

bilaterally causally related to factors of her federal employment. She related that her symptoms began in August 2014 and increased on October 21, 2014 such that she sought treatment in the emergency room.

On October 22, 2014 a physician assistant found that appellant should be excused from work for one week beginning that date. A nurse practitioner, in a December 30, 2014 disability certificate, advised that appellant was off work three days and could resume work on January 5, 2015.

Appellant, on January 7, 2015, accepted a modified position at the employing establishment. The job required intermittent standing and walking for four hours per day, intermittent driving for two hours per day, intermittent lifting and carrying for four hours per day, and intermittent pushing, pulling, and grasping for four hours per day. The job offer provided that it would remain within the restrictions set forth by her physician and was subject to revision based on the limitations provided by her physician. The offer specified appellant's current restrictions as no walking over two hours per day.

OWCP accepted the claim for bilateral plantar fasciitis and heel spurs.²

Appellant, on September 8, 2015, filed a claim for compensation (Form CA-7) for intermittent dates of disability from August 2014 to August 2015. Regarding the dates relevant to this appeal, in accompanying time analysis forms, she advised that she was off work as her manager could not accommodate her restrictions on August 18, October 26 and 29, and December 15, 2014, and September 3, 2015. Appellant alleged that she was unable to work due to swollen feet on October 17 and 20, 2014 and August 22, 2015, and was in the hospital on October 21 and 22, 2014. She did not work for 28 hours from December 30, 2014 to January 3, 2015, 32 hours from February 2 to 5, 2015, 56 hours from February 9 to 17, 2015, and 8 hours on July 13, 2015 on the instructions of her physician. Appellant claimed eight hours of time lost on December 30, 2014, January 30, February 11, 17, and 25, March 5, April 29, and July 13, 2015 for medical appointments. She requested compensation from September 9 to 11 and 15 to 16, 2015 as she was unable to work as a result of swelling in her feet.

On September 21, 2015 the employing establishment noted discrepancies in some of the dates of compensation claimed by appellant on the CA-7 forms sent to OWCP on September 21, 2015. It contended that there was no medical evidence supporting disability on certain dates and also that some dates lacked a priority assignment worksheet. The employing establishment further advised that appellant had the Sunday occurring from October 20 to 29, 2014 as an off day and also worked for 8.37 hours during this period.

Appellant submitted evidence to support her claim. In a January 26, 2015 form report, Dr. Khae V. Saepanh, an osteopath, advised that he had initially evaluated appellant on October 21, 2014. He diagnosed plantar fasciitis and noted that her bilateral foot pain increased

² By decision dated January 8, 2015, OWCP had previously denied appellant's claim as the medical evidence was insufficient to support that she sustained a diagnosed condition due to the identified work factors. In a decision dated August 18, 2015, an OWCP hearing representative reversed the January 8, 2015 and accepted the claim for bilateral plantar fasciitis and heel spurs.

when she worked as a mail carrier. Dr. Saephanh opined that appellant could walk one hour per day.

On January 29, 2015 a nurse practitioner found that appellant could work four hours a day three days a week beginning January 30, 2015. On February 2, 2015 the nurse practitioner requested that appellant be excused from work early on January 30, 2015 and for one week beginning February 2, 2015. The nurse practitioner opined that appellant could resume work on February 10, 2015.

Dr. Liu, on February 9, 2015, advised that appellant could return to work on February 10, 2015 with restrictions until March 5, 2015 of no walking more than two hours a day with 10-minute breaks for each 20 minutes of walking.

On February 11, 2015 a nurse practitioner advised that appellant could not work for two days and could resume modified work on February 14, 2015. On February 17, 2015 he indicated that she could return to work with restrictions. On February 25, 2015 the nurse practitioner noted that appellant received treatment on that date and could return to work on February 26, 2015.

In a form report dated April 29, 2015, Dr. Richard A. Nolan, a Board-certified orthopedic surgeon, diagnosed plantar fasciitis, checked a box marked “yes” that the history provided on the form corresponded to that given by appellant, and listed work restrictions of walking up to four hours per day intermittently for two hours at a time and standing up to two hours per day.³

By letter dated October 5, 2015, OWCP advised appellant that medical evidence from a nurse or physician assistant must be countersigned by a physician to constitute medical evidence. It requested that she clarify the dates that she was off work due to disability, medical appointments, or work not being available and informed her of the medical evidence required to establish disability.

On October 21, 2015 Dr. Liu cosigned the December 30, 2014 and the January 29, February 2, 11, 17, and 25, 2015 reports from the nurse practitioner.

