United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 12-109**
	)	**Issued: October 2, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Los Angeles, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 21, 2011 appellant filed a timely appeal from a September 29, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established entitlement for wage-loss compensation on January 23, 2009 while attending a medical appointment.

FACTUAL HISTORY

On June 2, 2005 appellant, then a 43-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed weakness in her legs and back pain from carrying mail. OWCP accepted the claim for displaced lumbar intervertebral disc and

[1] 5 U.S.C. § 8101 *et seq.*

unspecified lumbar neuritis and radiculopathy. On June 29, 2005 appellant accepted a USPS offer for limited duty for sedentary work.

On February 11, 2009 appellant filed a claim for compensation Form CA-7 for leave without pay for a medical appointment on January 23, 2009. In a CA-7a time analysis form, she requested 4.88 hours of leave without pay on January 23, 2009 for a physician's appointment. Appellant also noted that she had worked 3.12 hours that day.

By letter dated February 25, 2009, OWCP requested that appellant submit additional information with regards to her claim for compensation on January 23, 2009. It noted that no medical evidence was received confirming attendance of the appointment and that wage-loss visits were only compensable up to four hours. OWCP provided appellant 30 days to submit the requested documentation.

In medical reports dated January 17 to July 1, 2008, Dr. Khalid B. Ahmed, appellant's treating physician and Board-certified orthopedic surgeon, diagnosed lumbar strain, disc lesion and lumbar spine with radiculitis and radiculopathy. He noted that appellant complained of continued back pain and recommended a functional capacity evaluation to assess her ability to return to work. In a July 1, 2008 medical report, Dr. Khalid requested authorization from OWCP for a functional capacity assessment (FCA).

In a January 23, 2009 residual FCA, Vincent Manfre, a chiropractor, evaluated appellant for a lumbar injury as a result of her federal employment duties as a letter carrier. In his report, he stated that she was referred by her treating physician, Dr. Ahmed, for an FCA. Dr. Manfre provided a medical history and description of appellant's employment duties. He evaluated her through static strength testing, spinal ranges of motion, work activities, dynamic lifting capacity and work postures to determine her FCA. Dr. Manfre opined that appellant qualified for sedentary work with restrictions of lifting, pushing and pulling no more than 15 pounds occasionally, carrying less than 6 pounds occasionally and no squatting, bending or lifting from the floor.

By decision dated September 29, 2011, OWCP denied appellant's claim for disability compensation on January 23, 2009 on the grounds that the record contained no medical evidence documenting treatment on January 23, 2009.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[2] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[3] The issue of

[2] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[3] *Id*.

whether a particular injury causes disability for work must be resolved by competent medical evidence.[4] To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.[5]

The Board will not require OWCP to pay compensation for disability in the absence of 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 his or her disability and entitlement to compensation. 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.[6]

Section 8103 of FECA[7] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree of the periods of any disability or aid in lessening the amount of any monthly compensation.[8] These services, appliances and supplies shall be furnished by or on the order of the United States medical officers and hospital or at the employee's option by or on the order of physicians and hospitals designated or approved by the Secretary.[9] The employee may be furnished necessary and reasonable transportation and expenses incidental to the securing of such services, appliances and supplies.[10] The Board has previously interpreted this provision of FECA, which requires payment of expenses incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services. Case law makes clear that an employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment.[11] The rationale for this entitlement is that, during such required examinations and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.[12]

[4] *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[5] *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

[6] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[7] 5 U.S.C. § 8103.

[8] *Id.*

[9] *Daniel J. Perea*, 42 ECAB 214 (1990).

[10] *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

[11] 5 U.S.C. § 8123; *see Shirley L. Steib*, 46 ECAB 309 (1994).

[12] *Beverly A. Scott*, 37 ECAB 838 (1986).

