

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

E.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ware Shoals, SC, Employer**

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**Docket No. 10-428
Issued: October 22, 2010**

Appearances:
Greg Dixon, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 4, 2009 appellant filed a timely appeal from August 12 and October 22, 2009 decisions of the Office of Workers' Compensation Programs denying periods of wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant established total disability for work for the period January 3 to 30, 2009; and (2) whether appellant was entitled to wage-loss compensation in addition to a schedule award for the period June 9 to September 28, 2007.

FACTUAL HISTORY

The Office accepted that on September 18, 2001 appellant, then a 44-year-old city carrier, sustained a torn left medial meniscus with internal derangement and chondromalacia when she slipped and fell on a porch step. It later accepted lumbar sbluxation, a displaced lumbar disc without myelopathy and chronic pain syndrome.

Dr. William B. Evins, an attending orthopedic surgeon, treated appellant for left knee and lumbar conditions beginning in 2002. He performed left knee arthroscopy on December 10, 2003 with removal of loose bodies and joint debridement. Dr. Evins submitted periodic reports through 2006.

Beginning in May 2005, appellant was followed by Dr. Christie B. Mina, an attending Board-certified neurosurgeon, who diagnosed degenerative lumbar disc disease from L4 to S1 with a small disc bulge at L4-5.

Dr. John C. Haasis, an attending Board-certified anesthesiologist, administered lumbar facet block injections at L3, L4 and L5 on June 7, 2007. He held appellant off work from June 7 to 12, 2007. Dr. Haasis performed another series of facet injections on September 7, 2007.

Appellant claimed a schedule award. By decision dated March 4, 2008, the Office granted her a schedule award for a 15 percent impairment of the left lower extremity.¹ The period of the award ran from March 18, 2007 to January 14, 2008.²

In a June 23, 2008 report, Dr. Mina noted the recent onset of right lower extremity symptoms related to a herniated L4-5 disc. She held appellant off work for intermittent periods in October and November 2008 due to lumbar pain with right-sided radiculopathy.³ Dr. Mina also held appellant off work in January 2009. In a January 19, 2009 report, she held appellant off work from January 3 to 10 and January 16 to 20, 2009 due to the accepted lumbar conditions. In a January 26, 2009 report, Dr. Mina held appellant off work from January 23 to 27, 2009 “due to injury on the job.”

On February 11, 2009 appellant filed claims for wage loss for periods of disability from June 9 to September 28, 2007. On February 16, 2009 she claimed wage loss for total disability from January 3 to 30, 2009. The Office advised appellant of the medical evidence needed to establish her claims.

In a March 16, 2009 report, Dr. Mina noted that, beginning in the fall of 2008, she prohibited appellant from working overtime or lifting more than 20 pounds. On April 1, 2009 she explained that it was “nearly impossible” for appellant to work from January through March 2009 due to side effects of Skelaxin, Lyrica and Cymbalta prescribed for radicular pain. Dr. Mina advised appellant not to work, or “work as you are able to work.”⁴

¹ The record indicates that appellant received a prior schedule award under a separate claim for a 13 percent left lower extremity impairment. Added to the prior award, she had a 28 percent impairment of the left lower extremity.

² By decision dated July 21, 2008, the Office denied compensation for the period May 12 to June 8, 2007. It vacated this decision on March 17, 2009 and awarded wage-loss compensation for the period May 12 to June 8, 2007.

³ Appellant underwent caudal steroid injections on July 24, September 11, 2008 and February 17, 2009.

⁴ On May 21, 2009 Dr. Mina performed an L4-5 hemilaminectomy, discectomy and foraminotomy, authorized by the Office.

By decision dated May 14, 2009, the Office denied wage-loss compensation for the period June 9 to September 28, 2007 as appellant received compensation under a schedule award for the same injury from March 18, 2007 through November 14, 2008.

By decision dated August 12, 2009, the Office denied compensation from January 3 to 30, 2009 on the grounds that the medical evidence was insufficient to support the claimed period of disability.

In September 9 and 16, 2009 letters, appellant requested reconsideration of the May 14 and August 12, 2009 decisions. She asserted that lumbar facet injections totally disabled her for work from June 9 to September 28, 2007. Appellant contended that she receive wage-loss compensation concurrent with the schedule award as the two benefits pertained to different injuries. The schedule award was for knee impairment but she was disabled for work due to the accepted lumbar condition.

