

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

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P.W., Appellant )

and )

DEPARTMENT OF DEFENSE, DEFENSE )  
LOGISTICS AGENCY, HUMAN RESOURCE )  
ACTIVITY, Fort Belvoir, VA, Employer )

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**Docket No. 11-352  
Issued: September 20, 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 November 30, 2010 appellant filed a timely appeal from an August 16, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for disability compensation and November 2, 2010 decision denying her request for a review of the written record. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish that she was disabled from April 19 to 30, 2010 as a result of her accepted left wrist and emotional conditions; and (2) whether OWCP properly denied appellant's request for a review of the written record under 5 U.S.C. § 8124(b) as untimely.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On July 22, 2009 appellant, then a 52-year-old human resource specialist, filed a traumatic injury claim alleging that on July 20, 2009 she sustained a wrist injury, stress, and trauma due to an employee grabbing and pulling her wrist to prevent her from leaving a room. A witness stated that appellant's wrist was swollen and bruised. Appellant stopped work on July 20, 2009. OWCP accepted appellant's claim for left wrist sprain and adjustment disorder with mixed disturbance of emotions.

Appellant received disability compensation for the periods September 4, 2009 to April 16, 2010 and May 31 to November 20, 2010. On October 24, 2010 appellant was placed on the periodic rolls.

On June 2, 2010 OWCP received appellant's claim for disability compensation for the period April 19 to 30, 2010 along with various medical records. A leave analysis sheet for the claimed period revealed that appellant used one hour of leave without pay (LWOP) on April 19, three hours of LWOP on April 27, 2010 three and a half hours of LWOP on April 26, 2010 four hours of LWOP on April 21 and 22, 2010 five hours of LWOP on April 20, 2010 and eight hours of LWOP on April 28, 29 and 30, 2010. In an April 22, 2010 work excuse slip, Dr. Sulaiha Mastan, a clinical psychologist, confirmed that appellant received medical treatment on that date.

On June 17, 2010 OWCP informed appellant that it received her claim for compensation and requested that she provide additional medical evidence supporting that she was disabled as a result of the July 20, 2009 employment injury. Appellant did not respond.

By decision dated August 16, 2010, OWCP denied appellant's claim of disability for the period April 19 to 30, 2010 finding insufficient medical evidence.

On October 15, 2010 appellant requested a review of the written record and submitted additional medical evidence.<sup>2</sup>

In a decision dated November 2, 2010, an OWCP hearing representative denied appellant's request for review of the written record on the grounds that it was untimely filed. It was determined that her claim could equally be addressed by requesting reconsideration and submitting evidence not previously considered.

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<sup>2</sup> In an August 19, 2010 work excuse slip, Dr. Sofia R. Rizwan, a Board-certified psychiatrist and neurologist, excused appellant for any absences during the period April 19 to 30, 2010 due to ongoing work-related stress caused by a July 20, 2009 employment injury. In a September 8, 2010 report, Dr. Rizwan noted that she had been treating appellant for emotional stress related to the July 20, 2009 employment incident and diagnosed adjustment disorder. She also submitted a work excuse slip stating that appellant was under her care for emotional stress related to a July 20, 2009 employment injury. Dr. Rizwan stated that appellant continued to demonstrate fear at work and felt unsafe at work, cried, and got emotional, especially when in close proximity to the people who caused the injury. Appellant also resubmitted the July 22, 2009 radiology report.

## LEGAL PRECEDENT -- ISSUE 1

The term disability as used in FECA means the incapacity because of an employment injury to earn wages that the employee was receiving at the time of injury.<sup>3</sup> Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>4</sup> 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.<sup>5</sup> Whether a particular injury causes an employee to be disabled for employment is a medical issue which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>6</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.<sup>7</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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.<sup>8</sup>

The Board has held that according to section 8103, payment of expenses incidental to the securing of medical services encompasses payment for loss of wages incurred while obtaining medical services.<sup>9</sup> An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury.<sup>10</sup>

## ANALYSIS -- ISSUE 1

OWCP accepted appellant's traumatic injury claim for a left wrist and emotional condition and awarded disability compensation for the periods September 4, 2009 to April 16, 2010 and May 31 to November 20, 2010. Appellant also requested disability compensation for the period April 19 to 30, 2010 and submitted medical evidence to support her claim.

