010 due to “intolerable” left foot pain. The Board notes that appellant’s claim is accepted for left plantar fasciitis, left heel spur and left posterior tarsal tunnel syndrome. However, Dr. Sollecito does not indicate that he treated her on September 22, 2010, but merely provided a work excuse. Thus appellant is not entitled to four hours of compensation for a medical appointment on September 22, 2010, as it does not indicate that he treated her on that date for her accepted condition. The Board also finds that the medical evidence is insufficient to establish total disability due to the accepted conditions on September 20 and 21, 2010. Dr. Sollecito did not provide a rationalized explanation regarding why appellant was unable to work on those dates due to her accepted conditions. Although he related that she indicated that her foot pain was intolerable, the Board has held that when a physician’s statements regarding an employee’s ability to work consist only of repetition of the employee’s complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented sufficient medical opinion on the issue of disability or a basis for payment of compensation.²¹ As noted, appellant’s burden of proof, includes the necessity to submit supporting rationalized medical evidence.²²

¹⁹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

²⁰ As indicated, the hearing representative’s February 15, 2012 decision found entitlement to wage-loss compensation for hours of work that she missed, beginning July 7, 2010, because the employing establishment did not make appropriate light duty available. This decision does not affect those periods but only dates where appellant claimed compensation for total disability or where the evidence indicates that she received medical treatment for her accepted conditions.

²¹ *S.F.*, 59 ECAB 525 (2008).

²² See *supra* note 8.

Regarding October 5, 2010, Dr. Wu, noted that on October 4, 2010, he performed a calcaneocuboid joint injection on October 4, 2010. The Board notes that appellant received four hours of compensation for her routine medical appointment on October 4, 2010. There is no indication that she was unable to work on October 5, 2010 due to her accepted condition. The Board also notes that the office manager's notes cannot be considered as competent medical evidence as medical opinion evidence may only be provided by a qualified physician.²³

For the dates of December 22 to 31, 2010, Dr. Sollecito's January 29, 2011 report confirmed that appellant was seen on December 27, 2010 for a painful left heel with burning and pain aggravated by walking. The Board notes that the accepted conditions include plantar fasciosis, heel spur and posterior TTS on the left. Dr. Sollecito indicated that he was treating appellant for her plantar fasciosis, heel spur and posterior TTS. Thus, appellant is entitled to up to four hours of compensation on December 27, 2010 for the medical appointment. For other times in this period, Dr. Sollecito did not provide sufficient medical explanation regarding why appellant was unable to work on specific dates within this period. He noted that she presented with a painful left heel that was aggravated by walking and numbness on the dorsum of her feet. While Dr. Sollecito generally noted that appellant could not work for more than seven hours daily, he did not explain why she was unable to work at all on any particular dates during this period. As noted, 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.²⁴

Dr. Sollecito also indicated that appellant was seen on January 17, 2011 for the accepted conditions of plantar fasciosis, heel spur and posterior TTS on the left and thus she is entitled to compensation for up to four hours on this date. For February 14, 2011, the record contains a disability slip from Dr. Sollecito. However, Dr. Sollecito merely indicated that appellant was under his care for the accepted condition. He did not indicate that she was seen on this date for treatment of an accepted condition. Thus, appellant is not entitled to compensation for lost wages incidental to a medical appointment. For the date of March 28, 2011, Dr. Sollecito indicated that she was seen on that date for pain related to her tarsal tunnel decompression. As this was related to her foot condition, appellant would be entitled to compensation for up to four hours on this date. The Board notes that these medical records do not offer a rationalized opinion that she was totally disabled such that she was unable to work for the period March 24 through 29, 2011. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²⁵

Other reports submitted by appellant, did not address whether appellant's accepted condition caused total disability or whether she was seen for treatment of her accepted conditions on the aforementioned dates.

²³ See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

²⁴ See *supra* note 7.

²⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

The Board finds that appellant has failed to submit rationalized medical evidence establishing that her disability on the remaining dates was causally related to her accepted employment injury and thus, she has not met her burden of proof.

On appeal, appellant indicated that she did not believe that the hearing representative had all available documentation. The Board has reviewed the record and there is no evidence to suggest that the record is incomplete.

Appellant may submit evidence or argument with a written request for reconsideration 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 established entitlement to compensation for her medical treatment on December 27, 2010 and January 17 and March 28, 2011. However, she did not establish that she was totally disabled for other specific dates in the periods from August 19, 2010 through March 29, 2011 as a result of her employment-related conditions.

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2012 decision of the Office of Workers' Compensation Programs is modified in part and affirmed in part.

Issued: February 4, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board