

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

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D.B., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE  
INFORMATION SYSTEMS AGENCY,  
St. Louis, MO, Employer**  
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**Docket No. 11-209  
Issued: August 5, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On November 1, 2010 appellant timely appealed the May 13, 2010 merit decision of the Office of Workers' Compensation Programs, which denied her claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant is entitled to wage-loss compensation for temporary total disability on September 18, 22 and 23, 2009.

**FACTUAL HISTORY**

Appellant, a 58-year-old information technology specialist, has an accepted claim for contusions of the left knee and left lower leg and left chondromalacia patellae, which arose on March 14, 2005.<sup>1</sup> She resumed her regular duties on April 11, 2005. Appellant received

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<sup>1</sup> She slipped and fell down a flight of stairs in the performance of duty.

continuation of pay and compensation from OWCP for intermittent wage loss. OWCP also granted a schedule award for 10 percent impairment of the left lower extremity.

Dr. Donald R. Bassman, a Board-certified orthopedic surgeon, examined appellant on September 18, 2009. Appellant's chief complaint at the time was localized left knee pain. Dr. Bassman diagnosed left knee chondromalacia and referred appellant for a magnetic resonance imaging (MRI) scan. Appellant was to return for follow-up after obtaining a new left knee MRI scan. Dr. Bassman did not specifically comment on appellant's work status and what, if any, restrictions applied. OWCP approved the requested MRI scan, which appellant obtained on September 28, 2009.

On September 25, 2009 appellant filed a claim for compensation (Form CA-7) for a total of 24 hours of lost wages on September 18, 22 and 23, 2009. She claimed to have been off work based on her doctor's advice. On September 28, 2009 appellant filed another Form CA-7 for three hours of lost wages due to the MRI scan she obtained that same day.

OWCP paid appellant for the three hours claimed for her September 28, 2009 MRI scan. However, with regard to the 24 hours of wage loss claimed for the period September 18 to 23, 2009, OWCP advised appellant that she needed to file a notice of recurrence (Form CA-2a) and provide the necessary medical evidence establishing a causal relationship between the claimed period of disability and her accepted March 14, 2005 employment injury.

OWCP subsequently received an October 28, 2009 report from Dr. Bassman who noted that appellant had returned for a follow-up visit regarding her left knee. Dr. Bassman also noted that appellant's recent MRI scan was negative. He reported that appellant had been able to stay off her knee for a few days and there was a decrease in swelling. However, the cause of the swelling was unclear. Dr. Bassman further noted that appellant's knee had never fully recovered from her March 14, 2005 fall at work. He indicated that appellant needed to continue with her quadriceps exercises. Dr. Bassman diagnosed left knee chondromalacia patella and advised appellant to return as needed.

Appellant later filed a claim for four hours of lost wages associated with her October 28, 2009 medical appointment, which OWCP paid.

In a decision dated December 8, 2009, OWCP denied appellant's claim for disability beginning September 18, 2009. It explained that, while the relevant contemporaneous medical evidence referenced appellant's complaints of left knee pain and included a diagnosis of chondromalacia patella, the reports did not indicate that appellant was disabled during the claimed period.

On April 7, 2010 appellant requested reconsideration. She submitted Dr. Bassman's March 17, 2010 treatment notes and a narrative report dated March 31, 2010. When Dr. Bassman examined appellant on March 17, 2010, he noted that her left knee continued to be symptomatic. He also noted that her knee had never really responded to any of the medication or therapy prescribed since her original work injury in 2005. Appellant complained of daily pain and swelling. Also, stairs continued to bother her, as well as kneeling and squatting. Appellant reported feeling some grinding, at times, like clicking in the knee with extension. Dr. Bassman

further noted that previous MRI scans showed chondromalacia without any meniscal tears. Appellant took Advil twice daily and continued to elevate her knee. Dr. Bassman diagnosed left knee chondromalacia patella. He also indicated that appellant could continue at her present job, which she reportedly was able to tolerate. Dr. Bassman further noted that appellant would like to elevate her legs with a stool if possible. Appellant was instructed to return for follow-up on an as needed basis.<sup>2</sup>

