

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 12-1529
Issued: December 11, 2012**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 9, 2012 appellant filed a timely appeal from a June 26, 2012 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 met his burden of proof to establish that his disability for the period December 20, 2011 through February 14, 2012 was causally related to his employment injury.

FACTUAL HISTORY

On September 9, 2008 appellant, then a 61-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained a right toe condition due to factors of his federal

¹ 5 U.S.C. § 8101 *et seq.*

employment. OWCP accepted the claim for right great toe contusion, hallux valgus and bunion. It authorized right toe and foot surgeries, which appellant underwent on July 15, 2010 and April 21, 2011.

On December 20, 2011 appellant filed a claim for compensation for the period December 20, 2011 through January 3, 2012 and submitted a November 16, 2011 report by Dr. Robert J. Fink, a Board-certified orthopedic surgeon, who diagnosed status post surgery of the left foot. Dr. Fink indicated that appellant was taking narcotic pain medication and was totally incapacitated for duty. He took appellant off work from November 16, 2011 to January 18, 2012.

In a January 3, 2012 letter, OWCP requested additional medical evidence and afforded appellant 30 days for submission.

On January 10, 2012 appellant filed a claim for compensation for the period January 6 to 17, 2012 and submitted a January 18, 2012 duty status report by Dr. Fink who diagnosed right large toe status post surgery and opined that appellant was not able to work.

On February 6, 2012 appellant filed a claim for compensation for the period February 2 to 14, 2012 and submitted a January 18, 2012 report by Dr. Anatoly Rozman, a physician Board-certified in physical medicine and rehabilitation, took appellant off work from January 18 to March 19, 2012. In a February 20, 2012 report, Dr. Fink took appellant off work from February 20 to April 4, 2012 and indicated that appellant was unable to work until April 18, 2011. Appellant also submitted two statements indicating that he was seen in therapy on intermittent dates during the period June 16, 2011 through May 3, 2012.

In an April 20, 2012 report, Dr. Rozman indicated that a March 3, 2011 x-ray showed narrowing of the metatarsophalangeal joint, medial exostosis. Right calcaneus showed no spurs with some soft tissue swelling at the level of the plantar fascia. An electromyography (EMG) test revealed L4-5 radiculopathy. Dr. Rozman opined that appellant had reached maximum medical improvement and advised that he was not ready to start walking a full day long.

Appellant submitted a urine toxicology review from Dr. Fink dated April 10, 2012 and a magnetic resonance imaging (MRI) scan of the right great toe dated November 10, 2009.²

By decision dated June 26, 2012, OWCP denied appellant's claim for disability for the period December 20, 2011 through February 14, 2012 on the basis that the medical evidence submitted was not sufficient to support disability due to the employment injury.

LEGAL PRECEDENT

Section 8102(a) of FECA³ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as

² Appellant retired from the employing establishment effective April 2, 2012.

³ 5 U.S.C. § 8102(a).

specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty....” In general the term “disability” under FECA means “incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”⁴ This meaning, for brevity, is expressed as disability for work.⁵ For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.⁶ Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable, probative and substantial medical evidence.⁷

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. 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 he or she was receiving at the time of injury, has no disability as that term is used under FECA and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

ANALYSIS

The Board finds that appellant has not established that he was disabled for the period December 20, 2011 through February 14, 2012 causally related to his employment injury. While OWCP accepted that appellant sustained an employment injury, appellant bears the burden to establish through medical evidence that he was disabled during the claimed time periods and that his disability was causally related to his accepted injury.⁹ The Board finds that appellant submitted no rationalized medical evidence explaining how the employment injury materially worsened or aggravated his right foot and toe conditions causing his disability for work from December 20, 2011 to February 14, 2012.

On January 18, 2012 Dr. Rozman took appellant off work from January 18 to March 19, 2012. On April 20, 2012 he indicated that a March 3, 2011 x-ray showed narrowing of the metatarsophalangeal joint and that the right calcaneus showed no spurs with some soft tissue swelling at the level of the plantar fascia. Dr. Rozman opined that appellant had reached maximum medical improvement and advised that he was not ready to start walking a full day long. Although he opined that appellant was disabled, he failed to provide a rationalized medical

⁴ 20 C.F.R. § 10.5(f). See also *William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

⁵ See *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁶ See *William A. Archer*, 55 ECAB 674 (2004).

⁷ See *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁸ *Id.*

⁹ See *supra* notes 6-7. See also *V.P.*, Docket No. 09-337 (issued August 4, 2009).

explanation that appellant had employment-related residuals and that those residuals prevented him from continuing in his federal employment. Thus, these reports do not establish that he has disability for work due to the employment injury.

In his reports, Dr. Fink diagnosed status post right toe surgery and opined that appellant was totally incapacitated for duty due to taking narcotic pain medication. He took appellant off work for the periods November 16, 2011 through January 18, 2012 and February 20 through April 4, 2012. The Board finds that Dr. Fink also did not provide a rationalized medical opinion to establish that appellant's disability during the periods claimed was causally related to the accepted employment injury.

The November 10, 2009 MRI scan is diagnostic in nature and therefore does not address causal relationship.

The two statements prepared by an office manager indicating that appellant was seen in therapy on intermittent dates during the period June 16, 2011 through May 3, 2012 do not constitute medical evidence as they were not prepared by a physician.¹⁰

Appellant has not submitted any rationalized medical evidence establishing that he was disabled during the period December 20, 2011 through February 14, 2012 causally related to the accepted employment-related conditions. Thus, he has not met his burden of proof to establish that he is entitled to compensation for total disability.

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 his burden of proof to establish that his disability for the period December 20, 2011 through February 14, 2012 was causally related to his employment injury.

¹⁰ Lay persons are not competent to render medical opinions. See *James A. Long*, 40 ECAB 538, 542 (1989); see also *A.C.*, Docket No. 11-549 (issued December 14, 2011).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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