Appellant’s supervisor signed an acknowledgement of a list of dates that the employing establishment did not have work available within her restrictions. Regarding the dates relevant to this appeal, the supervisor indicated that there was no work available within her restrictions from October 26 to December 24, 2015.

By decision dated December 9, 2015, OWCP found that appellant was entitled to compensation for 882.24 hours from August 18, 2014 to September 16, 2015. It determined, however, that there was no medical evidence supporting her claim for lost time from work for 8 hours on August 18 and October 17, 20, and 22, 2014; 28 hours from December 30, 2014 to

³ Dr. Nolan evaluated appellant on April 10, 2015. He noted that she worked with restrictions and in November 2014 began working four hours a day four days a week. Appellant was off work for a period as there was no work available. In January 2015 she again worked four hours a day for four days a week. Dr. Nolan attributed appellant’s bilateral foot condition to her employment activities. He found that she could work full time with walking no more than 2 hours at a time with a 30-minute break and driving limited to 1 hour per day.

January 8, 2015; 8 hours on January 30, 2015; 32 hours from February 2 to 5, 2015; 56 hours from February 9 to 17, 2015; 8 hours on February 25 and March 5, 2015; 4 hours on April 29, 2015; 8 hours on July 13, August 22, and September 3, 2015; 20 hours from September 9 to 11, 2015; and 16 hours from September 15 to 16, 2015. It further determined that she was not entitled to eight hours of compensation on October 26, 2014 because it was for a Sunday, a day she was off work. OWCP noted that the employing establishment advised that she worked full time on October 29, 2014 and that it paid her sick leave on December 15, 2014.

Appellant, on January 7, 2016, requested a review of the written record by an OWCP hearing representative.

In a progress report dated December 30, 2014, received by OWCP on January 15, 2016, a nurse practitioner evaluated appellant for foot pain. The nurse diagnosed “fasciitis plantar” and indicated that he had provided a disability slip.

In a decision dated June 21, 2016, an OWCP hearing representative affirmed the December 9, 2015 decision. She found that appellant had not submitted medical evidence supporting her claim for employment-related intermittent disability for the hours denied from August 18, 2014 to September 16, 2015.⁴

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.⁵ For each period of disability claimed, he or she has the burden of proof to establish 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 reliable medical opinion evidence.⁷

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.⁸ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁹ 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-

⁴ The hearing representative’s decision actually indicated that the denial of intermittent compensation was through September 18, 2015. This appears to be a typographical error as the evidence set forth, *supra*, indicates that the denial was for dates through September 16, 2015.

⁵ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

⁶ See *Amelia S. Jefferson*, *id.*

⁷ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁸ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

⁹ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

earning capacity.¹⁰ 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 in her employment, she is entitled to compensation for any loss of wages.

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.¹¹

ANALYSIS

OWCP accepted that appellant sustained bilateral plantar fasciitis and heel spurs causally related to factors of her federal employment. It denied her claim for compensation for intermittent disability from August 8, 2014 to September 16, 2015 as she had not established that she was receiving medical treatment for her accepted work injury, disabled from her modified work, or that the employing establishment did not have work available within her restrictions.

Appellant claimed that she was unable to work on October 17 and 20, 2014, August 22, 2015, and intermittently from September 9 to 11 and 15 to 16, 2015 because her feet were swollen. She has not, however, submitted any medical evidence supporting that she was unable to work on the dates claimed. As discussed, 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.¹² Accordingly, the Board finds that appellant has not established entitlement to wage-loss compensation on these dates.

The Board further finds that the medical evidence is insufficient to support that appellant was unable to work for 28 hours from December 31, 2014 to January 3, 2015, 32 hours from February 2 to 5, 2015, 56 hours from February 9 to 17, 2015, and 8 hours on July 13, 2015. Appellant contended that she was off work during this period on the advice of her physician. In a disability certificate dated December 30, 2014, a nurse practitioner found that appellant could not work until January 5, 2015. In an accompanying report, the nurse practitioner evaluated her for foot pain. Dr. Liu cosigned the disability certificate on October 21, 2015. She, however, did not provide an opinion explaining why appellant's symptoms increased such that she was unable to work from December 30, 2014 to January 5, 2015, and thus the evidence is of diminished probative value.¹³ Such rationale is particularly important as Dr. Liu's opinion on her ability to work is not based upon a contemporaneous examination.¹⁴

¹⁰ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹¹ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *See S.F.*, Docket No. 15-0480 (issued November 4, 2015).

¹³ *See M.H.*, Docket No. 15-0071 (issued March 13, 2015); *P.D.*, Docket No. 11-0545 (issued October 21, 2011).

