

factors of his federal employment. OWCP accepted the claim for bilateral wrist sprain and bilateral carpal tunnel syndrome. Appellant underwent authorized carpal tunnel surgeries on March 17, April 14 and October 20, 2009 and January 12, 2010.

On December 8, 2008 appellant claimed intermittent disability, from January 29 through July 19, 2008, that totaled 336 hours. Doctor visits in 2008 were listed as being on January 29, February 5 and 28, April 24, May 7, 21 and 28, June 17 and 23 and July 2, 2008. Appellant submitted prescription notes from Dr. Martin H. Rubin, a Board-certified internist, commencing February 8, 2008. In a July 25, 2008 medical note, Dr. Rubin noted the dates of treatment, the type of treatment provided and stated that appellant was unable to work due to pain.

In a January 27, 2009 letter, OWCP asked that appellant provide rationalized medical evidence supporting that the claimed disability was due to the accepted conditions.

In a January 28, 2009 report, Dr. Rubin stated that appellant's chronic daily pain, due to his bilateral carpal tunnel syndrome, led to frequent loss of hand function, worse on the left. He noted that while pain medication provided some symptom relief, the side effects prevented appellant from performing even light duty. In prescription notes dated February 10, 11, 13² and 16,³ 2009, Dr. Rubin stated that appellant was unable to work due to carpal tunnel syndrome. On February 16, 2009 he released appellant to work with restrictions.

In a February 16, 2009 work release, Dr. Kraig M. Burgess, an orthopedic surgeon, released appellant to light-duty work effective February 17, 2009. In a February 23, 2009 work release, he opined that appellant could work with restrictions effective February 24, 2009.

Appellant subsequently filed a claim for compensation for intermittent periods from September 2, 2008 through October 19, 2009. From September 2, 2008 through February 28, 2009 he claimed 208 hours of leave without pay. The employing establishment certified 144 hours, noting that appellant used either annual or sick leave or was scheduled to be off for the claimed dates of September 8, October 20, November 9, December 16 and 17, 2008 and January 5, 6 and 22, 2009. From March 2 through 13, 2009, appellant claimed 72 hours due to hand pain and a March 12, 2009 doctors visit. From March 14 to 20, 2009, appellant claimed 48 hours of total disability. From March 17 through May 30, 2009, appellant claimed total disability as a result of recovery from the March 17, 2009 left carpal tunnel release and the April 14, 2009 right carpal tunnel release. For the period June 1 through 6, 2009, appellant claimed 40 hours of total disability. The employing establishment stated that appellant worked part-time light duty as of June 1, 2009 and that the claimed eight hours leave without pay on June 6, 2009 was a scheduled day off. From June 8 through 20, 2009, appellant claimed 56 hours while, from June 27 to July 4, 2009, appellant claimed 12 hours leave without pay and 16 leave buyback hours for June 29 and 30, 2009. For the period July 6 through 10, 2009, appellant submitted a Form CA-7, but no time analysis form. From July 13 to 17, 2009, appellant claimed

² Dr. Rubin opined appellant was totally disabled due to carpal tunnel syndrome February 12 and 13, 2009.

³ Dr. Rubin opined appellant was totally disabled on February 14, 2009 from a flare-up of carpal tunnel syndrome. He opined that appellant could return to limited-duty work.

12 hours leave without pay and 16 hours leave buyback, which the employing establishment denied. For the period July 20 through 31, 2009, appellant claimed 47.25 hours.

Appellant also filed a recurrence of disability claim for the period July 24 through October 19, 2009. The employing establishment stated that he was released to full-time work effective July 20, 2009, but he worked part time through July 24, 2009. Appellant missed work on July 27, 2009, worked 4.75 hours on July 28, 2009, missed work on July 29, 2009, worked a full day on July 30, 2009 and stopped work completely on July 31, 2009.

Medical notes beginning in 2008 were submitted, including those for treatment and disability due to the March 17, April 14 and October 20, 2009 and January 12, 2010 carpal tunnel surgeries. Dr. Burgess released appellant to light-duty work effective February 24, 2009.⁴ In a March 9, 2009 duty status report, Dr. Rubin stated that appellant could not work due to left hand pain and the effects of pain medication. Appellant underwent carpal tunnel surgeries on March 17 and April 14, 2009. On June 1, 2009 he returned to part-time light-duty work. On July 20, 2009 Dr. Burgess released appellant to full-time work effective July 21, 2009. In his July 20, 2009 report, Dr. Burgess noted that appellant had increased pain which he attributed to checking trucks over a two-day period. The objective examination was essentially normal. Dr. Burgess opined that appellant could return to full-time limited-duty work. He also noted that from a surgical standpoint, appellant could return to his original rural letter carrier job. In a July 27, 2009 report, Dr. Burgess noted that appellant reported a difficult time performing job activities. Examination showed full digital and wrist mobility with discomfort on extremes of wrist flexion and extension. A positive Tinel's and Phalen's examination was noted, greater on the left than the right. Dr. Burgess referred appellant to repeat electrodiagnostic studies and released him to full-time light-duty work. A work release with appellant's restrictions was provided.

