

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

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**A.V., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
St. Louis, MO, Employer**

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**Docket No. 09-191  
Issued: August 18, 2009**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 27, 2008 appellant filed a timely appeal from Office of Workers' Compensation Programs' April 3 and September 29, 2008 merit decisions. Under 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 has met his burden of proof in establishing that he was entitled to four hours of compensation for wage loss on September 27 and October 24, 2007 causally related to his federal employment.

**FACTUAL HISTORY**

Appellant, a 50-year-old letter carrier, filed a Form CA-2 claim for benefits on June 8, 2006, alleging that he developed degenerative disc disease causally related to factors of his employment. The Office accepted the claim for lumbosacral spondylosis. It paid appropriate compensation for temporary total disability. Appellant stopped work in February 2006 and

returned to intermittent part-time light duties until he stopped work on March 26, 2007. He returned to full-time light duties on August 3, 2007.

On November 16, 2007 appellant submitted CA-7 forms requesting eight hours of compensation for wage loss on September 27 and October 24, 2007.

By letter dated November 29, 2007, the Office advised appellant that compensation was payable for four hours for a medical examination with his treating physician he attended on September 27, 2007 and for a second opinion examination he underwent on October 24, 2007. It noted that it customarily authorized compensation for four hours for medical appointments. The Office stated that, if appellant required additional time for diagnostic testing or treatment, he needed to submit further medical evidence explaining the need for extended time. Appellant did not submit any additional medical evidence.

By decision dated April 3, 2008, the Office denied appellant's claim for additional compensation based on wage loss for medical appointments he attended on September 27 and October 24, 2007. It stated that it had requested additional medical evidence to support the claim for more than the four hours of compensation awarded for these dates; however, it had not received such evidence.

By letter dated April 7, 2008, appellant's attorney requested an oral hearing, which was held on July 14, 2008. At the hearing, appellant indicated that he did not require more than four hours for attending the September 27 and October 24, 2007 appointments.

By decision dated September 29, 2008, an Office hearing representative affirmed the April 3, 2008 decision. The Office stated that appellant had failed to submit medical evidence establishing a longer period for appointments than that for which he had already received compensation.<sup>1</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing that the essential elements of his or her claim by the weight of the evidence.<sup>3</sup> Under the Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.<sup>4</sup> For each period of disability claimed, the employee

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<sup>1</sup> The Board notes that appellant's attorney also requested a hearing on the issue of whether the Office properly denied authorization for lumbar fusion surgery in a separate decision dated April 3, 2008. Both of these issues were combined and discussed at the July 14, 2008 hearing. The Office hearing representative affirmed the April 3, 2008 determination denying authorization for surgery. This issue was adjudicated by the Board, by decision dated November 13, 2008, Docket No. 08-1439, in which it affirmed the Office's denial of authorization for the requested surgery.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *See Prince E. Wallace*, 52 ECAB 357 (2001).

has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>5</sup> 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.<sup>6</sup> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>7</sup> The Board will not require the Office 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 disability and entitlement to compensation.<sup>8</sup>

### ANALYSIS

In support of his claim, appellant submitted CA-7 forms for September 27 and October 24, 2007. The Office awarded him wage-loss compensation for four hours claimed for each of these dates. However, it denied compensation for any additional hours in its April 3, 2008 decision, noting that he was entitled to no more than four hours of compensation for routine medical appointments. It is noted that, while the Office's procedural manual provides that no more than four hours of compensation 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. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (June 1999). In this case, the Office determined that, while longer periods of time were allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care, appellant had failed to provide sufficient medical evidence to support that he was out on disability or attending a medical examination during the other periods he claimed. The Board affirms the Office's April 3, 2008 decision, as appellant failed to provide medical evidence establishing that he sustained disability causing wage loss above and beyond the periods awarded by the Office. Appellant requested a hearing but did not submit any additional medical evidence supporting his claim that he was entitled to more than four hours for the September 27 and October 24, 2007 medical appointments. In fact, he acknowledged in his testimony that he did not spend more than four hours of his time for these appointments on the dates in question.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

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<sup>5</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>6</sup> *Gary L. Watling*, 52 ECAB 278 (2001).

<sup>7</sup> *Manual Garcia*, 37 ECAB 767 (1986).

<sup>8</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> *Id.*

Consequently, appellant has not met his burden of proof to establish that he sustained any additional employment-related disability on September 27 and October 24, 2007. The Board will affirm the September 29, 2008 decision.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he was entitled to additional compensation for wage loss on September 27 and October 24, 2007 causally related to his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 29 and April 3, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: August 18, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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