The Board finds that the evidence establishes that appellant received medical treatment for her work-related injury on April 22, 2010 and is entitled to a total of four hours of compensation for this date.<sup>11</sup> The record supports that appellant received treatment for her accepted emotional condition on April 22, 2010 by Dr. Mastan, an attending clinical

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<sup>3</sup> 20 C.F.R. § 10.5(f); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>4</sup> See *Fred Foster*, 1 ECAB 21 (1947).

<sup>5</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>6</sup> *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>7</sup> See *S.F.*, 59 ECAB 525 (2008); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>8</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); see *William A. Archer*, 55 ECAB 674 (2004).

<sup>9</sup> 5 U.S.C. § 8103.

<sup>10</sup> *Daniel Hollars*, 51 ECAB 355 (2000); *Antonio Mestres*, 48 ECAB 139 (1996); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16(a) (December 1995).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998) (provides that, in general, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments).

psychologist.<sup>12</sup> This is the only medical evidence addressing her claim of disability from April 19 to 30, 2010. Dr. Mastan, however, did not provide any opinion finding appellant disabled on other dates during the claimed period or any medical rationale explaining why appellant was unable to perform her employment duties. This evidence is insufficient to establish that appellant was otherwise disabled during the claimed period as a result of her accepted July 20, 2009 employment injuries.<sup>13</sup>

On appeal, appellant states that she overlooked her claim for compensation during this period and pointed out that she had timely submitted all medical documentation requested by OWCP. The Board notes that appellant submitted additional evidence following the August 16, 2010 merit decision. The Board, however, may not consider new evidence for the first time on appeal which was not before OWCP at the time it issued its final decision. 20 C.F.R. § 501.2(c). As the medical reports were not part of the record considered by OWCP in its August 16, 2010 decision, the Board may not consider this evidence for the first time on appeal.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that a claimant for compensation who is not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision and before review under section 8128(a), to a hearing on his claim before a representative of the Secretary.<sup>14</sup>

OWCP regulations further provide that a claimant can choose between two types of hearings: an oral hearing or a review of the written record.<sup>15</sup> The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>16</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>17</sup> In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

Appellant had 30 calendar days from OWCP's August 16, 2010 decision to request a review of the written record. Because her request was postmarked October 15, 2010, her request was untimely.<sup>19</sup> As section 8124(b)(1) is unequivocal on the time limitation for requesting a

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<sup>12</sup> See *Daniel Hollars*, 51 ECAB 355 (2000); see also *C.F.*, Docket No. 07-1567 (issued January 17, 2008).

<sup>13</sup> See *J.C.*, Docket No. 10-1694 (issued May 23, 2011); *T.P.*, Docket No. 08-975 (issued April 1, 2011).

<sup>14</sup> 5 U.S.C. § 8124(b)(1).

<sup>15</sup> 20 C.F.R. § 10.615.

<sup>16</sup> *Id.* at § 10.616(a).

<sup>17</sup> *G.W.*, Docket No. 10-782 (issued April 23, 2010). See also *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>18</sup> *Id.* See also *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>19</sup> OWCP regulations and the procedure manual provide that the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. 20 C.F.R. § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (June 1997).

hearing, appellant was not entitled to a review of the written record as a matter of right. Exercising its discretion to grant or deny a review of the written record, OWCP denied her request finding that she could equally well address any issues in her case by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's August 16, 2010 decision, the Board finds that it did not abuse its discretion in denying appellant's untimely request for a review of the written record.<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant has established entitlement to compensation for medical treatment on April 22, 2010, but has not otherwise established that she was disabled from April 19 to 30, 2010 as a result of her accepted left wrist and emotional conditions. The Board also finds that OWCP properly denied appellant's request for a review of the written record as untimely.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 2 and August 16, 2010 decisions of the Office of Workers' Compensation Programs are affirmed, as modified.

Issued: September 20, 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>20</sup> *Gerard F. Workinger*, 56 ECAB 259 (2005).