

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

G.M., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Richmond, VA, Employer**

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**Docket No. 13-1538
Issued: December 17, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 18, 2013 appellant filed a timely appeal from the December 19, 2012 and April 1, 2013 decisions of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUES

The issues are: (1) whether appellant was entitled to continuation of pay for the period August 1 to 6, 2012; and (2) whether OWCP properly refused to reopen appellant's case for reconsideration under 5 U.S.C. § 8128.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 3, 2012 appellant, a 49-year-old clerk, filed a claim for benefits alleging that she cut her right arm while entering through a door on August 1, 2012.

By letter dated August 10, 2012, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from her treating physician describing her symptoms and a medical opinion explaining the cause of any diagnosed condition.

The employing establishment controverted appellant's claim on several grounds by letter dated August 10, 2012. It was noted that appellant's physician had allowed appellant to return to restricted full-time duty on August 1, 2012, but that she had not returned to work.

In a report dated August 1, 2012, Dr. Jon J. Schott, Board-certified in emergency medicine, advised that appellant had reported to the Covington Hospital emergency department on August 1, 2012 with a laceration on her right arm. Appellant related that she walked into a door and accidentally cut herself. She denied a loss of motor or sensory function.

In an August 6, 2012 report, Dr. Michael P. Schulte, a Board-certified family practitioner, advised that appellant hurt her right arm at work on August 1, 2012. Appellant went to her business health clinic, where she received nine stitches to close her laceration. Dr. Schulte asserted that she had a healing, uninfected laceration wound on the dorsum of her right wrist and stated that she should have her sutures removed in a few days.

By decision dated September 13, 2012, OWCP denied appellant's claim, finding that she failed to establish that she sustained her claimed right arm injury at the time, place and in the manner alleged on August 1, 2012.

Appellant submitted hospital records dated August 1, 2012. She was admitted to the emergency room for a laceration to her right arm that day.

In an August 1, 2012 report, Dr. Patrick H. Kunkler, a Board-certified family practitioner, related appellant's history that she sustained injury that day when her right arm hit the door handle as she was entering the worksite. Appellant initially thought she bruised her right arm but subsequently noticed that she had an open, bleeding wound. She informed the guard that she needed to go to the hospital, where she received treatment. Dr. Kunkler advised that appellant's laceration produced sharp, moderate pain in her right wrist that she rated a 7 on a scale of 1 to 10. The injury was causally related to work activities. Appellant had nine sutures placed in her right arm to treat the laceration. Dr. Kunkler released her to return to restricted duty on August 1, 2012. He restricted appellant from lifting exceeding five pounds and firm gripping with her right hand.

On October 21, 2012 appellant requested reconsideration.

By decision dated December 19, 2012, OWCP accepted appellant's claim for an open wound to the right forearm.

In a December 19, 2012 decision, OWCP denied appellant's claim for continuation of pay for the period August 1 to 6, 2008. It found that the medical evidence of file showed that she was released to restricted full-duty work and the employing establishment had such work available.

On March 12, 2013 appellant requested reconsideration. She resubmitted Dr. Schulte's August 6, 2012 report. In an August 10, 2012 report, Dr. Schulte advised that he had removed appellant's sutures and that her laceration had healed.

By decision dated April 1, 2013, OWCP denied appellant's application for review. It found that she did not raise a substantive legal question or include new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the evidence.³ Under FECA, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.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 The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷ 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 her disability and entitlement to compensation.⁸

Section 8118 of FECA provides for payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to traumatic injury with his or her immediate supervisor on a form approved by the Secretary of Labor within the time

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *Gary L. Watling*, 52 ECAB 278 (2001).

⁷ *Manual Garcia*, 37 ECAB 767 (1986).

⁸ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

specified in section 8122(a)(2) of FECA.⁹ In order to establish entitlement to continuation of pay, an employee must establish, on the basis of reliable, probative and substantial evidence, that he or she was disabled as a result of a traumatic employment injury. As part of this burden, he or she must furnish medical evidence from a qualified physician who, based on a complete and accurate history, concludes that the employee's disability for specific periods was causally related to such injury.¹⁰

FECA's implementing regulations provide, in pertinent part, that to be eligible for continuation of pay, a claimant must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file a Form CA-1 within 30 days of the date of injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.¹¹

ANALYSIS -- ISSUE 1

On August 3, 2012 appellant filed a traumatic injury claim for a laceration to her right arm sustained while entering her worksite on August 1, 2012. OWCP accepted her claim for an open wound to the right forearm. It denied continuation of pay, finding that appellant failed to establish that she lost time from work due to her traumatic injury from August 1 to 6, 2012. On appeal, appellant contends that continuation of pay should have been granted because Dr. Schulte approved her time off from work from August 1 to 6, 2012.

The Board finds that appellant did not submit medical evidence establishing that she lost time from work due to the August 1, 2012 injury. There is no contemporaneous medical evidence to supporting her claim to continuation of pay from August 1 to 6, 2012. In an August 6, 2012 report, Dr. Schulte advised that he released appellant to return to restricted duty on August 1, 2012 with a limitation on lifting exceeding five pounds or firm gripping with her right hand.

Although appellant established that she sustained injury on August 1, 2012 she did not establish that the injury resulted in disability from August 1 to 6, 2012.¹² She has the burden to demonstrate her disability for work based on rationalized medical opinion evidence. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹³ Appellant did not submit a physician's

⁹ 5 U.S.C. § 8118. A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

¹⁰ *Carol A. Dixon*, 43 ECAB 1065 (1992).

¹¹ 20 C.F.R. § 10.205(a)(1)-(3). *See also Carol A. Lyles*, 57 ECAB 265 (2005).

¹² *See Robin L. Brainard*, 43 ECAB 329 (1991).

¹³ *Howard A. Williams*, 45 ECAB 853 (1994).

medical opinion to establish that she was disabled for work due to the accepted injury. OWCP properly denied the claim for continuation of pay because Dr. Schulte released her to return to restricted full duty as of August 1, 2012. None of the other medical reports submitted by Dr. Schulte or the other physicians in this case address disability from August 1 to 6, 2012 as claimed.

Appellant has failed to submit medical evidence to establish that she was disabled due to an employment injury for the period August 1 to 6, 2012. OWCP properly denied continuation of pay for this period.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by submitting relevant and pertinent evidence not previously considered by OWCP.¹⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁵

ANALYSIS -- ISSUE 2

Appellant has not established that OWCP erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by OWCP. On appeal, appellant contends that she submitted relevant legal and medical evidence sufficient to require a merit review. The only new medical evidence she submitted was Dr. Schulte's August 10, 2012 report, which reiterated that she sustained a laceration wound to her right hand on August 1, 2012. Dr. Schulte advised that appellant had returned to his office to have her sutures removed. He did not provide any opinion on her disability for work. This evidence is therefore irrelevant to the issue in appellant's claim.¹⁶ Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that OWCP properly denied appellant's claim for continuation of pay from August 1 to 6, 2012. The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

¹⁵ *Supra* note 13.

¹⁶ *See Patricia G. Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2013 and December 19, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 17, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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