In medical notes dated August 3 and 7, 2009, Dr. Rubin noted that appellant was seen for increased pain. In an August 10, 2009 report, Dr. Burgess noted that appellant advised that he was unable to work due to severe pain and simple daily tasks and activities had become impossible. Physical examination showed objective findings out of proportion to subjective complaints. Motor strength testing in all major groups revealed weakness which was likely effort related. Dr. Burgess provided an impression of status post bilateral carpal tunnel release and unexplained chronic hand pain bilateral. He noted that appellant and his wife stated that he was incapable of any work, even light duty. Dr. Burgess provided appellant an off-work slip with no return to work until seen in follow up after his electromyogram evaluation and pain management consultation.

In a September 14, 2009 report, Dr. Burgess indicated that appellant underwent repeat neurodiagnostic evaluation and a second opinion. He noted that appellant related the decline in his progress to being sent back to work to check all of the locked car doors at the worksite. Examination revealed discomfort with neurogenic testing of the median nerve as Palen's and Tinel's maneuver bilaterally. Review electrodiagnostic evaluation showed normal ulnar, motor and sensory components in addition to improvement in the right median conduction but

⁴ There are no medical notes supporting claimed temporary total disability for the period September 2, 2008 through February 28, 2009.

worsening of the left median nerve compared to the August 2008 study. Dr. Burgess placed appellant in an off-work status pending results of further testing and examination.

On September 30, 2009 OWCP requested additional information. It noted the medical evidence required to support disability causally related to the accepted work injury as well as time off for medical appointments. From September 2, 2008 to February 28, 2009, it found the medical evidence supported that appellant attended medical appointments on October 2 and November 9, 2008 and January 28, February 10 and 23, 2009, but he was only entitled to 16 total hours of compensation as November 9, 2008 was a scheduled day off. From March 2 to 13, 2009, OWCP noted that the medical evidence supported that appellant could perform limited duty. From March 14 to 16, 2009, no medical evidence was provided to support either a medical appointment or total disability.

OWCP accepted that appellant was totally disabled for the period March 17 through May 29, 2009 due to the March 17, 2009 left carpal tunnel release and the April 14, 2009 right carpal tunnel release.⁵ From June 1 to 6, 2009, it noted that appellant was released to part-time limited duty as of June 1, 2009 and thus compensation was only established for 4 hours per day, although appellant was paid 32 hours of the 40 claimed for this period. The eight hours claimed for June 6, 2009 was not payable as it was a scheduled day off. OWCP paid the total claimed for the period June 8 through 20, 2009 (56 hours) and for the period June 27 through July 4, 2009 (12 hours). For the period July 6 through 10, 2009, it noted that a leave analysis form (CA-7a) was not provided and the employing establishment would not certify the claim without such form. From July 13 to 17, 2009, OWCP paid the 12 hours of leave claimed for partial disability while, from July 20 to 31, 2009, OWCP found that appellant established 16 hours total for time off for medical appointments on July 20, 24, 27 and 29, 2009. It found additional factual and medical evidence were needed to support appellant's recurrence claim for the period beginning July 24, 2009. It noted that appellant was released to full-time work, effective July 20, 2009, but he worked part time through July 24, 2009, missed work on July 27, 2009, worked 4.75 hours on July 28, 2009, missed work on July 29, 2009, worked 8 hours on July 30, 2009 and stopped work beginning July 31, 2009. OWCP informed appellant that no action would be taken on his leave buyback requests as it was within the employing establishment's discretion. Appellant was requested to provide additional factual and medical evidence to support his claims.

