

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

J.P., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Tampa, FL, Employer**

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**Docket No. 15-711
Issued: June 15, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 21, 2015 appellant filed a timely appeal from a December 18, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 established disability for work on and after December 18, 2014 causally related to an accepted fracture of the left great toe.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On June 20, 2013 appellant, then a 55-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) asserting that on June 17, 2013 he sustained a fracture of the distal phalanx of his left great toe when his foot was run over by a wheelchair.

In a June 18, 2013 report, Dr. Eve N. Hanna, an attending physician Board-certified in occupational and emergency medicine, provided a history of a June 17, 2013 closed fracture of the distal phalanx of the left great toe sustained when an electric wheelchair ran over appellant's left foot.² She provided June 24, October 23, and November 20, 2013 reports noting appellant's complaints of pain on palpation of the left great toe.

In a June 6, 2014 report, Dr. Hanna noted appellant's complaints of tenderness over the distal aspect of the left great toe. She opined that the left great toe fracture had resolved.

On November 18, 2014 appellant filed a recurrence of disability claim (Form CA-2a) asserting that he was totally disabled for work beginning on December 2, 2013 while on sedentary duty.³ He stopped work as of February 3, 2014 and subsequently resigned from the employing establishment. Appellant noted that he sought treatment at an emergency room on November 10, 2014.

By decision dated December 18, 2014, OWCP accepted appellant's claim for a closed fracture of the distal phalanx of the left great toe. It closed his case effective that day as the accepted fracture had resolved, based on Dr. Hanna's June 6, 2014 report. OWCP noted that its decision was unrelated to appellant's claim for a fracture of the distal phalanx of the right great toe under File No. xxxxxx912.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁴ Under FECA, the term "disability" is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.⁵ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁶ 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

² Dr. Hanna also provided reports regarding an occupationally related right great toe fracture under File No. xxxxxx912. The right great toe fracture claim is not before the Board on the present appeal.

³ OWCP did not conduct additional development or issue a final decision regarding the claim for recurrence of disability.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

reliable medical opinion evidence.⁷ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸ 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 her disability and entitlement to compensation.⁹

ANALYSIS

OWCP accepted that appellant sustained a fracture of the distal phalanx of the left great toe on June 17, 2013. Dr. Hanna, an attending physician Board-certified in occupational and emergency medicine, opined that the injury had resolved as of June 6, 2014. However, appellant asserted that the left great toe fracture disabled him from work from December 2, 2013 onward. He has the burden of establishing by the weight of the substantial, reliable, and probative evidence that he was totally disabled for work for the claimed period due to the accepted fracture.¹⁰

In support of his claim, appellant submitted reports from Dr. Hanna dated from June 18, 2013 to June 6, 2014, noting subjective symptoms through November 20, 2013. She found that the left great toe fracture had resolved as of June 6, 2014. There is no medical evidence of record indicating that the accepted fracture disabled appellant for work on or after December 18, 2014, or that it required continuing medical treatment. Therefore, OWCP's December 18, 2014 decision finding that the accepted fracture resolved as of that date is proper under the law and facts of the case.

On appeal, appellant asserts that he remains totally disabled for work due to the accepted injury, the right great toe fracture accepted under File No. xxxxxx912, diabetic neuropathy, and decubitus ulcers in both feet. He argues that OWCP should have continued to pay medical and wage-loss compensation benefits, noting that his claim was timely filed and in compliance with applicable law and regulations. Appellant's attending physician opined that the accepted left great toe fracture had resolved as of June 6, 2014. The Board notes that the right great toe fracture under File No. xxxxxx912 is not before the Board on the present appeal.

Appellant also alleges that OWCP mishandled his claim. The Board notes that the record does not demonstrate any impropriety by OWCP in the development or adjudication of the claim. Appellant also argues that his injuries occurred due to the employing establishment's negligence in supervising patients learning to use motorized wheelchairs. The Board notes that OWCP accepted that the June 17, 2013 injury occurred as alleged.

⁷ *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *Manuel Garcia*, 37 ECAB 767 (1986).

⁹ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

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 failed to establish disability for work on and after December 18, 2014 causally related to an accepted fracture of the left great toe.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 18, 2014 is affirmed.

Issued: June 15, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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