

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

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J.C., Appellant)	
)	
and)	Docket No. 12-611
)	Issued: September 12, 2012
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Richmond, VA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 19, 2012 appellant filed a timely appeal from the December 6, 2011 Office of Workers' Compensation Programs' (OWCP) decision, which denied her request for merit review. She also timely appealed a merit decision dated July 26, 2011, in which OWCP denied her claim for 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 these issues.

ISSUE

The issues are: (1) whether appellant met her burden of proof to establish that she was entitled to three hours of compensation for a medical appointment on May 7, 2010; and (2) whether OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 23, 2007 appellant, then a 60-year-old clerk, filed a traumatic injury claim alleging that on that same date she sustained an injury after she tripped over a carpet while in the performance of duty. OWCP accepted her claim for bilateral knee and lower leg contusions as well as a right knee meniscus tear. It also authorized March 26, 2008 right knee partial meniscectomy and a June 17, 2009 total left knee arthroplasty. Appellant missed work intermittently and received disability compensation for appropriate periods.

In an April 19, 2010 disability certificate, Dr. Richard Hinds, a Board-certified orthopedic surgeon and treating physician, noted that appellant was seen on that date for her left knee. In a report of the same date, his physician's assistant noted appellant's complaints of continuing left knee pain and indicated that appellant should undergo a magnetic resonance imaging (MRI) scan of the left lower extremity. In a May 10, 2010 disability certificate, Dr. Hinds asked that appellant be excused from work on May 7, 2010 for "her MRI [scan]" appointment.

On May 12, 2010 appellant filed a Form CA-7 claiming compensation for three hours of leave without pay on May 7, 2010. In a May 21, 2010 telephone call memorandum, the employing establishment informed OWCP that she was "injured at work" as a reason for the leave without pay of three hours.

By letter dated March 4, 2011, OWCP requested additional information from appellant regarding compensation claimed on May 7, 2010. Appellant was advised that if her time lost was due to a medical condition, she must submit medical evidence that explained how her injury or condition worsened on that date.

OWCP received a confirmation from Comprehensive MRI dated March 15, 2011 verifying that appellant was seen on March 7, 2010 for an MRI scan of the left knee. Also received was a note from Dr. Hinds advising that appellant was seen on April 4, 2010 for left knee pain and it was recommended that she have an MRI scan of the left knee.

By decision dated July 26, 2011, OWCP denied appellant's claim for disability compensation on May 7, 2010. It found that the evidence of record failed to support disability for the claimed period and that appellant did not submit the MRI scan report.

On September 1, 2011 appellant requested reconsideration. She indicated that she contacted her physician's office and was informed that "the test was not completed due to metal artifacts present." Appellant explained that she was submitting a copy of the letter that she received from her physician *via* facsimile that noted that the test was unable to be completed due to metal artifacts. OWCP received a January 15, 2008 MRI scan read by Dr. Hinds, who noted that it revealed synovial effusion and anteromedial reticulated soft tissue edema.

In a decision dated December 6, 2011, OWCP denied appellant's request for reconsideration on the grounds that the evidence was irrelevant and insufficient to warrant merit review of the prior decision. It found that, without a copy of the MRI scan report, she had not

provided sufficient evidence that her absence on May 7, 2010 was related to her accepted condition.

LEGAL PRECEDENT -- ISSUE 1

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.² As used in 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.³ Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁴ Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.⁵

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.⁶ Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.⁷ However, OWCP’s obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.⁸

OWCP’s procedure manual provides that wages lost for compensable medical examination or treatment may be reimbursed.⁹ It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider’s location.¹⁰ As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical

² *William A. Archer*, 55 ECAB 674 (2004).

³ *Patricia A. Keller*, 45 ECAB 278 (1993); *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

⁴ *See Fred Foster*, 1 ECAB 21 (1947).

⁵ *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁶ 5 U.S.C. § 8103(a).

⁷ *Vincent E. Washington*, 40 ECAB 1242 (1989).

⁸ *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

⁹ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (December 1995).

¹⁰ *See also Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

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.¹¹

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for bilateral knee and lower leg contusions. Appellant filed a claim for wage-loss compensation on May 7, 2010 for three hours of leave without pay.

In support of her claim for three hours of wage-loss compensation on May 7, 2010, appellant submitted a March 15, 2011 certificate from Comprehensive MRI. The disability certificate contained a notation that she was seen on May 7, 2010 for an MRI scan of the left knee. Also submitted was a May 10, 2010 disability certificate from Dr. Hindes who asked that appellant be excused from work on May 7, 2010 for her MRI scan appointment. OWCP found that appellant did not support her claim of disability, as a copy of the MRI scan had not been provided and the evidence did not establish that her disability was due to her accepted work injury.

The record reflects, however, that she was advised by her physician to have an MRI scan of the left knee that she was indeed seen on May 7, 2010 for an MRI scan of the left knee, that she has an accepted left knee condition and had authorized left knee surgery on June 17, 2009. The evidence reflects that appellant attended a medical appointment on May 7, 2010 related to her accepted condition on May 7, 2010.

As noted, OWCP procedures provide that wage loss for compensable medical examinations or treatment may be reimbursed. The Board has held that for a routine medical appointment, a maximum of four hours of compensation is usually allowed.¹² Despite the fact that appellant failed to provide the letter from the MRI scan facility to explain the reason there was no report, the evidence reflects that appellant was attending a medical appointment for her accepted condition. Accordingly, the Board finds that appellant is entitled to three hours of compensation on May 7, 2010 for her appointment with her physician to obtain an MRI scan, as she requested.

CONCLUSION

The Board finds that appellant has established entitlement to three hours of compensation on May 7, 2010.

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

¹² *William A. Archer*, 55 ECAB 674 (2004). *See id.*

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with the Board's decision.¹³

Issued: September 12, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹³ In light of the Board's finding on the first issue, a finding of whether OWCP properly denied her request for a merit review is necessary.