United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 12-565**
	)	**Issued: January 16, 2013**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, St. Louis, MO, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 9, 2012 appellant, through her attorney, filed a timely appeal from the October 26 and December 14, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant had disability for 96 hours from January 27 to February 11, 2011 or any disability for work commencing June 21, 2011 causally related to her accepted employment-related injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] On November 10, 2011 OWCP denied appellant's schedule award claim. On November 22, 2011 appellant, through counsel, submitted a request for a telephone hearing under section 8124. Because OWCP did not issue a final schedule award decision before the present appeal was filed, it is not an issue before the Board.

FACTUAL HISTORY

OWCP accepted that on December 10, 2010 appellant, then a 61-year-old customer service representative, sustained bilateral knee, head, and right elbow contusions and a left knee sprain when she stepped out of an elevator and tripped on an uneven floor at work. On January 27, 2011 it accepted arthropathy of the left ankle. Appellant stopped work on December 10, 2010 and returned to limited duty on February 22, 2011.

Appellant filed claims for disability compensation (Form CA-7) for the period January 27 to February 12, 2011. Leave analysis sheets for the claimed period revealed that she used eight hours of leave without pay (LWOP) on June 27, 28 and 31, 2010 and February 1 to 4 and 7 to 11, 2011 due to medical treatment.

The record contains a September 13, 2010 report from Dr. Neal L. Presant, Board-certified in family and occupational medicine, dated prior to the December 10, 2010 injury accepted in this case. Dr. Presant noted that appellant had been unable to work since early June because of an injury sustained in a fall. He noted that she requested advanced sick leave of 96 hours commencing July 13, 2010. Dr. Presant stated that appellant sustained injuries to her elbow and foot and that her physicians agreed that she was unable to work. He opined that she might be able to return to work by early October. Dr. Presant explained that it was unlikely that appellant would be able to return to work before December because she had a medical condition that would be considered "serious" under the criteria for advanced sick leave.

In a handwritten attending physician's report, a physician with an illegible signature listed appellant's complaint of increased back pain radiating down the left lower extremity and knee since a slip and fall at work on December 10, 2010. The form noted the diagnoses of acute chronic low back pain at L5 and acute left knee pain. It advised that appellant was disabled beginning December 10, 2010.

In a December 15, 2010 x-ray report, Dr. Bennett Greenspan, a Board-certified diagnostic radiologist, observed moderate to severe tricompartmental osteoarthritis of both knees and a loose body was seen in the left knee. He found no fracture or other osseous abnormalities. An x-ray of the lumbar spine revealed moderate to severe degenerative disc disease at L5-S1 and normal vertebral body heights.

In a December 15, 2010 report, Dr. Alexander Sheng, Board-certified in physical medicine and rehabilitation, noted appellant's complaint of back pain radiating down her left lower extremity and knee since a fall at work on December 10, 2010. Examination of the lumbar spine revealed tenderness diffusely in her lumbar paraspinals and spinous processes. Flexion was to approximately 60 degrees and extension to neutral. Examination of the left knee revealed slight effusion and tenderness all the way down to appellant's tibial crest on the left. Dr. Sheng observed crepitation and mild varus laxity on her knee. Lachman's and McMurray's tests were negative bilaterally. Dr. Sheng reviewed appellant's medical records and noted that an x-ray showed moderate to severe tricompartmental osteoarthritis in the knees with a loose body in the left knee. He diagnosed acute chronic low back pain with left lower extremity radicular features consistent with an L5 process and acute left traumatic knee pain in the setting of osteoarthritis and loose body status post fall concerning for osteochondral injury.

In a December 22, 2010 magnetic resonance imaging (MRI) scan report of the lumbar spine, Dr. Robert McKinstry, a Board-certified diagnostic radiologist, observed normal anatomic alignment and vertebral bodies without compression fractures. Degenerative endplate changes were present at L5 and S1. Dr. McKinstry diagnosed moderate multilevel degenerative disc disease, facet arthropathy, and ligamentum flavum thickening, most severe at L5-S1.

In a December 23, 2010 report, Dr. Timothy J. Oldani, a podiatrist, obtained a history of appellant's December 10, 2010 employment injury and related her inability to work since that time due to pain with weight-bearing activity. Upon examination, she complained of pain with palpation across the anterior aspect of the left ankle and across the Lisfranc joint of the left foot. A mild amount of localized edema was also present across the dorsal aspect of the left foot. X-rays revealed negative results. Dr. Oldani diagnosed left foot subtalar joint sprain and recommended an MRI scan of the left foot and ankle. He provided handwritten medical notes that were largely ineligible.

