



with restrictions on September 1, 2004. Appellant returned to work on December 13, 2004 in a temporary appointment as a wildlife biologist with a term limit not to exceed one year. By decision dated March 3, 2005, the Office determined that her actual wages as a wildlife biologist fairly and reasonably represented her wage-earning capacity and that she suffered no loss of wage-earning capacity. Appellant subsequently requested a schedule award. In a decision dated July 28, 2005, the Office granted 10 percent impairment to the left leg. The award ran from March 24 to October 28, 2005. Effective March 18, 2005, appellant's position as a wildlife biologist was terminated due to lack of work and funding. On January 4, 2006 she underwent another left shoulder arthroscopy, which the Office approved.<sup>1</sup>

By decision dated April 20, 2007, the Office awarded appellant compensation for the period January 4 through August 8, 2006 but disallowed her claim for compensation benefits after August 8, 2006.<sup>2</sup>

On May 12, 2009 the Office received a Form CA-7 claim for compensation for wage loss from March 14, 2004 through May 28, 2005. The employing establishment reported the relevant dates appellant was terminated and reinstated. It also indicated that she had received wage-loss compensation and/or schedule award compensation for all or part of the period claimed.

In a May 21, 2009 letter, the Office advised appellant that it had previously paid compensation for the period May 27 through December 10, 2004,<sup>3</sup> when she was compensated on an automatic basis, and from March 24 through October 28, 2005, when she received a schedule award. It requested additional factual and medical information from appellant and the employing establishment for the periods March 14 through May 26, 2004 and December 13, 2004 through March 23, 2005.

In a May 28, 2009 letter, the employing establishment verified the dates appellant was employed and those dates she was not employed. Pay rate information was also submitted. No additional information was received from appellant.

By decision dated November 20, 2009, the Office denied appellant's claim for wage-loss compensation from March 14, 2004 through May 28, 2005.

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<sup>1</sup> This case was previously before the Board. In a February 1, 2007 decision, the Board affirmed a June 9, 2006 Office decision finding that appellant did not establish a basis for modification of the March 3, 2005 wage-earning capacity decision. The case was remanded for a determination on whether she had any disability arising from her January 4, 2006 authorized surgery. Docket No. 06-1712 (issued February 1, 2007).

<sup>2</sup> The Office noted that payment from January 4 through February 9, 2006 was the only period that could be processed at that time. Appellant was to verify her entitlement to compensation and her employment status for the period February 10 through August 8, 2006 before the Office could process the remainder of the compensation.

<sup>3</sup> Office records actually support that compensation for disability was paid through December 12, 2004, not December 10, 2004.

## LEGAL PRECEDENT

The term disability as used in the Federal Employees' Compensation Act means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>4</sup> Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by probative medical evidence.<sup>5</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>6</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.<sup>7</sup>

## ANALYSIS

The Office accepted that appellant sustained a left meniscus tear, bilateral shoulder sprain and left chondromalacia patella due to her March 9, 2004 work injury. It also authorized surgeries which appellant underwent on May 27 and July 8, 2004, and January 4, 2006 for her right knee and left shoulder. Appellant claimed compensation for leave without pay for the period March 14, 2004 through May 28, 2005.

The record reflects appellant was paid disability compensation benefits for the period May 27 through December 10, 2004. She also received a schedule award that was paid from March 24 through October 28, 2005. As appellant was paid compensation for these periods, she is not entitled to any additional compensation for the same periods.<sup>8</sup>

Appellant claimed compensation for the entire period March 14, 2004 through May 28, 2005. For the period March 14, 2004 to the date of her authorized knee surgery on May 27, 2004 she submitted no evidence to demonstrate an inability to work. From May 27 through December 10, 2004 appellant received total disability compensation. She was working for the employing establishment from December 12, 2004 until her termination on March 18, 2005. Payment for appellant's schedule award began on March 24, 2004 and continued until October 28, 2005. The only period for which she was not either receiving compensation or was employed was from March 14 to May 27, 2004. Although appellant was advised in the Office's May 21, 2009 letter to submit additional information pertaining to those

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<sup>4</sup> 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

<sup>5</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>6</sup> *Id.*; see *W.F.*, 57 ECAB 705 (2006).

<sup>7</sup> *L.D.*, 61 ECAB \_\_\_\_ (Docket No. 09-1503, issued April 15, 2010); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>8</sup> See *Dale Mackelprang*, 55 ECAB 174 (2003) (it is well established that a claimant is not entitled to dual workers' compensation benefits for the same injury).

periods, no further information was submitted. The record has no evidence to support entitlement to compensation during these periods. 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.<sup>9</sup> The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>10</sup> The Board finds that there is no such evidence in this case.

On appeal appellant contends she has not been reimbursed for any of her lost wages. As noted, however, she was compensated for wage-loss compensation and/or schedule award compensation for much of the period claimed. For the other portions of intermittent disability, appellant did not submit sufficient evidence to establish that she was unable to work due to residuals of her accepted conditions. She also raised issues concerning her employment and inability to find work. The Board has jurisdiction over decisions of the Office in cases arising under the Act.<sup>11</sup> The only Office decision over which the Board has jurisdiction, the November 20, 2009 decision, addressed only appellant's entitlement to compensation for disability from March 14, 2004 through May 28, 2005. The Board has no jurisdiction over the other matters.

### **CONCLUSION**

The Board finds that appellant has not established entitlement to further wage-loss compensation from March 14, 2004 through May 28, 2005 causally related to her March 9, 2004 work injury.

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<sup>9</sup> See *Amelia S. Jefferson*, *supra* note 7.

<sup>10</sup> See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>11</sup> See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 20, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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