

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

C.B., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
Wilkes Barre, PA, Employer)

Docket No. 14-1231
Issued: September 18, 2014

Appearances:
Michael S. Miller, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 5, 2014 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated November 6, 2013. 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.

ISSUE

The issue is whether OWCP properly denied continuation of pay for the period May 17 to 29, 2013.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 63-year-old nursing assistant, filed a Form CA-1 claim for benefits based on a May 5, 2013 traumatic injury where he allegedly injured his chest and groin when he was assaulted by a patient on May 4, 2013.

By letter to appellant dated May 7, 2013, OWCP advised him that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and a medical opinion explaining the cause of any diagnosed condition.

In a report dated May 4, 2013, received by OWCP on May 29, 2013, Dr. O'Neill J. Pyke, a specialist in internal medicine, stated that appellant was admitted to the emergency room on May 4, 2013 with chest contusion after having been hit in the chest and kicked in the groin. He advised that appellant had tachycardia and was in atrial fibrillation while treated in the emergency room. Appellant was admitted for cardiological observation.

In a May 14, 2013 report, Dr. Marie J. Adajar, a specialist in internal medicine, stated that appellant was discharged from the hospital on May 6, 2013. She advised that a history of atrial fibrillation had been diagnosed on May 4, 2013 and that he was referred to an anticoagulation clinic. Dr. Adajar released appellant to return to full duty on May 14, 2013 and advised that he could return to the employee health unit as needed.

A hospital emergency room report dated May 16, 2013 indicated that appellant was admitted to the emergency room at approximately 3:00 p.m. that day. The report also noted that he began to complain of irregular heart beat and elevated blood pressure; he was subsequently treated for atrial fibrillation in the intensive care unit. Appellant was released after several days.

On May 17, 2013 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on May 17, 2013 which was causally related to his May 4, 2013 work injury. He stated on the form that he awakened on May 16, 2013 and felt his heart racing and fluttering and that he experienced shortness of breath and weakness. Appellant believed that these symptoms were related to his May 4, 2013 chest wall contusion.

In a statement dated June 10, 2013, appellant advised that, after he completed his 12:00 a.m. to 8:00 a.m. work shift on May 16, 2013, the symptoms he experienced on May 4, 2013 returned. He stated that he was admitted to the emergency room at the Veterans Administration medical center on the afternoon of May 16, 2013.

On June 19, 2013 OWCP accepted appellant's claim for contusion to the chest wall.

In a memorandum dated July 9, 2013, OWCP stated that appellant had received continuation of pay from May 4 to 15, 2013. It further stated that he was hospitalized for several nonwork-related conditions and was released to full duty on May 26, 2013; he took personal leave for May 26, 2013 and returned to work on May 29, 2013.

On July 18, 2013 OWCP accepted appellant's claim for recurrence of disability, for the accepted condition of chest wall contusion, based on Dr. Adajar's May 14, 2013 release to return

to full duty and her instructions to return to the Employee Health Unit as needed. It found that his treatment at the emergency room on May 16, 2013 was work related; however, it stated that his subsequent admission to the intensive care unit for atrial fibrillation treatment was not work related.

In a November 6, 2013 decision, OWCP determined that appellant was not entitled to continuation of pay for the period May 17 to 29, 2013 as his recurrent disability was not the result of a traumatic injury; *i.e.*, one occurring during one work shift. It stated that his May 16, 2013 recurrence of disability was for medical care at the emergency room only. OWCP found that appellant's subsequent hospital admission and days off from work were not work related.

LEGAL PRECEDENT

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 his 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 immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of FECA.⁹ In order to establish entitlement to continuation of pay, an

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).

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).

employee must establish, on the basis of reliable, probative and substantial evidence, that he was disabled as a result of a traumatic employment injury. As part of this burden, he 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

On May 5, 2013 appellant filed a Form CA-1 claim for benefits based on traumatic injury, alleging that he injured his chest and groin when he was assaulted by a patient on May 4, 2013. OWCP accepted his claim for chest wall contusion and awarded him continuation of pay from May 4 to 15, 2013. On May 17, 2013 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on May 16, 2013 which was causally related to his accepted chest wall contusion. OWCP accepted the claim on July 18, 2013, finding that his treatment at the emergency room on May 16, 2013 was work related, but that appellant's admission to the intensive care unit for atrial fibrillation treatment was not work related. On November 16, 2013 OWCP denied continuation of pay, finding that he failed to establish lost time from work due to a traumatic injury. It stated that appellant's period of recurrent disability from May 17 to 29, 2013 was not the result of a traumatic injury. OWCP found that the recurrence of disability was accepted only for medical care at the emergency room on May 16, 2013 and that his subsequent hospital admission and subsequent days off were for treatment of atrial fibrillation and were not related to his accepted chest wall contusion. On appeal appellant claims that his continuation of pay request should have been accepted because chest wall contusions are "a known cause" of atrial fibrillation.

The Board finds that appellant did not meet the requirements for continuation of pay. Although he gave written notice that he was claiming continuation of pay within 30 days of being injured, appellant has not established that his disability was due to a work-related traumatic injury.¹² OWCP noted that he was treated at an emergency room for symptoms he believed were causally related to his May 4, 2013 work injury for part of one day, May 16, 2013; but the evidence did not establish that his subsequent hospitalization and time off from work were due to the accepted chest wall contusion. The hospital records indicated that the hospitalization was due to atrial fibrillation, a nonwork-related condition. The record therefore contains no contemporaneous medical evidence supporting appellant's claim that he was entitled to continuation of pay for the period May 17 to 29, 2013.

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 W.W.*, 59 ECAB 533, 536 (2008).

OWCP properly denied continuation of pay for this period in its November 6, 2013 decision.

CONCLUSION

The Board finds that OWCP properly denied appellant's claim for continuation of pay from May 17 to 29, 2013.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 18, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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