



his back while tightening a bolt with a wrench. OWCP accepted his claim for sciatica. Appellant stopped work on March 6, 2003 and worked intermittently thereafter.

Appellant was treated by Dr. K.L. Vandervoort, a Board-certified orthopedist, from March 12 to June 13, 2003 for low back pain which developed after a work incident. He diagnosed left sciatica. Dr. Vandervoort managed appellant through a conservative regimen including anti-inflammatory medications, rest, time off work, physical therapy, epidural steroid injections and light-duty work. Appellant was treated by Dr. R. Barry Stuman, a Board-certified anesthesiologist, who performed lumbar epidural steroid injections on April 10 and May 16, 2003. A March 28, 2003 magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative disc changes at L4-5, L5-S1 and central and right paracentral disc bulge at L4-5 with a central disc protrusion at L5-S1 level.

On May 22, 2003 appellant was referred for vocational rehabilitation. On March 21, 2004 he returned to work as a modified mobile heavy equipment repairer, earning \$713.19 per week. In a July 7, 2004 decision, OWCP found that appellant's actual earnings as a modified mobile heavy equipment repairer represented his wage-earning capacity and that his earnings in that position was equivalent to the pay rate for the position he held at the time of his injury.

Appellant was treated by Dr. Hisham Hakim, a Board-certified orthopedist, beginning August 19, 2004, for back pain with radiculopathy. Dr. Hakim noted muscle tightness and spasm in the paraspinal region bilaterally and tenderness in the lumbar areas at the L1 joint. He diagnosed back pain with muscle spasm and continued appellant's work restrictions. From January 13 to November 24, 2009, Dr. Hakim diagnosed back pain with increasing muscle spasm and recommended trigger point injections. On November 24, 2009 he noted appellant's complaints of chronic low back pain and shoulder pain. Appellant reported injuring his shoulder on September 11, 2008 and undergoing surgery. Dr. Hakim diagnosed back pain with radiculopathy and shoulder pain postsurgery and continued work restrictions. He noted a functional capacity evaluation recommended full-time light-duty work. Dr. Hakim continued to treat appellant from January 5 to March 4, 2010, for radiating low back pain. On March 4, 2010 he diagnosed chronic back pain noted that appellant was working full-time, light duty and continued his work restrictions.

On April 29, 2010 Dr. Hakim treated appellant that date for worsening low back pain. Appellant reported driving a street sweeper which vibrated and aggravated his symptomology. Dr. Hakim noted objective findings of tenderness across the back in the lumbar area with muscle tightening. He diagnosed back pain and recommended stretching exercises and use of a back support. In an April 29, 2010 return to work slip, Dr. Hakim continued appellant's current work status through July 29, 2010.

On April 29, 2010 appellant submitted a Form CA-7, claiming compensation for total disability for nine hours on April 29, 2010. In a CA-7a form time analysis, he requested nine hours of leave without pay on April 29, 2010, for a physician's appointment.

In a letter dated May 10, 2010, OWCP requested that appellant submit additional information with regard to his claim for compensation on April 29, 2010. It requested that he

submit medical evidence establishing that he was totally disabled due to the accepted condition for the period claimed.

Appellant submitted a July 22, 2010 return to work slip from Dr. Hakim who continued appellant's work restrictions.

In a July 30, 2010 decision, OWCP found that appellant was entitled to four hours of compensation on April 29, 2010 but that he provided insufficient documentation to support disability for the other five hours claimed. It noted that normally four hours of compensation are allowed for medical appointment.

On August 20, 2010 appellant through his attorney requested a telephonic hearing. He submitted an August 19, 2010 return to work slip from Dr. Hakim, which continued his work restrictions until October 14, 2010. In a September 9, 2010 return to work slip, Dr. Hakim noted treating appellant on that date. Also submitted was a September 9, 2010 functional capacity evaluation which noted that appellant could work full sedentary duty. In an October 21, 2010 return to work slip, Dr. Hakim continued appellants current work status until December 16, 2010.

In a decision dated February 2, 2011, the hearing representative affirmed OWCP's decision dated July 30, 2010.

### **LEGAL PRECEDENT**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>2</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.<sup>3</sup> The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>4</sup> To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.<sup>5</sup>

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. For each period of disability claimed, the employee has the burden

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<sup>2</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>3</sup> *Id.*

<sup>4</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>5</sup> C.S., Docket No. 08-2218 (issued August 7, 2009).

of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>6</sup>

OWCP's procedure manual provides that wages lost for compensable medical examination or treatment may be reimbursed.<sup>7</sup> 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.<sup>8</sup> As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical 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.<sup>9</sup>

### ANALYSIS

OWCP accepted appellant's claim for sciatica. Appellant filed a claim for wage-loss compensation for nine hours of leave without pay on April 29, 2010 to attend a physician's appointment. The Board notes that OWCP authorized payment for four hours on April 29, 2010 but found insufficient evidence to support any greater entitlement on that date. The Board notes that the record supports that appellant was attending a physician's appointment for his work-related injury on this date and was properly granted compensation for four hours on that date consistent with OWCP procedures.<sup>10</sup>

The Board finds that the medical evidence submitted in support of the wage-loss compensation claim for five additional hours of total disability for April 29, 2010 is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

On April 29, 2010 Dr. Hakim treated appellant for worsening low back pain which developed after driving a street sweeper which vibrated and aggravated his symptoms. He noted objective findings of tenderness across the back in the lumbar area with muscle tightening. Dr. Hakim diagnosed back pain and continued appellant's restrictions. Similarly, in an April 29, 2010 return to work slip, he continued appellant's current work status through July 29, 2010. Although these notes indicated that appellant had a physician's appointment on April 29, 2010, the physician failed to provide a reasoned opinion explaining why he was disabled for nine hours on that particular day. As noted, OWCP procedures provide for payment of compensation for

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<sup>6</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (December 1995).

<sup>8</sup> See also *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

<sup>9</sup> See *supra* note 7, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

<sup>10</sup> The Board notes that, while a July 7, 2004 wage-earning capacity determination is in place, OWCP is not precluded from considering a limited period of disability without establishing that modification of the wage-earning capacity determination is warranted. See *Sharon C. Clement*, 55 ECAB 552 (2004); *K.R.*, Docket No. 09-415 (issued February 24, 2010).

wages lost for compensable medical examination or treatment for up to four hours.<sup>11</sup> However, Dr. Hakim did not explain why four hours was insufficient to allow for his appointment or the reasons why appellant was otherwise totally disabled for more than four hours on April 29, 2010 due to the accepted sciatica sustained on March 6, 2003. Other reports from him do not specifically address whether appellant was totally disabled for more than four hours on April 29, 2010. Thus, Dr. Hakim's reports are insufficient to establish that appellant had additional compensable wage loss on April 29, 2010. As noted, part of appellant's burden of proof includes submitting rationalized medical evidence which supports a causal relationship between the alleged disabling condition and the accepted injury.

Likewise, no other medical evidence of records addresses whether appellant had more than four hours of disability on April 29, 2010 causally related to his accepted sciatica sustained on March 6, 2003. Consequently, the medical evidence did not establish that the claimed period of disability was due to appellant's employment injury of March 6, 2003.

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 failed to establish that he had more than four hours of disability on April 29, 2010 was causally related to the accepted employment injury.

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<sup>11</sup> See *id.* See also *supra* note 7.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 2, 2011 is affirmed.

Issued: November 14, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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