



## **FACTUAL HISTORY**

On January 28, 2011 appellant, then a 55-year-old urology health technician, sustained injury when her right foot got caught in a rug and she fell and landed on her right knee and left side of her face. She listed the nature of her injury as left knee contusion with swelling. On April 13, 2011 OWCP accepted appellant's claim for effusion of joint, lower leg and left knee. It paid medical benefits and compensation for intermittent periods. OWCP denied appellant's claim for wage-loss compensation for certain dates.

On August 8, 2011 appellant filed claims for intermittent compensation between February 22 and July 28, 2011. Her claim included a request for compensation for 3.5 hours on March 21, 2011 for a physician's visit; 8 hours on March 22 and 23, 2011 because "[Physician] ordered off"; and 3 hours on April 29, 2011 for a physician's visit. The claim also included requests for physical therapy for July 8, (1.25 hours), 19, (1.5 hours) and 26, 2011 (1.25 hours).

On March 21, 2011 Dr. Thomas P. Rooney, a treating Board-certified orthopedic surgeon, noted that, due to knee effusion, appellant was not to work until the next available office appointment of March 23, 2011. He completed a duty status report on March 23, 2011 that he examined her on that date, that she had work restrictions and that she was limited to only intermittent sitting and standing at work. Dr. Rooney listed the date of injury as January 28, 2011. He indicated in a clinic note with regard to her March 23, 2011 visit that appellant had been having pain medially with burning up the thigh for the last few days but she continued working. Dr. Rooney noted a slight effusion and medial tenderness. He also noted a half-inch atrophy on the left side and full motion with pain beyond 110 degrees flexion. By letter dated August 16, 2011, OWCP asked for further information.

The record contains notes of physical therapy on numerous dates including July 14, 18, 21 and 28, 2011. The notes indicate that appellant did not show for an appointment on July 19, 2011 and that she cancelled an appointment on July 26, 2011.

By decision dated October 20, 2011, OWCP denied appellant's claim for compensation for the period March 21 through 23, 2011.

In a decision dated October 20, 2011, OWCP accepted appellant's claim for certain hours of compensation between July 8 and 28, 2011. It denied her claim for compensation for April 29, (3 hours) and July 8 (1.25 hours), 19 (1.5 hours) and 26, 2011 (1.25 hours).

On October 4, 2011 appellant filed a claim for compensation for intermittent periods between August 18 and September 27, 2011. OWCP paid for certain periods but in letters dated October 12, 2011 asked for further information as to August 23 (7 hours ) and 25 (1/2 hour) and September 13, 2011 (8 hours). Medical evidence was submitted showing that appellant visited Dr. Rooney on August 22, 2011. Dr. Rooney noted that moderate swelling in her knee had subsided, with definite mild effusion and tenderness medially. There is also a medical report indicating that on September 14, 2011 appellant underwent an arthroscopy and chondroplasty of the patella.

By decision dated December 2, 2011, OWCP denied appellant's claim for compensation on August 23 and 25 and September 13, 2011.

On October 20, 2011 appellant filed a claim for compensation for total disability from October 6 through 12, 2011. She submitted an October 5, 2011 office visit note from Dr. Ann D. Layton, a Board-certified internist, who noted that appellant was having swelling in her left leg with left knee pain post arthroscopy. In a medical note also dated October 5, 2011, Dr. Layton stated that appellant was off work for one week due to her medical condition of leg/knee swelling and pain.

By letter dated October 25, 2011, OWCP requested further information from appellant. No further evidence was received.

In a decision dated December 5, 2011, OWCP denied appellant's claim for compensation from October 6 through 12, 2011.

Appellant disagreed with the October 20, 2011 decisions and requested reconsideration. The request was dated November 16, 2011 and received by OWCP on December 5, 2011. Appellant submitted a November 28, 2011 chart note from Dr. Rooney, who indicated that her knee was doing well with no swelling and very minimal pain. Dr. Rooney noted that she still had ankle and foot swelling. He indicated that appellant could resume her normal activities. Dr. Rooney opined that the swelling in the ankles was more secondary to venous insufficiency. He also completed a duty status report of the same date, noting that appellant may work full time. Appellant also resubmitted medical reports by Dr. Layton dated February 4 and 22 and October 5, 2011.

By decision dated January 10, 2012, OWCP denied modification of the decisions issued on October 20, 2011.

