

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

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**Y.K., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
NORTH TEXAS HEALTH CARE SYSTEM,  
Dallas, TX, Employer**

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**Docket No. 10-1296  
Issued: March 7, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 24, 2010 appellant filed a timely appeal from a March 5, 2010 decision of the Office of Workers' Compensation Programs denying her claim for 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.

**ISSUE**

The issue is whether appellant established that she was disabled for work 16.25 hours to attend four medical appointments July 9 to 28, 2009.

On appeal, appellant asserted that new evidence accompanying her appeal request established that she attended medical appointments on July 9, 15, 21 and 28, 2009, incurring 16.25 hours of wage loss.

## **FACTUAL HISTORY**

The Office accepted that on June 20, 2008 appellant, then a 56-year-old traveling registered nurse, sustained rib and finger fractures, a dislocated right little finger, a right shoulder injury, neck and back sprains, displaced lumbar discs, contusions of the chest, thorax and left leg in a motor vehicle accident while returning from a patient home care visit. It also accepted a transfusion reaction due to treatment related to the accepted injuries. Appellant received wage-loss compensation for temporary total disability through September 28, 2008. She returned to full-time light duty on September 29, 2008.<sup>1</sup> Appellant remained under medical care and participated in physical therapy through September 2009. She received wage loss for intermittent work absences to attend medical appointments.

On July 14 and 31, 2009 appellant filed a claim for 16.25 hours of wage loss to attend medical appointments from July 9 to 28, 2009: 4 hours for x-rays on July 9, 2009; 4 hours for a medical appointment on July 15, 2009; 4.25 hours for a medical appointment and physical therapy on July 21, 2009 and 4 hours for a medical appointment and physical therapy on July 28, 2009.

In a September 17, 2009 letter, the Office advised appellant of the evidence needed to establish her claim for wage loss from July 9 to 28, 2009. It noted that there were no medical reports of record to support that she attended appointments on the dates claimed. Appellant was afforded 30 days to submit additional evidence.<sup>2</sup> She did not submit any response.

By decision dated March 5, 2010, the Office denied appellant's claim for wage-loss compensation from July 9 to 28, 2009. It found that she did not submit medical documentation supporting that she attended medical appointments on July 9, 15, 21 and 28, 2009 as claimed.

## **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his or her claim by the weight of the evidence.<sup>4</sup> Under the Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.<sup>5</sup> For each period of disability claimed, the employee has the burden of

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<sup>1</sup> By decision dated February 12, 2009, the Office found a \$5,282.56 overpayment of compensation as appellant received temporary total disability compensation from September 29 to October 25, 2008 after she returned to full-time work. This decision is not before the Board on the present appeal.

<sup>2</sup> By decision dated September 17, 2009, the Office denied appellant's claim for 10.5 hours of compensation from May 24 to June 6, 2009 as she submitted insufficient evidence to establish disability for that period. This decision is not before the Board on the present appeal.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *See Prince E. Wallace*, 52 ECAB 357 (2001).

establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>6</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>7</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 an employee to self-certify their disability and entitlement to compensation.<sup>8</sup>

An injured employee is 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, the Office generally limits the amount of compensation to four hours with respect to routine medical appointments.<sup>11</sup> Longer periods of time may be allowed when required by the nature of the procedure or the need to travel a substantial distance to obtain the medical care.

### ANALYSIS

The Office accepted that appellant sustained multiple fractures and contusions in a June 20, 2008 motor vehicle accident. Appellant claimed a total of 16.25 hours of wage-loss compensation for attending medical appointments on July 9, 15, 21 and 28, 2009. The Office advised her in a September 17, 2009 letter that she must submit medical reports supporting that she attended appointments on the dates claimed. However, appellant did not submit such evidence.

As stated, the Office is not required to pay wage-loss compensation in the absence of medical evidence documenting disability for the dates claimed.<sup>12</sup> Appellant did not submit medical documentation showing that she attended medical appointments on July 9, 15, 21 and 28, 2009. Therefore, the Office's March 5, 2010 decision denying her claim for wage loss from July 9 to 28, 2009 is proper under the law and facts of this case.

On appeal, appellant asserted that new evidence accompanying her appeal request established that she attended medical appointments on July 9, 15, 21 and 28, 2009, entitling her to 16.25 hours of wage-loss compensation as claimed. The Board may not consider evidence for the first time on appeal that was not before the Office at the time of the final decision in the

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<sup>6</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>7</sup> *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

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

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16a (December 1995).

<sup>11</sup> *Id.* at Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

<sup>12</sup> *Amelia S. Jefferson*, *supra* note 8; *Fereidoon Kharabi*, *supra* note 8.

case.<sup>13</sup> Therefore, the Board will not review the documents accompanying appellant's request for appeal. However, appellant may submit such evidence to the Office accompanying a valid request for reconsideration.

**CONCLUSION**

The Board finds that appellant has not established that she was disabled for work for 16.25 hours to attend four medical appointments from July 9 to 28, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 5, 2010 is affirmed.

Issued: March 7, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>13</sup> 20 C.F.R. § 501.2(c).