By decision dated October 22, 2009, the Office modified its May 14 and August 12, 2009 decisions, granting four hours of compensation for medical appointments on January 26, August 3 and September 27, 2009. It denied compensation for the remainder of the period January 3 to 30, 2009, finding Dr. Mina's opinion insufficiently rationalized. The Office also denied wage-loss compensation from June 9 to September 28, 2007 as appellant received a schedule award for that period.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.⁶

To establish a causal relationship between a claimed period of disability and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

ANALYSIS -- ISSUE 1

Appellant claimed she was totally disabled for work from January 3 to 30, 2009 and thereby entitled to wage-loss compensation. The Office denied the claim by August 12 and October 22, 2009 decisions based on a lack of rationalized medical evidence. It allowed four hours of compensation for medical appointments on January 26, August 3 and September 27, 2009.

In support of her claim, appellant submitted reports from Dr. Mina, an attending Board-certified neurosurgeon. In January 19 and 26, 2009 reports, Dr. Mina held appellant off work from January 3 to 10, 16 to 20 and 23 to 27, 2009 due to the accepted lumbar conditions. However, she did not provide medical rationale explaining how and why the accepted conditions disabled appellant for work for those periods. Without such rationale, Dr. Mina's reports are insufficient to meet appellant's burden of proof to establish disability for the other dates claimed.¹⁰

Dr. Mina explained in an April 1, 2009 report that, during January 2009, she advised appellant not to work, or "work as ... able to work," because it was "nearly impossible" for her to work due to medication side effects and radicular pain. She opined that it was possible, nearly impossible or appellant's choice as to whether she was able to work. This opinion is too equivocal to establish that appellant was totally disabled for work from January 3 to 30, 2009.¹¹ As appellant did not provide sufficient rationalized medical evidence establishing total disability for the claimed periods, the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provisions of the Federal Employees' Compensation Act¹² provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.¹³

¹⁰ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹¹ *L.R. (E.R.)*, 58 ECAB 369 (2007).

¹² 5 U.S.C. §§ 8101-8193.

¹³ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

A schedule award is payable consecutively but not concurrently with an award for wage loss for the same injury.¹⁴ A schedule award for one injury may be paid concurrently with compensation for wage loss paid for another injury, as long as the two injuries do not involve the same part of the body.¹⁵

ANALYSIS -- ISSUE 2

The Office granted appellant a schedule award for left knee impairment, paid from March 18, 2007 to January 14, 2008. Appellant later filed a claim for wage-loss compensation, from June 9 to September 28, 2007, a period encompassed by the schedule award. The Office denied the claim on the grounds that simultaneous receipt of wage-loss compensation and a schedule award was a prohibited dual benefit. It properly allowed four hours of compensation on August 3 and September 27, 2009 for medical appointments.

Appellant asserted that she was disabled for work from June 9 to September 28, 2007 due to a series of lumbar injections administered on June 7 and September 7, 2007 to treat accepted lumbar disc displacement and chronic pain. The claimed period of wage-loss compensation is thus unrelated to the left knee injury for which appellant received the schedule award. The Office's procedures provide that wage-loss compensation and schedule award benefits may be paid concurrently if they do not involve the same part of the body.¹⁶ As the lumbar spine and left knee are different regions of the body, the Board finds the case should be remanded to the Office for further development to determine if appellant was disabled for work from June 9 to 28, 2007 due to the accepted lumbar conditions. The Office will then issue an appropriate decision in the case.

CONCLUSION

The Board finds that appellant did not establish total disability for work for the period January 3 to 30, 2009. The Board further finds that the case is not in posture for a decision regarding appellant's entitlement to wage-loss compensation for the period June 9 to September 28, 2007.

¹⁴ *Thomas J. Engelhart*, 50 ECAB 322 (1999); *Joseph R. Waples*, 44 ECAB 936 (1993). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 808.5(a)(3) (January 2010). See also A. Larson, *The Law of Workers' Compensation* §§ 58.15, 58.20 (1992).

¹⁵ *J.B.*, Docket No. 08-1178 (issued December 22, 2008); see *Michael J. Biggs*, 54 ECAB 595 (2003). Federal (FECA) Procedure Manual, *id.* at Chapter 2.808.5.(a)(4) (January 2010).

¹⁶ *J.B.*, *supra* note 15; Federal (FECA) Procedure Manual, *supra* note 14 at Chapter 2.808.5.(a)(4) (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 22 and August 12, 2009 are affirmed in part regarding the denial of compensation for the period January 3 to 30, 2009, and set aside in part regarding the denial of wage-loss compensation from June 9 to September 28, 2007. The case is remanded to the Office for further development consistent with this opinion.

Issued: October 22, 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