In a January 7, 2011 report, Dr. Bernard C. Randolph, Jr., Board-certified in physical medicine and rehabilitation, reviewed appellant's medical history since the December 10, 2010 employment injury. Upon examination, he observed tenderness at the right elbow and grossly normal motion. Appellant's cervical spine was normally aligned and range of motion was full and pain free. Examination of the wrists and hands revealed functional ranges of motion and no swelling or deformity. Tinel's, Finkelstein's and Phalen's tests of the wrists were negative. Dr. Randolph noted bilateral valgus deformities of both knees and pain with valgus stress and palpation along the medial and anterior aspect of the knee. Examination of the lumbar and thoracic spine revealed normal alignment and functional range of motion. Dr. Randolph stated that x-rays revealed basal joint arthritis of the wrists and tricompartmental osteoarthritis of the knees with no acute abnormalities. Based on appellant's history, she was involved in a December 10, 2010 work-related incident where she sustained contusions to the knees, right elbow, and both hands, and sprained her left knee. Dr. Randolph noted underlying degenerative disease evident bilaterally and recommended an MRI scan examination and physical therapy. He concluded that regarding work, appellant would be able to do most of her normal activities as long as she was allowed to rest or stretch her left knee approximately 10 minutes every hour.

In a January 18, 2011 report, Dr. Anthony M. Lombardo, a podiatrist, examined appellant for a left foot injury. He placed her in a below the knee cast and instructed her to return in three weeks for cast removal. On January 19, 2011 he noted that appellant was totally disabled as of December 14, 2010. In a January 21, 2011 return to work slip, Dr. Lombardo advised that appellant was unable to work until February 8, 2011. He restricted her to no lifting, standing, and walking and stated that she was only able to work sitting down.

By letters dated February 8 and 23, 2011, OWCP advised appellant that the medical evidence was insufficient to establish disability for the claimed period as a result of her accepted injuries. It requested additional evidence to support her claim.

On February 8, 2011 Dr. Lombardo examined appellant's left ankle and found no pain with palpation. Range of motion in dorsiflexion, plantarflexion, inversion and eversion of the subtalar joint was within normal limits. Dr. Lombardo authorized appellant to return to work on February 21, 2011.

In a February 10, 2011 MRI scan of the left knee, Dr. Catherine Beal, a Board-certified diagnostic radiologist, found advanced osteoarthritis of the anterior compartment, articular cortical irregularity, spurring, and articulate erosions and subchondral bone marrow signal change. She also noted a subchondral cyst formation cortical irregularity within the lateral tibial plateau and medial compartment spurring. Dr. Beal diagnosed advanced tricompartmental osteoarthritis predominating anteriorly and laterally and effusion with probable suprapatellar loose body.

On February 11, 2011 Dr. Randolph stated that the left knee MRI scan revealed degenerative disease but no acute ligament injuries. He diagnosed left knee contusion and sprain and bilateral knee contusions. Dr. Randolph restricted appellant to avoid kneeling, stooping, and squatting and intermittent standing. Following December 10, 2010, appellant was diagnosed with a fracture to her left foot and was unable to participate in physical therapy. Dr. Randolph listed her complaint of left knee discomfort, mainly in the anterior and somewhat medial area, and mild discomfort in the anterior aspect of the right knee. He noted that she had been off work from four to six weeks. Upon examination, Dr. Randolph observed a functional range of motion, mild pain on the extreme of flexion and crepitus on range of motion. Appellant complained of mild discomfort with valgus stress. Lachman's and McMurray's tests were negative. The MRI scan of the left knee revealed moderate to severe tricompartmental degenerative disease, a small effusion and a thinning of the meniscal cartilage without acute injury. Dr. Randolph diagnosed persistent mechanical knee pain primarily related to arthritic disease and contusions at the time of her fall.

In a February 18, 2011 return to work slip, Dr. Lombardo stated that appellant was able to return to work on February 22, 2011 under physical restrictions. The record reflects that appellant returned to work at full-time modified duty under the restrictions recommended by Dr. Randolph and Dr. Lombardo.

Appellant submitted physical therapy reports dated February 16 to March 2, 2011. She was treated for left ankle and bilateral knee pain.