### **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. 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. 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 reliable, probative and substantial medical opinion evidence.<sup>2</sup> Such medical evidence must include findings on examination and the physician's opinion, supported by medical rationale, showing how the injury caused the employee disability for his or her particular work.<sup>3</sup>

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<sup>2</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>3</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.<sup>4</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.<sup>5</sup>

Appellant's burden of proving she was disabled on particular dates requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.<sup>6</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>7</sup> Generally, findings on examination are needed to justify a physician's opinion that a claimant is disabled for work.<sup>8</sup>

An injured employee may be entitled to compensation for lost wages incurred while obtaining authorized medical services.<sup>9</sup> This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location.<sup>10</sup> As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments.<sup>11</sup> However, 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 health care.<sup>12</sup>

### ANALYSIS

OWCP accepted appellant's traumatic injury claim for effusion of joint, lower leg and left knee. Thereafter, appellant claimed wage-loss compensation for intermittent periods of disability and for compensation for time taken for medical appointments. Although her claims for compensation were granted for numerous periods of time, there was a dispute about certain dates of compensation.

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<sup>4</sup> *Laurie S. Swanson*, 53 ECAB 517, 520 (2002). *See also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

<sup>5</sup> *T.B.*, Docket No. 12-244 (issued June 8, 2012).

<sup>6</sup> *E.C.*, Docket No. 11-2089 (issued May 21, 2012); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>7</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>8</sup> *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

<sup>9</sup> *See* 5 U.S.C. § 8103(a); *Gayle L. Jackson*, 57 ECAB 546, 547-48 (2006).

<sup>10</sup> 20 C.F.R. § 10.315; *see J.C.*, Docket No. 12-611 (issued September 12, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16a (October 2009).

<sup>11</sup> *See J.C., id.; see also, A.O.*, Docket No. 11-1892 (issued August 13, 2012); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

<sup>12</sup> *Id.*

OWCP denied appellant's claim for compensation for 3.5 hours on March 21, 2011 and for 8 hours on both March 22 and 23, 2011. Appellant's claim for 3.5 hours for a physician's appointment on March 21, 2011 is not supported by the evidence of the record. The March 21, 2011 note by Dr. Rooney appears to reference a telephone consultation, as he indicated that she should see him for the next available office appointment on March 23, 2011. The record does not support that appellant saw him on this date. With regard to March 22 and 23, 2011, there is no medical report establishing disability on these dates. Dr. Rooney noted pain and had slight effusion, medial tenderness and half-inch atrophy on the left side. He did not provide a rationalized opinion stating that appellant was unable to work on March 22 and 23, 2011 due to her accepted employment-related condition. Because the record fails to contain a physician's finding to support that she was disabled from work on the claimed days of disability due to her employment injury, the Board finds that she did not meet her burden of proof to establish her claim.<sup>13</sup> The evidence submitted with appellant's request for reconsideration provided does not support that she was disabled on March 22 or 23, 2011 or that she was attending a physician's appointment on March 21, 2011.

OWCP also determined that appellant did not establish disability for intermittent hours on April 29 and July 8, 19 and 26, 2011. Although there is some evidence that appellant was receiving physical therapy, there are no records that she was seen by a physical therapist or a physician on April 29 or July 8, 2011 or that therapy was for treatment of the employment injuries. The physical therapy notes indicate that she did not show for her appointment on July 19, 2011 and that she cancelled an appointment for July 26, 2011. The evidence submitted on reconsideration does not establish any appointments on these dates. Accordingly, the Board finds that appellant did not establish entitlement to wage-loss compensation on April 29 or July 8, 19 and 26, 2011.

On December 2, 2011 OWCP denied appellant's claim for compensation for certain hours on August 23 and 25 and September 13, 2011. There is no indication that appellant was seen on any of these dates by a medical professional. She was seen on August 22, 2011 by Dr. Rooney, but he made no comment with regard to excusing her for any portion of the workday on August 23 or 25, 2011. Although appellant did have surgery on September 14, 2011 there is no indication that she was disabled on the day prior to the surgery, September 13, 2011. Accordingly, the Board finds that she did not establish entitlement to wage-loss compensation on these dates.

On December 5, 2012 OWCP denied appellant's claim for compensation for total disability from October 6 through 12, 2011. Appellant saw Dr. Layton on October 5, 2011 and she excused appellant for one week from that date for leg/knee swelling and pain. However, Dr. Layton did not provide objective findings explaining her conclusion that appellant could not work that week or that the disability was employment related. Accordingly, OWCP properly denied appellant's claim for benefits from October 6 through 12, 2011.

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<sup>13</sup> L.C., Docket No. 12-530 (issued May 21, 2012).

The Board finds that appellant did not establish her entitlement to wage-loss compensation because the medical evidence did not sufficiently demonstrate that she was disabled during the claimed periods due to her accepted conditions.

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 and 10.607.

**CONCLUSION**

The Board finds that appellant has not established intermittent periods of disability from March 21 through October 12, 2011.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 10, 2012, December 5 and 2 and October 20, 2011 are affirmed.

Issued: November 8, 2012  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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