

FACTUAL HISTORY

On September 11, 2009 appellant, then a 60-year-old contact representative, filed a traumatic injury claim alleging that she bruised her knee, broke her arm and sustained a lump on her head when she fell in the performance of duty. The Office accepted her claim for closed fracture of the base of fourth and fifth metacarpal bones of the right hand. It authorized surgery on September 23, 2009. Dr. Jeffrey A. Klugman, a Board-certified orthopedic surgeon, performed an open reduction with pinning of the right fifth metacarpal base fracture/dislocation on September 30, 2009. On October 7, 2009 the Office expanded appellant's claim to include the additional condition of dislocation of the right hand.

On October 26, 2009 appellant filed a claim for compensation requesting wage-loss compensation for the period October 28 through November 13, 2009. She indicated that she used four hours of leave on October 28 and 30, 2009 as well as on November 3, 4, 11 and 13, 2009. On November 6, 2009 appellant used three hours of leave. She indicated that she underwent therapy on all dates except November 3, 2009 when she had a doctor's appointment. In a letter dated October 30, 2009, the Office requested that appellant provide medical evidence of disability on the dates claimed. It allowed 30 days for her response.

On October 20, 2009 Dr. Klugman referred appellant to physical therapy two times a week for eight weeks. He released her to return to work on that date. Dr. Klugman examined appellant on November 3, 2009 and indicated that she could continue to work with restrictions. On November 12, 2009 appellant requested authorization for physical therapy. She submitted physical therapy notes dated October 20 and November 16, 2009.

Appellant completed a second claim for compensation on November 12, 2009 and requested wage-loss compensation from November 17 through December 18, 2009. She indicated that she used four hours of leave for a doctor's appointment on November 17, 2009 and that she used four hours for rehabilitation on November 18, 25, December 2, 4, 9, 11, 16 and 18, 2009 as well as three hours of rehabilitation on November 20, 2009. Appellant again requested physical therapy authorization on November 12, 2009. The Office responded on November 20, 2009 and requested that she provide medical evidence of disability or medical treatment for the hours claimed. It allowed 30 days for a response.

Dr. Klugman examined appellant on November 17, 20 and December 1 and 15, 2009.

Appellant submitted a document dated December 2, 2009 indicating that she had completed appointments on October 28, 30, November 4, 11, 13, 18, 20, 25 and December 2, 2009 with "HUERC," the initials of one of her physical therapy providers. She submitted a physical therapy note dated December 16, 2009.

By decision dated December 28, 2009, the Office denied appellant's claim for compensation for 19 hours of leave without pay for the period October 30 through November 13, 2009. It stated that she had received compensation for October 28 and November 3, 2009.

A physical therapy note indicated that appellant received treatment on December 9, 2009. Appellant also submitted a document indicating that she had appointments on December 4, 11 and 16, 2009 with “HUERC.” The facsimile transmittal sheet from the employing establishment indicated that these were physical therapy appointments.

By decision dated January 14, 2010, the Office issued a decision denying appellant’s claims of compensation for 51 hours of leave without pay for the period October 30 through December 18, 2009. It found that she had not provided the necessary medical evidence to establish four hours of leave without pay on October 30, November 6, 11, 13, 18 and 25, December 2, 4, 11 and 18, 2009 as well as three hours of leave without pay on November 4 and 20, 2009. The Office stated that appellant had submitted medical evidence supporting treatment on October 28, November 3 and 17, 2009 as well as December 9 and 16, 2009 for which she was compensated.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.³

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁴ Findings on examination are generally needed to support a physician’s opinion that an employee is disabled for work. When a physician’s statements regarding an employee’s ability to work consist only of repetition of the employee’s complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁵ 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 employees to self-certify their disability and entitlement to compensation.⁶

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical

² *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ 20 C.F.R. § 10.5(f); *but see, Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁴ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵ *Id.*

⁶ *Id.*

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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.⁸ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

Under the Office regulations, section 10.310(a), the employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which it considers necessary to treat the work-related injury.¹⁰

ANALYSIS

Appellant has the burden of proof to establish disability for the periods claimed. The Office's procedure manual provides that, as a rule, no more than four hours of compensation should be allowed for routine medical appointments.¹¹ Appellant has submitted claims for compensation alleging that she lost intermittent hours from work beginning October 30, 2009. The Office authorized compensation on October 28, November 3 and 17, 2009 as well as December 9 and 16, 2009. Appellant has submitted several medical reports from Dr. Klugman indicating that he provided treatment for appellant on November 3, 17, 20 and December 1 and 15, 2009. It did not authorize compensation for November 20, 2009 for the three hours for Dr. Klugman's office appointment. As the medical evidence establishes that Dr. Klugman provided an examination and treatment on November 20, 2009 and it is related to appellant's work-related injury and consistent with other similarly accepted appointments, the Board finds that appellant is entitled to compensation for her lost time from work to attend this appointment.

Appellant has also indicated that her claim for lost time from work was due to physical therapy appointments. She has submitted documentation from Dr. Klugman prescribing physical therapy as well as a list of appointments with "HUERC" corresponding to the dates she claimed compensation. While these documents are not sufficient to meet appellant's burden of proof to establish her claim for medical treatment on the dates in question, they are sufficient to require the Office to further develop the medical evidence and the case record.¹²

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ 20 C.F.R. § 10.310(a) (2010).

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

¹² *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

On remand, the Office should request a list of physical therapy dates from her authorized physical therapists and compare these dates with appellant's claimed periods of disability due to the medical treatment. After this and such other development as it deems necessary, the Office should issue an appropriate decision addressing the specific periods of compensation claimed.

CONCLUSION

The Board finds that this case is not in posture for decision. On remand the Office should conduct further development of the factual and medical record in accordance with this decision of the Board.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2010 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: May 6, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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