In a March 7, 2011 MRI scan of the left ankle, Dr. David Wu, a Board-certified diagnostic radiologist, noted appellant's history of left ankle pain and swelling and possible fracture of the tarsal bone. He observed mild osteoarthritic changes with cartilage thinning in the subtalar joint and calcaneal-cuboid osteoarthritic disease. Appellant's lateral collateral and deltoid ligaments were intact. Dr. Wu diagnosed calcaneal-cuboid osteoarthritic disease with a four millimeters lateral marginal osteophyte of the distal calcaneus and subtalar and talonavicular osteoarthritic disease.

In an April 6, 2011 decision, OWCP denied appellant's claim of 96 hours of disability for the period January 27 to February 11, 2011. It found the medical evidence did not provide a rationalized opinion addressing her disability for the claimed hours as a result of her December 10, 2010 injury.

On April 22, 2011 appellant, through counsel, submitted a request for a telephone hearing, which was held on August 9, 2011. Counsel noted that Dr. Randolph treated appellant only for her elbow and knee conditions and, therefore, his opinion that appellant was capable of

returning to work referred only to these conditions. He noted that Dr. Lombardo treated appellant for her ankle and foot condition and did not authorize her to return to work until February 21, 2011. The hearing representative noted appellant's claim for disability compensation listed January 16, 2011 but the attached leave analysis report demonstrated that she had requested leave without pay beginning January 27, 2011.[3]

On May 18, 2011 the employing establishment confirmed that appellant had returned to modified duty on February 22, 2011. Appellant subsequently stopped work to undergo surgery for a nonwork-related left shoulder condition on April 8, 2011. She claimed leave following surgery from May 11 to 26, 2011. The record reflects that appellant returned to work following surgery on or about May 24, 2011.

In a decision dated June 21, 2011, OWCP denied appellant wage-loss compensation commencing June 21, 2011. It found that the medical evidence established that she was capable of work within the restrictions set by Dr. Lombardo and Dr. Randolph.

On June 30, 2011 appellant, through her attorney, submitted a request for a telephone hearing, which was held on October 6, 2011. She related that she returned to modified duty within her work restrictions after her December 2010 injury but stopped again due to an unrelated medical issue. Appellant returned again to work in June 2011. The hearing representative left the record open for 30 days for submission of additional medical evidence.

In an October 26, 2011 decision, OWCP's hearing representative affirmed the April 6, 2011 decision denying her claim for 96 hours of disability compensation from January 27 to February 11, 2011.

In a decision dated December 14, 2011, an OWCP hearing representative affirmed the June 21, 2011 decision denying wage-loss compensation commencing June 21, 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 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 probative and reliable medical opinion evidence.[4] 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.[5]

[3] Appellant also submitted physical therapy records.

[4] *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

[5] *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.[6] 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.[7]

The Board has held that according to section 8103, payment of expenses incidental to the securing of medical services encompasses payment for loss of wages incurred while obtaining medical services.[8] An employee is entitled to disability compensation for the loss of wages incident to treatment for an employment injury.[9]

ANALYSIS

OWCP accepted appellant's traumatic injury claim for head, bilateral knee, and right elbow contusions, left knee sprain and unspecified arthropathy of the left ankle sustained on December 10, 2010. Appellant filed claims for 96 hours of disability during the period January 27 to February 11, 2011. She also claimed disability commencing June 21, 2011 following surgery for a nonemployment-related left shoulder condition.

The Board finds that the evidence establishes that appellant was treated for her work-related injuries on February 8, 10 and 11, 2011 and is entitled to four hours of compensation for each date.[10] The record supports that, on February 8, 2011, Dr. Lombardo examined appellant's left ankle and found that her range of motion dorsiflexion, plantarflexion, inversion and eversion of the subtalar joint were within normal limits. Appellant underwent a February 10, 2011 MRI scan of the left knee and Dr. Beal observed advanced osteoarthritis of the anterior compartment, articular cortical irregularity, spurring, articulate erosions and subchondral bone marrow signal change. She diagnosed advanced tricompartmental osteoarthritis predominating anteriorly and laterally and effusion with probable suprapatellar loose body. The next day, Dr. Randolph stated that in a February 11, 2011 report that he examined appellant for complaints of left knee discomfort, mainly in the anterior and somewhat medial area and mild discomfort in the anterior aspect of the right knee. He observed functional range of motion, mild pain on the extreme of flexion, and crepitus on range of motion and diagnosed persistent mechanical knee pain. The Board finds that the medical evidence establishes that appellant received treatment for her employment-related injuries on February 8, 10 and 11, 2011, and is entitled to a total of 12 hours of compensation (four hours each) on these dates.