On September 10, 2009 Dr. Peter J. Campbell, a Board-certified orthopedic surgeon, conducted a fitness-for-duty examination based on Dr. Burgess' recommendation. He opined that, although OWCP accepted appellant's carpal tunnel as work related, the condition more likely represented idiopathic carpal tunnel-related syndrome that was multifactorial and more likely due to appellant's morbid obesity and diabetes mellitus. Dr. Campbell opined that the cause of appellant's subjective complaints was unknown and examination was limited secondary to his withdrawal-type reaction to any attempted examination. He noted that appellant's subjective complaints of postoperative pain exceeded that which would be expected for normal postoperative pillar pain. For the right hand, the nerve condition study supported improvement, with findings borderline normal, while, on the left, there was a noted worsening of the left

⁵ OWCP indicated that it would correct any difference in the pay rate between the date-of-injury pay rate of January 28, 2008 and the accepted date disability began of March 17, 2009 when it received corrected pay rate information from the employing establishment.

median nerve conduction compared to the August 2008 study. A repeat neurolysis was needed to assure complete depression. Appellant could work with left hand restrictions but no restrictions on the right hand. He opined that the only benefit of a functional capacity evaluation would be to evaluate appellant's effort and reliability during the examination.

In an October 5, 2009 report, Dr. Burgess noted that the employing establishment offered appellant a position with unrestricted use of his right hand in which he would case mail and deliver mail, which appellant did not think he could perform. He stated that appellant felt he was disabled. Dr. Burgess noted no significant change in appellant's examination. While appellant had extreme weakness to grip and thenar motor strength testing, Dr. Burgess felt it was somewhat effort related. Dr. Burgess noted the electrodiagnostic evaluation revealed persisted left median nerve entrapment compared to the 2008 study and opined that appellant may have had an incomplete medial release and repeat surgery was necessary. He opined that appellant could not safely drive a vehicle and case a route with one hand.

In two separate decisions dated March 5, 2010, OWCP addressed appellant's multiple claims for compensation from January 29, 2008 through October 19, 2009. For the period January 28 through July 19, 2008, OWCP found the employing establishment certified only 72 hours of the 336 hours claimed and, of the 72 certified hours, appellant was entitled to only 4 hours for a February 5, 2008 medical appointment. It found there was no clear medical opinion with objective findings which supported the claimed temporary total disability was causally related to the accepted injury and that he had used either annual or sick leave or was scheduled to be off for the other dates claimed.

For the period September 2, 2008 through October 19, 2009, OWCP granted appellant the time lost for medical appointments and temporary total and partial disability which were supported by the medical evidence and certified by the employing establishment as noted in its September 30, 2009 letter. It found that appellant did not establish claimed total disability for the 144 certified hours for the period September 2, 2008 through February 28, 2009 other than the 16 hours payable for medical appointments. For the claimed 72 hours covering the period March 2 through 13, 2009 and the claimed 24 hours for the period March 14 through 16, 2009, it found no medical evidence supported either a medical appointment or total disability. Compensation for the period July 6 through 10, 2009 was denied as no CA-7a was received. For the remaining 31.25 hours claimed for the period July 20 through 31, 2009, it found the medical evidence insufficient to support disability due to the accepted injury. It denied appellant's recurrence claim for the period July 24 through October 19, 2009 but found appellant had established 40 total hours for medical appointments on July 24, 27 and 29, August 4, 7 and 10, September 10, 14 and 21, and October 5, 2009, which the employing establishment certified.

Appellant requested a telephonic hearing, which was held on June 15, 2010.

By decision dated September 3, 2010, an OWCP hearing representative affirmed OWCP's March 5, 2010 decisions, finding that the remaining dates of claimed disability were not causally related to the accepted employment conditions.

LEGAL PRECEDENT

The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁶ 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.⁷ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁸ 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.⁹

The Board will not require OWCP 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 an employee to self-certify their disability and entitlement to compensation.¹⁰

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.¹¹ Appellant's burden of proving he was disabled on particular dates requires that he furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.¹² Where no such rationale is present, the medical evidence is of diminished probative value.¹³ Generally, findings on examination are needed to justify a physician's opinion that a claimant is disabled for work.¹⁴

An injured employee may be entitled to compensation for lost wages incurred while obtaining authorized medical services.¹⁵ This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location.¹⁶ As a matter of practice, OWCP generally limits the amount of compensation to four

⁶ *Paul E. Thams*, 56 ECAB 503 (2005).

⁷ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *D.I.*, 59 ECAB 158 (2007).

¹⁰ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *S.F.*, 59 ECAB 525 (2008).

¹² *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹³ *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁴ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

¹⁵ *See* 5 U.S.C. § 8103(a) (2006); *Gayle L. Jackson*, 57 ECAB 546, 547-48 (2006).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16a (October 2009).

hours with respect to routine medical appointments.¹⁷ 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.¹⁸

ANALYSIS

OWCP accepted that appellant sustained bilateral wrist sprain and bilateral carpal tunnel syndrome and it authorized several surgeries. Appellant returned to work with restrictions following his carpal tunnel surgeries. He requested intermittent periods of compensation for the period September 2, 2008 through October 19, 2009.