ANALYSIS

OWCP accepted appellant's claim for displaced lumbar intervertebral disc and unspecified lumbar neuritis and radiculopathy. Appellant filed a claim for wage-loss compensation for 4.88 hours of leave without pay on January 23, 2009 for a medical appointment. OWCP found that she did not support her claim for compensation, noting that no medical evidence was received documenting treatment on that date. The Board finds that this case is not in posture for decision.

In medical reports dated January 17 to July 1, 2008, Dr. Ahmed diagnosed lumbar strain, disc lesion and lumbar spine with radiculitis and radiculopathy. He recommended a functional capacity evaluation to assess appellant's ability to return to work and requested authorization from OWCP.

In a January 23, 2009 report, Dr. Manfre, a chiropractor, stated that appellant was referred by her treating physician, Dr. Ahmed, for an FCA. In his report, he evaluated her for a lumbar injury as a result of her federal employment duties as a letter carrier through static strength testing, spinal ranges of motion, work activities, dynamic lifting capacity and work postures. Dr. Manfre opined that appellant qualified for sedentary work with restrictions of lifting, pushing and pulling no more than 15 pounds occasionally, carrying less than 6 pounds occasionally and no squatting, bending or lifting from the floor.

In its September 29, 2011 denial of appellant's claim for disability compensation, OWCP noted that no evidence had been received documenting medical treatment on January 23, 2009. The Board finds that the record confirms that appellant underwent an evaluation by Dr. Manfre on January 23, 2009 for complaints consistent with her accepted diagnosed conditions of displaced lumbar intervertebral disc and unspecified lumbar neuritis and radiculopathy.[13] It appears that OWCP, in its September 29, 2011 decision, did not review Dr. Manfre's January 23, 2009 medical report received prior to the issuance of its decision.

The Board notes that services rendered by chiropractors are generally not payable by OWCP except "to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[14] In the present case, there is no evidence that Dr. Manfre treated appellant for a subluxation of the spine as demonstrated by x-ray to exist. He, therefore, cannot be considered a "physician" within the meaning of FECA.[15]

There are exceptions to the general rule that services rendered by a chiropractor are not payable when they do not consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. These exceptions are for physical therapy rendered by a

[13] *F.J.*, Docket No. 10-1303 (issued April 22, 2011).

[14] *See* 5 U.S.C. § 8101(2).

[15] *See Garey Harrison*, Docket No. 03-128 (issued May 27, 2003).

chiropractor under the direction of an authorized physician and for chiropractic treatment authorized without limitations by OWCP or the employing establishment.[16]

Dr. Manfre performed an FCA and reported that appellant was referred by Dr. Ahmed. There is no referral or prescription of record issued by Dr. Ahmed for treatment by Dr. Manfre or for treatment by a chiropractor but the record notes that on July 6, 2008 Dr. Ahmed, the treating physician, directed appellant to undergo an FCA. While Dr. Ahmed did not specifically contemplate that a chiropractor would perform this evaluation, he recommended appellant's treatment for an FCA. In view of the foregoing, the case will be remanded to OWCP to request Dr. Ahmed to address the nature and extent of the FCA which was contemplated and whether he had referred appellant to Dr. Manfre for treatment.[17]

On remand, OWCP should request Dr. Ahmed to clarify whether he prescribed, recommended or directed the FCA, physical therapy or other services by Dr. Manfre as required under section 8103 of FECA.[18] It should further request clarification from him to determine whether the services provided by Dr. Manfre were related to physical therapy or were "likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation" under 5 U.S.C. § 8103.[19] Following this and any other further development as deemed necessary, it shall issue an appropriate decision on appellant's claim to determine if she is entitled to four hours of wage loss for her medical appointment on January 23, 2009.

CONCLUSION

The Board finds that this case is not in posture for decision.

[16] *Supra* note 12.

[17] *Id.*

[18] *Eleanor B. Loomis*, 37 ECAB 792 (1986).

[19] *Rebecca Ortiz*, 42 ECAB 134 (1990).

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2011 of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: October 2, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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