

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

T.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jacksonville, FL, Employer**

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**Docket No. 13-2116
Issued: May 2, 2014**

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 September 17, 2013 appellant filed a timely appeal of a September 9, 2013 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 to consider the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he was totally disabled on February 10, 2013 due to his accepted employment injury.

On appeal appellant disagreed with OWCP's decision to apply his compensation benefits to a preexisting overpayment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 21, 2006 appellant, then a 44-year-old mail processor, developed a back condition due to his federal job duties. On December 20, 2006 OWCP accepted his claim for intervertebral disc disorder with myelopathy in the lumbar region. Appellant underwent surgery for a left L4-5 transfacet decompression of the thecal sac and nerve root and arthrodesis on November 11, 2008. He accepted a modified distribution clerk position on June 17, 2009.²

On May 2, 2012 OWCP issued a preliminary determination that appellant was overpaid \$2,657.58 for the period July 10, 2010 through August 27, 2011 as he received wage loss at the 75 percent augmented rate. It also found that he was at fault in the creation of the overpayment. Appellant requested a precoupment hearing on May 12, 2012. In a decision dated December 4, 2012, a hearing representative affirmed the May 2, 2012 overpayment. She found that appellant did not have any eligible dependents. Appellant began repaying the overpayment on January 11, 2012 with eight payments of \$100.00 each.³

In a note dated January 11, 2013, Dr. John E. Carey, a Board-certified orthopedic surgeon, stated that appellant was experiencing ongoing back and leg pain and that his workload was too demanding.

Appellant filed a claim requesting 24 hours of wage-loss compensation from February 10 through 12, 2013 due to his back injury. He indicated that February 10, 2013 was an off day. Appellant provided a note from Dr. Carey, dated February 18, 2013, stating that appellant should be excused from work on February 10, 11 and 12, 2013. Dr. Carey also submitted an office note dated February 15, 2013 advising that he examined appellant on that date for ongoing low back pain as a result of lumbosacral spondylosis and postlaminectomy syndrome. He performed facet joint injections from L2 through L5. On March 1, 2013 Dr. Carey examined appellant and stated that he was unable to work on February 28, March 3 through 5, 2013. In a separate treatment note, he listed appellant's ongoing low back pain due to displacement of a lumbar disc without myelopathy and stated that appellant could work two days a week at express mail. Dr. Carey performed paravertebral facet injections at three levels L2 through L5. Appellant submitted a claim for compensation and time analysis form indicating that he used 5.51 hours of leave without pay on February 28, 2013 due to a physician's visit and eight hours of leave without pay on March 3 through 5, 2013 due to "shots."

In a letter dated March 25, 2013, OWCP requested additional medical evidence in support of his claims for compensation. It allowed 30 days for a response.

² On August 31, 2009 OWCP made a preliminary determination that appellant had received an overpayment of compensation in the amount of \$1,029.04 as he received compensation for temporary total disability through July 4, 2009. It affirmed this decision on October 6, 2009. In a decision dated July 21, 2010, the Board affirmed the findings of overpayment. Docket No. 10-194 (issued July 21, 2010) *petition for recon. denied*, Docket No. 10-194 (issued November 16, 2010).

³ Appellant appealed this decision to the Board. By *Order Dismissing Appeal* dated March 12, 2013, the Board granted appellant's request to dismiss the appeal. Docket No. 13-488 (issued March 12, 2013).

By decision dated April 30, 2013, OWCP denied appellant's claims intermittent periods of disability from February 10 through March 5, 2013.

Appellant requested reconsideration on August 21, 2013. He resubmitted Dr. Carey's February 18 and March 1, 2013 notes. Dr. Carey examined appellant on April 11 and 26, 2013 and diagnosed postlaminectomy syndrome of the lumbar spine and spondylosis. He performed facet joint injections from L3 through L5. On May 31, 2013 Dr. Carey stated that appellant had back pain with an etiology due to disc herniation, spondylosis and failed back syndrome. He stated that appellant underwent facet injections on February 15, March 1 and April 11, 2013. In a note dated July 3, 2013, Dr. Carey performed lumbar radiofrequency lesioning at L2-3, L3-4 and L5-S1. On August 19, 2013 he stated that appellant's back pain had increased after walking across a parking lot. Dr. Carey found that appellant was totally disabled from August 19 through 20, 2013.

By decision dated September 9, 2013, OWCP found that appellant had provided sufficient evidence to warrant modification of part of the April 30, 2013 decision. It further stated, "Please note that since there is an outstanding debt that was finalized by the Branch of Hearings and Review in December 2012 and advised you to repay this debt in full, this entire payment is being applied to this debt. If you disagree with this overpayment repayment, you should follow the appeal rights that were enclosed with the December 2012 decision." OWCP accepted that appellant was disabled for work for 45.51 hours from February 11 through March 5, 2013 due to his accepted employment injury and authorized treatment of lumbar facet blocks. It found that he was not entitled to compensation on Sunday, February 10, 2013, as this was his scheduled "off day." OWCP applied \$377.77 for February 11 through 28, 2013 and \$306.21 for March 3 through 5, 2013 to the outstanding overpayment.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁶

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁷ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁷ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁸ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees 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. As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments.¹¹ 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.

ANALYSIS

Appellant claimed 53.51 hours of wage-loss compensation for the periods February 10 through 12, 2013, 5.51 hours of compensation on February 28, 2013 due to a physician's visit, and 24 hours of compensation from March 3 through 5, 2013. OWCP authorized 45.51 hours of compensation benefits for the periods claimed. It found that appellant was not entitled to eight hours of compensation benefits on February 10, 2013 as it was a scheduled day off.

The Board finds that appellant is not entitled to eight hours of wage-loss compensation on Sunday, February 10, 2013 as it was a scheduled day off. Appellant is not entitled to wage-loss compensation on a scheduled day off.¹² Even if he sought medical treatment that day he is not entitled to compensation for a medical appointment he attended during his off-duty time.¹³

On appeal, appellant argued that OWCP improperly applied his wage-loss benefits for the period February 10 through March 5, 2013 to his outstanding overpayment. The Board does not have jurisdiction over the December 4, 2012 overpayment decision because more than 180 days has elapsed from the date of issuance of that decision to the filing of this appeal.¹⁴

⁸ *Id.*

⁹ *Id.*

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

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

¹² *T.B.*, Docket No. 11-663 (issued December 15, 2011).

¹³ *G.B.*, Docket No. 08-2470 (issued September 25, 2009).

¹⁴ See 20 C.F.R. § 501.3(e) (2009).

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 total disability on February 10, 2013.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2014
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