In a report dated March 31, 2010, Dr. Bassman provided a chronology of appellant's treatment dating back to May 17, 2005, which included medication (NSAID), physical therapy, a home exercise program and multiple MRI scans. He described her March 14, 2005 employment injury when she fell down some stairs at work. Dr. Bassman noted that by October 2005, appellant's left knee symptoms had improved to the point where her pain was rated 1 out of 10. However, in November 2005, appellant continued to experience left knee pain due to an "unspecified aggravation." Her left knee complaints persisted despite her home exercise program and negative/normal MRI scans. Dr. Bassman noted that he continued to treat appellant over the next several years and her diagnosis over the entire period was chondromalacia patella. He further indicated that when seen in 2008 and 2009 appellant continued to complain of pain, stiffness and occasional swelling. Also, stairs were noted to be a problem for appellant. Dr. Bassman commented that appellant's latest MRI scan from September 2009 was normal and when he recently saw her, appellant had reported similar complaints as before. He explained that appellant never fully recovered from her original injury. However, appellant was able to return to her employment, which involved sitting and working at a computer. Dr. Bassman noted that factors that might cause a recurrence would be any that would increase the stress on the articular surface of the patella. He further indicated that appellant's recurring disability was the same as the original disability. Dr. Bassman added that her patella was more prone to recurrence with stress or contusion. Lastly, he indicated there were no precipitating factors that would have caused this condition by itself. Dr. Bassman reiterated that appellant's original injury was caused by a fall down the stairs at work.

By decision dated May 13, 2010, OWCP denied modification of the December 8, 2009 decision.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>3</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such

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<sup>2</sup> OWCP paid appellant for three hours of lost wages for her March 17, 2010 medical appointment with Dr. Bassman.

<sup>3</sup> 20 C.F.R. § 10.5(x) (2010).

an assignment are altered so that they exceed her established physical limitations.<sup>4</sup> Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy her burden of proof by showing a change in the nature and extent of the injury-related condition such that she was no longer able to perform the light-duty assignment.<sup>5</sup>

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally related to the original injury.<sup>6</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.<sup>7</sup> The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>8</sup>

An injured employee may also 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 the medical care.<sup>12</sup>

### ANALYSIS

Appellant stopped work for three days in September 2009 reportedly on the advice of her treating physician. She filed a claim for wage-loss compensation for a total of 24 hours during the period September 18 to 23, 2009. Dr. Bassman examined appellant on September 18, 2009, and reported complaints of localized left knee pain. He diagnosed left knee chondromalacia and referred appellant for an MRI scan. However, Dr. Bassman did not specifically comment on appellant’s work status. During a follow-up visit on October 28, 2009, he reviewed the latest

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<sup>4</sup> *Id.*

<sup>5</sup> *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

<sup>6</sup> 20 C.F.R. § 10.104(b); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>7</sup> *See Helen K. Holt*, *supra* note 6.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

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

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16a (October 2009).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

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

MRI scan and advised appellant to return on an as needed basis. While Dr. Bassman noted decreased swelling after appellant had been able to stay off her knee for a few days, he did not identify the particular time frame nor did he indicate that appellant stopped working on his advice or instructions. When appellant next saw Dr. Bassman on March 17, 2010, his treatment notes for that visit did not specifically address the claimed period of disability in September 2009. Dr. Bassman's latest report, dated March 31, 2010, similarly failed to specifically address the claimed period of disability in September 2009. He noted in "2009" that appellant continued to complain of pain, stiffness, occasional swelling and a problem navigating stairs. Dr. Bassman also mentioned that appellant's September 2009 left knee MRI scan was normal. Additionally, his March 31, 2010 report referenced "recurring disability." However, Dr. Bassman did not specifically indicate that appellant was disabled from work on September 18, 22 and 23, 2009 due to her employment-related left chondromalacia patellae. Accordingly, the relevant medical evidence does not establish entitlement to 24 hours of wage-loss compensation for temporary total disability on September 18, 22 and 23, 2009.

While appellant has not established entitlement to compensation for temporary total disability, wage-loss compensation may be awarded for documented periods when an injured employee obtained authorized medical services.<sup>13</sup> As noted, Dr. Bassman examined appellant on September 18, 2009 and recommended that she obtain an MRI scan, which she did on September 28, 2009. OWCP compensated appellant for the three hours she claimed for obtaining the recommended MRI scan. It also compensated appellant for subsequent visits to Dr. Bassman on October 28, 2009 and March 17, 2010. In each instance, Dr. Bassman diagnosed left knee chondromalacia patellae, which is an accepted condition arising from appellant's March 14, 2005 employment injury. Under the circumstances, the Board finds that appellant is entitled to four hours of wage-loss compensation for her September 18, 2009 examination by Dr. Bassman.

### CONCLUSION

Appellant did not establish entitlement to wage-loss compensation for temporary total disability on September 18, 22 and 23, 2009. However, she is entitled to four hours of wage-loss compensation on September 18, 2009 for medical treatment received in connection with her accepted employment injury. Accordingly, OWCP's May 13, 2010 decision is modified to reflect appellant's entitlement to four hours of wage-loss compensation on September 18, 2009.

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<sup>13</sup> See 5 U.S.C. § 8103(a); *Gayle L. Jackson, supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 5, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board