For the period January 28 through July 19, 2008, appellant claimed a total of 336 hours.¹⁹ There is no medical evidence of record supporting that the claimed temporary total disability is causally related to the accepted conditions or that appellant attended a medical appointment due to the accepted conditions. Medical notes dated February 5 and July 25, 2008, listed the dates of treatment, treatment provided and stated that appellant was unable to work due to pain; however, there was no finding that appellant was disabled from work on those dates due to his employment-related conditions or any explanation as to why a work-related condition caused any disability. Appellant has not established additional entitlement to compensation for temporary total disability or wage-loss compensation for authorized medical services during the period January 28 through July 19, 2008.

For the period September 2, 2008 through February 28, 2009, appellant claimed 208 total hours of leave without pay. The medical evidence fails to support additional temporary total disability or medical appointments beyond the 20 hours deemed payable for medical appointments on October 2, 2008,²⁰ and January 28, February 10, 11 and 13, 2009. Dr. Rubin indicated in his January 28, 2009 report that medication side effects prevented him from performing light-duty work. However, he failed to identify any particular period of total disability or provide a medical explanation as to why such side effects from the medication were disabling. Furthermore, Dr. Rubin opined that appellant could work with restrictions on February 16, 2009 and did not indicate whether the pain medication was discontinued. Dr. Burgess released appellant to light duty effective February 17, 2009 and again released him to work with restrictions on February 24, 2009, but Dr. Burgess provided no explanation as to why appellant was unable to work, due to his accepted conditions, for any uncompensated period prior to the work release dates. Thus, appellant has not established additional entitlement to compensation for wage-loss compensation during this period.

OWCP denied the claimed 72 hours of disability for the period March 2 through 13, 2009 and the claimed 24 hours of disability for the period March 14 through 16, 2009. There is insufficient medical evidence to establish that this disability was causally related to the accepted

¹⁷ *Id.* at Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

¹⁸ *Id.*

¹⁹ Appellant was paid four hours for a medical appointment on February 5, 2008.

²⁰ Compensation for November 9, 2008 is not payable as this was a scheduled day off.

conditions. In his March 9, 2009 report, Dr. Rubin opined that appellant was unable to work due to hand pain. However, Dr. Rubin failed to indicate any objective findings or medical reasoning to support how appellant's accepted condition changed such that appellant could not continue working light duty, which Dr. Burgess had released appellant effective February 24, 2009. A physician's opinion, which does not address causal relationship, is of diminished probative value.²¹ While appellant claimed eight hours for a March 12, 2009 doctor's appointment there is no medical evidence supporting that appellant received authorized medical services on that date. There is no other medical evidence to support temporary total disability for the periods claimed. Thus, appellant has not established entitlement to compensation for total disability or wage-loss compensation for authorized medical services during the claimed periods.

For the period March 17 through May 30, 2009, OWCP paid temporary total disability from March 17 through May 29, 2009. There was no medical evidence to support work-related total disability for May 30, 2009. For the period June 1 through 6, 2009, appellant was paid 32 hours of the claimed 40 hours. The eight hours claimed for June 6, 2009 was a scheduled day off; thus, appellant is not entitled to compensation for that day. No other evidence was provided to support entitlement for that day. From June 27 through July 4, 2009, appellant received 12 hours of leave without pay, but was denied compensation for 16 hours of leave buyback for June 29 and 30, 2009. The Board notes that there is no medical evidence that appellant was treated for his accepted condition or was totally disabled due to his accepted condition on either of these dates. Thus, OWCP properly denied appellant's claim for 16 hours of leave buyback for June 29 and 30, 2009.

For the period July 6 through 10, 2009, appellant did not provide a Form CA-7a detailing his claimed disability. The record reflects that appellant returned to work in a part-time light-duty position on June 1, 2009. Dr. Burgess saw appellant on July 6, 2009 and released him to limited-duty work effective July 7, 2009. The record also indicates that appellant attended physical therapy on July 9, 2009. Thus, appellant is entitled to four hours compensation for his medical appointment of July 6, 2009 and four hours compensation for his physical therapy session of July 9, 2009, for a total of eight hours. The record contains no medical evidence to support total disability due to the accepted conditions, or wage-loss incidental to medical treatment for the accepted conditions, for July 7, 8 or 10, 2009.