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[6] *Laurie S. Swanson,* 53 ECAB 517, 520 (2002); *see also Debra A. Kirk-Littleton,* 41 ECAB 703 (1990).

[7] *Jefferson, supra* note 4.

[8] 5 U.S.C. § 8103.

[9] *Daniel Hollars,* 51 ECAB 355 (2000); *Antonio Mestres,* 48 ECAB 139 (1996); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation,* Chapter 2.901.16(a) (December 1995).

[10] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters,* Chapter 3.900.8 (November 1998) (provides that, in general, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments.

The remaining medical evidence of record is insufficient to establish that appellant was disabled for the other 84 hours claimed as a result of her accepted December 10, 2010 employment injuries.

Appellant submitted various reports by Dr. Lombardo to support her claim for disability compensation. In a January 19, 2011 report, Dr. Lombardo examined appellant for a left foot injury after a December 10, 2010 fall at work. He noted placing her in an air cast and reported that appellant was totally disabled beginning December 14, 2010. In a January 21, 2011 return to work slip, Dr. Lombardo indicated generally that she would be unable to work until February 8, 2011. In a February 8, 2011, he authorized appellant to return to work on February 21, 2011. Although Dr. Lombardo opined that appellant was disabled from work until February 21, 2011, he did not provide any explanation or medical rationale addressing his stated conclusion. Although he noted that appellant's foot had been placed in an air cast, he did not explain why she would be disabled from performing the modified duties of her federal employment under the restrictions he set forth.

In a January 7, 2011 report, Dr. Randolph provided an accurate history of the December 10, 2010 injury and noted appellant's complaints of bilateral knee pain and some pain along the dorsal aspects of her wrists, hands and right elbow. Upon examination, he observed tenderness at the right elbow and functional ranges of motion with no swelling or deformity. Examination of appellant's knees revealed bilateral valgus deformities with valgus stress and palpation along the medial and anterior aspect of the knee. Dr. Randolph diagnosed left knee contusion and sprain and degenerative disease. He stated that appellant should be able to return to her normal work activities as long as she was allowed to rest or stretch her left knee approximately 10 minutes every hour. In a February 11, 2011 medical form, Dr. Randolph further restricted her to avoid kneeling, stooping and squatting. The Board finds that his reports fail to establish that appellant was disabled during the claimed period as he authorized appellant to return to work on January 7, 2011. Dr. Randolph's report does not support that she was unable to work from January 27 to February 11, 2011 as a result of her December 10, 2010 injuries.

The medical evidence is insufficient to establish that appellant was disabled during the claimed period as a result of her accepted December 10, 2010 employment injuries. The reports of Drs. Presant, Greenspan, Sheng, McKinstry, Oldani, Beal and Wu do not provide any opinion regarding appellant's inability to perform modified work during the claimed period as a result of her accepted injuries.

The record establishes that appellant returned to modified duty full time as of February 21, 2011. She continued working until she stopped on April 8, 2011 to undergo surgery for a nonaccepted left shoulder condition. OWCP denied appellant's claim for disability compensation benefits as of June 21, 2010. The evidence of record does not establish that appellant sustained disability due to her accepted conditions on or after April 8, 2011 or commencing June 21, 2011.

Appellant did not submit any medical evidence contemporaneous to her April 8, 2011 surgery or thereafter to support any period of disability for work due to residuals of her accepted conditions. There is no medical opinion from either Dr. Randolph or Dr. Lombardo, the

attending physicians, addressing whether appellant's December 10, 2010 injury necessitated the shoulder surgery or contributed to any disability for work as of June 21, 2011. The record reflects that appellant returned to work on May 24, 2011 and she testified at the October 6, 2011 hearing that she was performing work duties within her specified restrictions. There is no medical evidence addressing appellant's disability for work commencing June 21, 2011 in relation to the conditions accepted as arising out of the December 20, 2010 injury. For these reasons, the Board finds that she did not meet her burden of proof to establish disability commencing June 21, 2011.

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 established entitlement to compensation for 12 hours of medical treatment; but has not otherwise established that she was disabled from January 27 to February 11, 2011 or commencing June 21, 2011 as a result of her December 10, 2010 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the December 14 and October 26, 2011 decisions of the Office of Workers' Compensation Programs are affirmed, as modified.

Issued: January 16, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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