United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 10-577**
	)	**Issued: January 24, 2011**
DEPARTMENT OF THE ARMY, VERMONT NATIONAL GUARD, Colchester, VT, Employer	)	

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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 28, 2009 appellant, through counsel, filed a timely appeal from the November 24, 2009 merit decision of the Office of Workers' Compensation Programs, denying intermittent periods of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant established intermittent periods of disability from February 1 through March 28, 2009.

On appeal, appellant, through her attorney, contends that the decision is contrary to fact and law.

FACTUAL HISTORY

On August 14, 2008 appellant, then a 33-year-old human resources specialist, sustained an injury to her left knee and right foot while moving furniture. She underwent a left knee arthroscopy on December 3, 2008. On January 5, 2009 the Office accepted appellant's claim for

left knee contusion and sprain. On January 9, 2009 appellant was released by Dr. Michael Barnum, her Board-certified orthopedic surgeon, to work with restrictions four hours a day. After her return to part-time employment, the Office paid compensation for disability for the remaining four hours a day.

Appellant continued to have medical treatment and physical therapy. In a March 6, 2009 report, Dr. Barnum indicated that he saw her on that date for follow up. Notes also indicate that appellant had physical therapy on numerous occasions during this period, including on February 3 and 6 and March 6, 2009.

On February 13, 2009 appellant filed claims for intermittent periods of disability between February 1 and March 28, 2009. In addition to requesting compensation for the four hours a day that she was unable to work, she also requested compensation for an additional two hours on February 5, 2009 and for an additional four hours (total eight hours a day) on February 3, 6, 9, 10 and 11, 2009. Appellant stated that her knee buckled during her doctor's visit on February 3, 2009 and that she had an appointment with her doctor and therapy on February 6, 2009. She noted that on February 9, 10 and 11, 2009 she was awaiting work at an alternate duty location. Appellant also requested an additional four hours (total eight hours) on February 20, 2009 stating "inability to be mobile due to knee" and one hour on March 6, 2009 for a doctor's appointment and physical therapy. She requested an additional four hours for March 20, 2009 for "reinjury/relapse." The Office paid wage loss for about 116 hours of intermittent disability.

By decision dated May 18, 2009, the Office denied appellant's claim for additional compensation. For the period February 1 through 14, 2009, it noted that 40 hours were paid and that there was no entitlement to the additional 22 hours claimed. With regard to the period February 15 through 28, 2009, the Office noted that 36 hours were paid and that appellant had no entitlement to the additional 4 hours. From March 15 through 28, 2009, 40 hours were paid and that there was no entitlement to an additional 4 hours claimed. The Office stated that there was no medical evidence to establish that she was disabled from work for the remaining hours claimed.

On June 4, 2009 the employing establishment indicated that it had received appellant's request for 13.5 hours of administrative leave from February 9 and 11, 2009. The employing establishment noted that administrative leave would be granted as she had not been compensated by the Office. For February 6, 2009 appellant was authorized to use eight hours of leave without pay as she had a scheduled doctor's appointment in the morning and a physical therapy appointment in the afternoon.

On June 2, 2009 appellant requested a telephonic hearing by an Office hearing representative.

On June 23, 2009 the Office accepted appellant's claim for reflex sympathetic dystrophy (RSD).

At the hearing held on September 9, 2009, appellant's attorney argued that her claim should be remanded in light of the fact that it recently accepted RSD. Counsel contended that appellant was going to be discharged from her job when she was discharged from the National

Guard due to RSD. He argued that it should be the burden of the employing establishment to establish that appellant was unable to work.

By decision dated November 24, 2009, an Office hearing representative affirmed the May 18, 2009 decision.

LEGAL PRECEDENT

The term disability, as used in the Federal Employees' Compensation Act means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of the injury.[1] In other words, if an employee is unable to perform the required duties of the job in which she was employed when injured, the employee is disabled.[2] Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[3]

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury.[4] The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[5]

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. 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.[6] Where no such rationale is present, the medical evidence is of diminished probative value.[7]

Section 8103(a) of the Act provides that an employee may be furnished necessary and reasonable transportation and expenses incident to the securing of medical services.[8] The Board has interpreted this section to authorize payment for loss of wages incurred while obtaining

[1] *Patricia A. Keller*, 45 ECAB 278, 286 (1993).

[2] *Id.*

[3] *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

[4] *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

[5] *Fereidoon Kharabi*, *id.*

[6] *Ronald E. Eldridge*, 53 ECAB 218 (2001).

[7] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[8] 5 U.S.C. § 8103(a).

medical services. Compensation for wage loss may be authorized while obtaining the medical services and for a reasonable time spent traveling to and from the provider's location.[9]

ANALYSIS

The Office accepted appellant's claim for left knee contusion and left knee sprain. It subsequently accepted her claim for RSD. After appellant's left knee arthroscopy on December 3, 2008, her physician released her to return to work as of January 9, 2009 for four hours a day at limited duty. From February 1 through March 28, 2009 she was paid compensation for four hours a day of wage loss. Appellant seeks additional compensation for other hours of intermittent disability.

Appellant contends wage loss for medical treatment and/or physical therapy on February 3, 5 and 6 and March 6, 2009. The record reflects that she had an appointment with Dr. Barnum on March 6, 2009. In a note of that date, Dr. Barnum stated that he saw appellant for follow-up. There is also a March 6, 2009 note directing physical therapy signed by Dr. Barnum. The record reflects that appellant had physical therapy on several occasions as detailed in physical therapy treatment notes on February 3 and 6 and March 6, 2009. Office procedures provide that wage loss for compensable medical examinations or treatment may be reimbursed.[10] The Board has held that for a routine medical appointment, a maximum of four hours of compensation is usually allowed.[11] Accordingly, the Board finds that appellant is entitled to four hours of compensation on February 3 and 6, 2009 for attending physical therapy sessions and one hour of compensation for March 6, 2009 for her doctor's appointment and physical therapy session, as she requested.

Regarding appellant's request for compensation for February 5 and 20 and March 20, 2009, there is no medical evidence to establish that she was disabled on these dates or had medical appointments related to treatment of her accepted conditions. The Office properly denied wage-loss compensation for these dates.

With regard to the compensation claimed for the period February 9 through 11, 2009, the hearing representative noted that the employer provided administrative leave for this time. Accordingly, this period of time is no longer at issue in this case.

Therefore, the Board finds that appellant has established entitlement to nine hours of compensation for February 3 and 6 and March 6, 2009. Appellant has not established entitlement to additional compensation for the remaining dates claimed.

[9] *Gayle L. Jackson*, 57 ECAB 546 (2006).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (December 1995).

[11] *William A. Archer*, 55 ECAB 674 (2004).

CONCLUSION

The Board finds that appellant has established entitlement to four hours of compensation on February 3 and 6, 2009 and one hour of compensation on March 6, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 24, 2009 is affirmed, as modified.

Issued: January 24, 2011
Washington, DC

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

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

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