From July 13 to 17, 2009, OWCP paid appellant 12 hours of leave without pay, but noted the 16 hours of leave buyback was denied by the employing establishment. In situations where compensation is claimed for periods when leave was used, OWCP has the authority and the responsibility to determine whether the employee was disabled during the period for which compensation is claimed.²² It determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buyback, after which the employing establishment will determine whether it will allow the

²¹ See *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

²² See *Glen M. Lusco*, 55 ECAB 148 (2003); see also 20 C.F.R. § 10.425.

employee to buy back the leave used.²³ The Board has no authority to overrule an employing establishment's determination regarding leave buyback.²⁴

For the period July 20 through 31, 2009, appellant claimed 47.25 hours but received 16 hours of compensation for medical appointments on July 20, 24, 27 and 29, 2009. The record indicates that Dr. Burgess released him to full-time full-duty work beginning July 20, 2009. While appellant saw Dr. Rubin on July 24 and 29, 2009, he indicated that appellant was seen for bilateral hand pain, treated with medication and placed on temporary total disability. Dr. Rubin, however, did not support disability due to the accepted work conditions or explain how appellant became totally disabled due to his accepted conditions after Dr. Burgess, a treating physician, released him to full-duty work. Thus, Dr. Rubin's reports are insufficient to establish that appellant sustained intermittent disability between July 20 through 31, 2009 due to his accepted employment conditions.

The record reflects that appellant stopped work completely on July 31, 2009. The medical evidence does not establish a causal connection between the claimed disability beginning this date and the accepted work conditions. As noted, on July 20, 2009 Dr. Burgess released appellant to regular work. This was based on an essentially normal objective examination. In his July 27, 2009 report, Dr. Burgess performed an objective examination and imposed some restrictions pending diagnostic testing. However, he released appellant to full-time light-duty work.²⁵ In his August 10, 2009 report, Dr. Burgess noted that appellant's objective findings were out of proportion to his subjective complaints. He provided appellant an off-work slip with no return to work based on appellant's report he was unable to work and pending further evaluation. The Board has held that when a physician's statements regarding a claimant's ability to work consist only of a repetition of the claimant's complaints that he hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.²⁶ In his September 14, 2009 report, Dr. Burgess reported a worsening of the left median nerve and placed appellant in an off-work status pending further testing. He did not offer an opinion as to how appellant's left hand condition was due to the accepted condition and why it necessitated total disability. On October 5, 2009 Dr. Burgess noted that there was no significant change in appellant's examination and the weakness in grip and thenar motor strength testing were effort related. While he opined that appellant may have had an incomplete release and a repeat operation was necessary, he offered no opinion explaining why appellant's disability was causally related to his accepted conditions.

Dr. Rubin's notes of August 3 and 7, 2009 report seeing appellant for increased pain. However, they fail to support total disability as Dr. Rubin did not offer an opinion on disability or provide any objective findings. Medical evidence which does not offer an opinion regarding

²³ *Id.*

²⁴ *Id.*

²⁵ There is no evidence to indicate that the employing establishment did not make appropriate light-duty work available.

²⁶ *John L. Clark*, 32 ECAB 1618 (1981).

the cause of an employee's condition is of limited probative value on the issue of causal relationship.²⁷

While Dr. Campbell noted a worsening of appellant's left hand on September 10, 2009, based on a review of diagnostic testing, he did not support that appellant was totally disabled due to the accepted conditions. Instead, he opined that appellant could work with no restrictions on the right hand and restrictions on the left hand. He further noted that appellant's subjective complaints of pain exceeded that which would be expected for normal postoperative pain.

Appellant has not submitted a well-reasoned medical opinion explaining how his claimed total disability is causally related to his accepted conditions. The Board finds that appellant has not met his burden of proof, except as noted, to establish that his claimed disability is causally related to his accepted conditions.

On appeal, appellant's counsel argues that OWCP's decision is contrary to fact and law. As explained, except for finding appellant is entitled to wage-loss compensation on July 6 and 9, 2009, for wage-loss incidental to medical treatment for his accepted employment injury, appellant has not established entitlement to the claimed period of compensation.

CONCLUSION

Appellant is entitled to four hours of wage-loss compensation on both July 6 and 9, 2009 for a total of eight hours for medical treatment received in connection with his accepted employment injury. Appellant has not otherwise established entitlement to wage-loss compensation for total disability for intermittent periods from January 29, 2008 through October 19, 2009.

²⁷ See *supra* note 21.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 3, 2010 is affirmed, as modified.

Issued: December 15, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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