

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

A.K., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, ROBINS AIR FORCE
BASE, GA, Employer**

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**Docket No. 12-742
Issued: October 18, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On February 15, 2012 appellant filed a timely appeal from a January 24, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his recurrence claim. The Board also has jurisdiction over a September 20, 2011 decision denying 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.

On appeal appellant contends that his left wrist pain is due to his accepted conditions and authorized physical therapy sessions.

ISSUES

The issues are: (1) whether OWCP properly denied appellant's claim for one hour of wage-loss compensation on July 5, 2011; and (2) whether appellant established that he sustained

¹ 5 U.S.C. § 8101 *et seq.*

a recurrence of his medical condition beginning June 16, 2011 causally related to the accepted employment conditions.

FACTUAL HISTORY

On March 3, 2011 appellant, then a 51-year-old automated publishing systems operator, filed an occupational disease claim alleging that on February 11, 2011 he first realized that his employment duties aggravated his left shoulder and arm. He did not stop work. OWCP accepted the claim for aggravation of the left bursae and shoulder tendons and left lateral epicondylitis. It authorized physical therapy and paid wage-loss compensation for physical therapy and medical appointments.

On June 16 and July 5, 2011 appellant was seen by Dr. Todd Kinnebrew, a treating Board-certified orthopedic surgeon, for left wrist pain. He related that the onset of the pain had been gradual and occurring in a persistent pattern for months. Physical findings included moderate tenderness over the dorsal aspect of the left wrist and left ulnar nerve. Dr. Kinnebrew noted causative factors of lifting and twisting movement and grasping objects. He diagnosed a left wrist sprain/strain.

By letter dated July 14, 2011, OWCP informed appellant that he had not claimed a left wrist condition at the time he filed his occupational disease claim and the current evidence was insufficient to support that it was employment related. Appellant was advised as to the medical evidence required to support his claim that his left wrist condition was causally related to his employment.

On July 19, 2011 appellant filed a claim for compensation (Form CA-7) for intermittent wage for the period July 3 to 16, 2011. In a time analysis form (CA-7a), appellant noted using one hour of leave without pay for a doctor's appointment on July 5, 2011.

By letter dated July 26, 2011, OWCP advised appellant that the evidence was insufficient to support his claim for wage-loss compensation on July 5, 2011 due to his accepted medical conditions. Appellant was advised as to the evidence required to support his claim and given 30 days to provide the requested information.

OWCP received a July 5, 2011 disability note from Dr. Kinnebrew stating that appellant had a medical appointment with him that day.

By decision dated September 20, 2011, OWCP denied appellant's claim for an hour of wage-loss compensation for attending a medical appointment with Dr. Kinnebrew on July 5, 2011. It found the appointment was for left wrist pain, which was not an accepted condition.

On October 11, 2011 appellant filed a claim for a recurrence of disability for medical treatment only beginning June 16, 2011 due to left wrist pain.

By correspondence dated October 28, 2011, OWCP advised that the evidence of record was insufficient to support his recurrence claim for his accepted left shoulder and elbow

conditions. It asked that he submit additional medical and factual evidence to support his recurrence claim. Appellant was given 30 days to provide the requested information.

On November 3, 2011 appellant responded to OWCP's request for additional information. He attributed his left wrist pain to his daily work duties and his physical therapy. Appellant stated that he had been informed by Dr. Kinnebrew that his left wrist pain was connected to his left shoulder and elbow conditions. He related that while he was undergoing physical therapy for his left shoulder and elbow he began to have left wrist pain. As the pain began from his physical therapy, appellant also attributed his left wrist pain to his left shoulder and elbow physical therapy.

By decision dated January 24, 2012, OWCP denied appellant's recurrence claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his claim by the weight of the evidence.³ For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.⁴ 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.⁵

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.⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁸ 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 his employment, he 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

² 5 U.S.C. §§ 8101-8193

³ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁴ See *Amelia S. Jefferson*, *supra* note 3; see also *David H. Goss*, 32 ECAB 24 (1980).

⁵ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁶ *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).

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *Merle J. Marceau*, 53 ECAB 197 (2001).

claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁹

An injured employee may be entitled to compensation for lost wages incurred while obtaining authorized medical services.¹⁰ This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location.¹¹ As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments.¹² 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.¹³

ANALYSIS -- ISSUE 1

The issue is whether appellant has established entitlement to 1.00 hour of wage-loss compensation due to a medical appointment on July 5, 2011. The Board finds that OWCP properly denied his claim as he did not establish that his treatment that day was for his accepted conditions.

