

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

B.C., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Oakland, CA, Employer**

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**Docket No. 12-1388
Issued: January 25, 2013**

Appearances:

*Sylvia R. Johnson, for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2012 appellant, through her representative, filed a timely appeal from the January 4, 2012 merit decision 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 the case.

ISSUE

The issue is whether appellant is entitled to compensation for intermittent wage loss for January 3, February 28 and March 14, 2011 for medical appointments and February 14, 2011 for total disability.

On appeal, appellant's counsel contends that the evidence is sufficient to establish that appellant was entitled to wage-loss compensation for certain hours on the aforementioned dates.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has been before this Board on a prior occasion. The facts as set forth in the Board's prior decision are hereby incorporated by reference.² OWCP accepted appellant's claims for the following conditions: right arm strain, right knee contusion, right meniscus tear, internal derangement of the knee, adjustment disorder with mixed anxiety and depressed mood, pain disorder associated with psychological factors, rotator cuff syndrome and allied disorders of the right shoulder. Appellant had various periods of not working or working part time. She began working part time intermittently in January 2009. Appellant continued to submit claims for intermittent periods. Her claims included requests for compensation for four hours for each of the following days for doctor's appointments: January 3, February 28 and March 14, 2011. Appellant also requested compensation for eight hours on February 14, 2011 claiming that she was totally disabled on that date.

By decision dated June 20, 2011, OWCP denied appellant's request for compensation for these dates. On June 24, 2011 appellant requested an oral hearing before an OWCP hearing representative.

In support of her claim for intermittent periods of compensation, appellant submitted, *inter alia*, a copy of a treatment note from Dr. Gail Barry Bourque, a psychologist, dated January 3, 2010. Dr. Bourque indicated that she was treating appellant for depression and a general anxiety disorder. Appellant also submitted a medical report dated February 9, 2011 wherein, her treating physician, Dr. Richard A. Nolan, a Board-certified orthopedic surgeon, indicated that she was temporarily totally disabled until February 14, 2011. Dr. Nolan noted that appellant was experiencing a constant aching pain in the anterior aspect of the knee, that nocturnal rest was disturbed an average of four times per night as she attempted to change position, that she had an increase in pain in her right shoulder. He indicated that appellant could resume her normal job activities on February 14, 2011. A prescription note on Dr. Nolan's stationery indicates that appellant was temporarily totally disabled until February 14, 2011. The signature on this note is illegible.

At the hearing held on October 26, 2011, appellant's representative argued that appellant received frequent treatment and that the regulations did not require a medical report every time appellant receives treatment. Appellant testified that she missed the whole day on February 14, 2011 because she was temporarily totally disabled due to a knee and shoulder injury which caused her a lot of pain. She provided dates of her medical appointments.

The record contains a document labeled "ACS Web Bill Processing Portal" which indicates that OWCP paid bills for psychologist's appointments on January 3, February 28 and March 14, 2011 for treatment for adjustment reaction.

By decision dated January 4, 2012, OWCP's hearing representative affirmed the denial of appellant's claim for compensation for medical appointments on January 3, February 28 and

² Docket No. 08-1746 (issued September 24, 2009). On January 11, 2000 appellant, then a 24-year contract representative, filed a traumatic injury claim alleging that on that date she slipped and fell on wet carpet and scraped and bruised her right knee. She returned to work for periods of intermittent employment.

March 14, 2011. The hearing representative further denied appellant's claim for compensation for eight hours on February 14, 2011. However, the hearing representative remanded the case for OWCP to determine if appellant was entitled to four hours of compensation on December 20, 2010, February 24 and March 24, 2011 for medical appointments.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.³ 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.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 or her federal employment, but who nonetheless has the capacity to earn the wages 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.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 or her employment, he or she is entitled to compensation for any loss of wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).⁹ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

³ See *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁴ *Id.*

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).

⁹ *A.D.*, 58 ECAB 149 (2006).

¹⁰ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 291 (2001).

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.¹¹

An injured employee may also be entitled to compensation for lost wages incurred while obtaining authorized medical services.¹² This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location.¹³ As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments.¹⁴ 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.¹⁵

In situations where compensation is claimed for periods when leave was used, OWCP has the authority and the responsibility to determine whether the employee was disabled during the period for which compensation is claimed.¹⁶ It determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buyback, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.¹⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for wage-loss compensation on January 3, February 28 and March 14, 2011 for medical appointments and February 14, 2011 for total disability.

Appellant alleged that she was totally disabled on February 14, 2011. In a medical report dated February 9, 2011, Dr. Nolan stated that appellant was temporarily totally disabled but could resume her normal job activities on February 14, 2011. Accordingly, appellant was released to work as of February 14, 2011. Appellant's representative contends on appeal that appellant only had the prescription note which indicated that appellant was temporarily totally disabled until February 14, 2011, and that appellant interpreted this note to mean that she was disabled on that date. However, there is no medical evidence of record that supports that

¹¹ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² See 5 U.S.C. § 8103(a) (2006); *Gayle L. Jackson*, 57 ECAB 546-48 (2006).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16a (December 1995).

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

¹⁵ *Id.*

¹⁶ See *Glen M. Lusco*, 55 ECAB 148 (2003); see also 20 C.F.R. § 10.425.

¹⁷ *Id.*

appellant was disabled on February 14, 2011; this is the date she was to return to work pursuant to Dr. Nolan's instructions. Accordingly, OWCP properly denied appellant's claim for compensation on February 14, 2011.

The remaining dates: January 3, February 28 and March 14, 2011 are claims for compensation for four hours on each date for a medical appointment. The Board finds that appellant has not proven that she saw a physician for treatment of her accepted injury on these dates. A treatment note dated January 3, 2011 from Dr. Bourque listed only a general diagnosis of anxiety disorder. Appellant's representative contends that as OWCP paid for appellant's psychologist bills on these dates, that this is sufficient to establish that appellant was entitled to wage-loss compensation for these dates. However, 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.¹⁸ There is no medical evidence in the file supporting appellant's claim for compensation for medical appointments on these dates. Accordingly, appellant has not met her burden of proof to establish compensation on these dates.

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 is not entitled to compensation for intermittent wage loss for January 3, February 28 and March 14, 2011 for medical appointments and February 14, 2011 for total disability.

¹⁸ *Supra* note 11. See also *M.C.*, Docket No. 12-64 (issued May 10, 2012); *Gary L. Whitmore*, 43 ECAB 441 (1993) (where the Board found that payment of compensation by OWCP does not, in and of itself, constitute acceptance of a particular condition or disability in absence of evidence from OWCP indicating that the condition or disability has been accepted as work related).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 4, 2012 is affirmed.

Issued: January 25, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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