

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

D.B., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Columbia, SC, Employer)

Docket No. 12-591
Issued: October 11, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 24, 2012 appellant filed a timely appeal from a January 10, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for wage-loss compensation. Pursuant to the Federal Employees' Compensation Act¹ (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 established that she is entitled to wage-loss compensation for 4.25 hours.

FACTUAL HISTORY

On March 7, 2005 appellant, then a 49-year-old nurse, filed an occupational disease claim alleging that on February 3, 2005 she first became aware of left shoulder pain. On February 4,

¹ 5 U.S.C. § 8101 *et seq.*

2005 she realized that her left shoulder pain was due to her employment duties. OWCP accepted the claim for left shoulder impingement syndrome, neck sprain, left rotator cuff tear, cervical radiculitis and aggravation of cervical spondylosis without myelopathy.²

On November 15, 2011 appellant filed a claim for 27 hours of intermittent wage-loss compensation from May 11 to November 10, 2011. The attached time analysis form indicated 1.75 hours on May 8, 2011 to pick up a transcutaneous electrical neural stimulator (TENS) unit, 1.00 hour on August 24, 2011 to pick up a narcotic prescription and 5.50 hours on October 20, 2011 for a procedure.

By letter dated November 28, 2011, OWCP informed appellant that her claim was not payable in its entirety at that time. Appellant was advised as to the dates and hours that payment was authorized and the ones which required further evidence. OWCP also informed her that wage-loss compensation for errands was not compensable as it did not qualify as medical care. It also informed appellant that, if she was claiming more than four hours for a medical appointment, documentation was required to support the additional hours.

By decision dated January 10, 2012, OWCP denied payment for wage-loss compensation for 4.25 hours. The denial was for 1.75 hours on June 8, 2011, 1.00 hours on August 24, 2011 and 1.50 hours for October 20, 2011, a total of 4.25 hours of leave without pay.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁴ 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.⁵ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁶

Under FECA the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn

² By decision dated December 14, 2005, OWCP granted appellant a schedule award for an 18 percent permanent impairment of the left arm.

³ 5 U.S.C. §§ 8101-8193

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁵ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

⁶ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

wages.⁸ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in employment, he or she is entitled to compensation for any loss of wages.

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 their disability and entitlement to compensation.¹⁰

An injured employee may be entitled to compensation for lost wages incurred while obtaining authorized medical services.¹¹ This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location.¹² As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments.¹³ However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.¹⁴

ANALYSIS

OWCP accepted appellant's claim for left shoulder impingement syndrome, which was expanded to include neck sprain, left rotator cuff tear, cervical radiculitis and aggravation of cervical spondylosis without myelopathy. Appellant claimed wage-loss compensation for 1.75 hours for June 8, 2011, 1.00 hour for August 24, 2011 and 1.50 hours for October 20, 2011 or a total of 4.25 hours. OWCP advised her by letter dated November 28, 2011 as to the medical evidence necessary to support her claim for disability on the days in question.

The issue is whether appellant has established entitlement to 4.25 hours of wage-loss compensation due to a medical appointment and picking up medication and TENS unit for the dates in question. The Board finds that OWCP properly denied her claim. OWCP denied wage-loss compensation for 4.25 hours for June 8, August 24 and October 20, 2011. It found that

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *See* 5 U.S.C. § 8103(a); *Gayle L. Jackson*, 57 ECAB 546, 547-48 (2006).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (October 2009).

¹³ *Id.* at Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

¹⁴ *Id.*

appellant was not entitled to 2.75 hours of wage-loss compensation for May 8 and August 20, 2011 as she was not claiming lost time for a medical appointment. Rather, she was claiming lost wages for time spent picking up narcotic medication and a TENS unit. The Federal (FECA) Procedure Manual states that an employee is entitled to lost wages for medical examinations or treatment.¹⁵ The hours claimed by appellant for May 8 and August 20, 2011 were not for a medical examination or treatment, but rather to pick up narcotic medication and a TENS unit. As appellant was not claiming lost time for a medical examination or treatment, OWCP properly denied her claim for 1.75 hours on May 8, 2011 and 1.00 hours on August 20, 2011.

Appellant also claimed 5.50 hours of wage-loss compensation for attending a medical appointment on October 20, 2011. OWCP paid her wage-loss compensation for 4.00 hours claimed on October 20, 2011. It denied compensation for the additional 1.50 hours appellant claimed. It is noted that, while OWCP's Federal (FECA) Procedural Manual provides that no more than 4.00 hours of compensation should be allowed for routine medical appointments, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.¹⁶ On November 28, 2011 OWCP informed appellant that any hours claimed for medical appointments over four hours required documentation supporting the extra hours. Appellant did not submit any evidence to explain why her medical appointment on October 20, 2011 required more than four hours. As she failed to provide any documentation supporting her claim for the additional 1.50 hours for the October 20, 2011 medical appointment, OWCP properly found she was only entitled to 4.00 hours.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she is entitled to wage-loss compensation for 4.25 hours.

¹⁵ See *supra* note 12.

¹⁶ See *supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 10, 2012 is affirmed.

Issued: October 11, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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