¹⁴ *See R.B.*, Docket No. 16-0169 (issued February 23, 2016).

On February 9, 2015 Dr. Liu advised that appellant was unable to work on that date, but could resume work on February 10, 2015 with restrictions. She did not, however, provide any findings on examination or address causation, and thus her opinion is insufficient to support disability on February 9, 2015.¹⁵

Regarding the February 11, 2015 report signed by a nurse practitioner, the Board notes that nurse practitioners are not considered “physicians” under FECA and cannot render a medical opinion.¹⁶

In a disability certificate dated February 17, 2015 and cosigned by Dr. Liu on October 21, 2015, a nurse practitioner found that appellant could return to work with restrictions on that date. The report does not establish disability for any of the claimed period and is thus insufficient to meet appellant’s burden of proof. The record further does not have any medical evidence supporting disability on July 13, 2015.

Appellant requested compensation for time lost on October 21 and 22, 2014 because she was in the hospital, and for December 30, 2014 and January 30, February 25, March 5, and April 29, 2015 due to medical appointments. There is no evidence that she received medical treatment on October 21, 2014, January 30, and March 5, 2015. On April 29, 2015 OWCP paid appellant compensation for four hours of time lost for a medical appointment on April 29, 2015, the most allowed for a routine medical appointment.¹⁷ On October 22, 2014 a physician assistant indicated that she should be excused from work on that date. On December 30, 2014 a nurse practitioner advised that appellant could not return to work at that time, and on February 25, 2015 a nurse practitioner indicated that she received treatment on that date. Dr. Liu later signed these reports on October 21, 2015, rendering them medical reports. OWCP found that there was no medical evidence supporting disability on these dates, but did not consider whether appellant was entitled to four hours of compensation on those dates for attending a medical appointment. The case, therefore, must be remanded for OWCP to evaluate whether appellant was entitled to compensation for lost wages for attending medical appointments on October 22 and December 30, 2014 and February 25, 2015 causally related to the accepted work injury.

Appellant additionally claimed that the employing establishment did not have work available within her restrictions on August 18, October 26 and 29, and December 15, 2014, and September 3, 2015. She submitted an October 22, 2015 statement from her supervisor acknowledging the dates that there was no work available within her restrictions. The

¹⁵ See *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Laurie S. Swanson*, 53 ECAB 517 (2002).

¹⁶ *R.E.*, Docket No. 16-1568 (issued February 9, 2017) (nurse practitioners are not considered physicians as defined by FECA).

¹⁷ If a claimant has returned to work following an accepted injury or the onset of an occupational disease and must leave work and lose pay or use leave to undergo treatment, examination or testing for the accepted condition, compensation should be paid for wage loss under section 8105 of FECA, while undergoing the medical services and for a reasonable time spent traveling to and from the location where services were rendered. 5 U.S.C. § 8105. For a routine medical appointment, a maximum of four hours of compensation is usually allowed. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); see also *William A. Archer*, 55 ECAB 674 (2004).

dates included October 26, 29, and December 15, 2014, but not August 18, 2014 or September 3, 2015.

As to August 18, 2014 and September 3, 2015, the Board finds no evidence to establish appellant's claim that there was no work available for her within her restrictions. On September 21, 2015 the employing establishment advised that appellant worked 8.37 hours during the period October 20 to 29, 2014, but that October 26, 2014 was a Sunday, a scheduled day off. It also noted that she received 7.65 hours of sick leave on December 15, 2015.

OWCP found that she had October 26, 2014 off work as it was a Sunday, that she worked on October 29, 2014, and received sick leave on December 15, 2014. The employing establishment, however, noted that there was no work available for appellant on October 26, 29, and December 15, 2014. The Board finds, therefore, that the record contains conflicting information from the employing establishment regarding whether appellant worked on October 29, 2014 and received sick leave on December 15, 2014 or whether there was no work available and whether appellant was off work on Sunday, October 26, 2014 or that she was off work because there was no work available.

On remand OWCP should obtain clarification from the employing establishment regarding appellant's status on those dates prior to determining whether she is entitled to compensation. Following such further development, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she is entitled to wage-loss compensation for dates on October 17, 20, and 21, 2014, December 31, 2014 to January 3, 2015, January 30, February 9 to 17, March 5, July 13, August 22, and September 9 to 11 and 15 to 16, 2015. The Board further finds that the case is not in posture for decision regarding whether she is entitled to wage-loss compensation on October 22, 26, and 29, December 15 and 30, 2014, and February 25, 2015.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 22, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board