On July 5, 2011 appellant attended a medical appointment with Dr. Kinnebrew for left wrist pain; but this condition has not been accepted by OWCP as employment related. The burden of proof is on appellant to establish causal relationship. Dr. Kinnebrew diagnosed a left wrist sprain and noted it as causative factors of lifting and twisting movement and grasping objects. Dr. Kinnebrew did not adequately address how appellant's left wrist condition was due to factors of his federal employment. OWCP allowed him an opportunity to submit additional medical evidence. The Board finds that appellant did not submit an adequate rationalized medical explanation of how his left wrist pain was causally related to the accepted elbow or shoulder condition. OWCP properly denied his request for wage-loss compensation for one hour on July 5, 2011.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury.¹⁴ Continuous treatment for the original condition or injury is not considered a recurrence of a medical

⁹ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ See 5 U.S.C. § 8103(a); *Gayle L. Jackson*, 57 ECAB 546, 547-48 (2006).

¹¹ *J.C.*, Docket No. 12-611 (issued September 12, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (October 2009).

¹² *J.C.*, *supra* note 11; *A.O.*, Docket No. 11-1892 (issued August 13, 2012); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

¹³ *Id.*

¹⁴ 20 C.F.R. § 10.5(y).

condition nor is an examination without treatment.¹⁵ As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.¹⁶ It is the employee's burden to establish that the claimed recurrence is causally related to the original injury.¹⁷ Causal relationship is a medical issue that can generally be resolved only by rationalized medical opinion evidence.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of a medical condition on June 16, 2011. As noted, OWCP accepted his March 3, 2011 occupational disease claim for left bursae and shoulder tendons and left lateral epicondylitis. Appellant did not stop work following the filing of his occupational disease claim on March 3, 2011. On October 11, 2011 he filed a recurrence claim, contending that his left wrist condition was causally related to the accepted conditions. Appellant failed, however, to submit sufficient rationalized medical opinion evidence to establish his left wrist condition as a consequence of the treatment of his accepted conditions.

On June 16 and July 5, 2011 Dr. Kinnebrew diagnosed a left wrist sprain/strain and noted causative factors of lifting and twisting movement and grasping objects. Appellant bears the burden to establish causal relation for conditions not accepted by OWCP as being employment related.¹⁹ Although Dr. Kinnebrew noted causative factors to some of the tasks that appellant had to do at work, he failed to provide an explanation of appellant's diagnosed left wrist sprain to the accepted left bursae and shoulder tendons and left lateral epicondylitis or as a consequence of treatment of the accepted conditions. OWCP has not accepted that appellant's left wrist sprain/sprain and pain developed or were caused as a result of his accepted employment conditions, and there is no rationalized medical evidence to support such a conclusion. Although appellant contended that Dr. Kinnebrew related the left wrist conditions to the accepted employment conditions, the current medical evidence of record does not bear this out.²⁰

An award of compensation may not be based on surmise, conjecture or speculation.²¹ Neither the fact that appellant's condition became apparent during a period of employment nor his belief that his condition was caused or aggravated by his employment is sufficient to establish causal relationship.²² Causal relationship must be established by rationalized medical

¹⁵ *Id.*

¹⁶ *Id.* at § 10.5(x).

¹⁷ *Id.* at § 10.104. *See also Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

¹⁸ *See Jennifer Atkerson*, 55 ECAB 317 (2004).

¹⁹ *See Mary A. Ceglia*, *supra* note 17.

²⁰ *See supra* note 9.

²¹ *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

²² *W.D.*, Docket No. 09-658 (issued October 22, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

opinion evidence and appellant failed to submit such evidence. Consequently, he has not met his burden of proof to establish that his left wrist condition is causally related to this accepted employment conditions or his employment duties. The Board will affirm OWCP's January 24, 2012 decision.

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 OWCP properly denied appellant's claim for one hour of wage-loss on July 5, 2011 and his claim for a recurrence of a medical condition beginning June 16, 2011 due to his accepted employment injuries of aggravation of left bursae and shoulder tendons and left lateral epicondylitis.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 24, 2012 and September 20, 2011 are affirmed.

Issued: October 18, 2012
Washington, DC

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

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

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