

FACTUAL HISTORY

On October 11, 2005 appellant, then a 45-year-old automation clerk, filed a traumatic injury claim alleging that on that date he felt a sharp pain in his left lower leg by the groin area while pulling off racks of mail from the Delivery Bar Code Sorter (DBCS) machine. He stopped work that day. OWCP accepted a bilateral inguinal hernia without obstruction or gangrene and paid appropriate benefits, including a hernia repair on November 29, 2005. Appellant returned to full duty effective January 16, 2006.³

OWCP subsequently expanded the claim to include diaphragmatic obstruction, hernia with obstruction and bilateral ilioinguinal and iliophyogastric neuropathy (abdominal cutaneous nerve entrapment).

Appellant worked intermittently. Effective December 2, 2010 he stopped all work when the employing establishment had no light-duty work available. Appellant was then paid compensation on the periodic rolls. He returned to part-time work at the employing establishment on July 14, 2014.

On August 13, 2014 OWCP received a vocational rehabilitation report from a vocational rehabilitation counselor regarding service dates for appellant from July 14 to August 12, 2014. This report summarized a meeting with appellant on July 18, 2014 which lasted 2.3 hours at Romo's Place Restaurant.

On October 1, 2014 appellant filed a claim for disability compensation for 8 hours on September 28, 2014, for 8 hours on September 29, 2014 and for 2 hours on July 18, 2014, for a total of 18 hours of leave without pay (LWOP). On the Form CA-7a, time analysis form, he indicated that the two hours claimed on July 18, 2014 was for a meeting with the vocational rehabilitation counselor.

On October 9, 2014 OWCP advised appellant of the deficiencies in his claim. It requested that he provide medical evidence establishing disability to support the dates claimed. Appellant was accorded 30 days to submit the additional evidence.

Appellant submitted supporting documentation that he was in the hospital on September 28 and 29, 2014 for testicular pain. He submitted a July 18, 2014 authorization for a certified vocational rehabilitation counselor and case manager, to review and release his records and information pertaining to his work-related injury.

By decision dated December 18, 2014, OWCP denied appellant's disability compensation claim for two hours of leave without pay on July 18, 2014. The decision noted that FECA only provides compensation for medical appointments. Meetings with individuals at the employing establishment were not compensable.

³ Under OWCP file number xxxxxx730, appellant has an accepted claim for left plantar fibromatosis, due to a February 1, 1999 work injury. Under that claim, there is no evidence that he sought medical treatment after September 29, 2009. Appellant eventually resumed work.

LEGAL PRECEDENT

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.⁵ The Board will not require OWCP to pay compensation for disability in the absence of 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 or her disability and entitlement to compensation.⁶

ANALYSIS

OWCP accepted that appellant sustained bilateral inguinal hernia without obstruction or gangrene, a diaphragmatic obstruction, hernia with obstruction and bilateral Illioinguinal and Illiophyogastric neuropathy (abdonminal cutaneous nerve entrapment) and paid appropriate benefits, including a hernia repair on November 29, 2005. Appellant claimed wage-loss compensation for two hours on July 18, 2014, eight hours on September 28, 2014 and eight hours on September 29, 2014, for a total of eight hours leave without pay. OWCP accepted 16 hours of disability compensation for the period September 28 to 29, 2014, but denied the claimed two hours of disability compensation for July 18, 2014.

On the Form CA-7a, time analysis form, appellant indicated that the two hours claimed on July 18, 2014 was for a meeting with a vocational rehabilitation counselor. The record reflects that he did meet with that vocational rehabilitation counselor on July 18, 2014 to discuss a return to work and to sign a release of his records.

Chapter 8.100(4)(a)(2) of the procedure manual states that Section 8104 of FECA provides that a permanently disabled individual may be directed to undergo vocational rehabilitation. The injured worker receives compensation while cooperating and participating in the rehabilitation process.⁷

As appellant met with his vocational rehabilitation counselor on July 18, 2014 to discuss a return to work and authorize the release of his records, he should receive compensation for the meeting. As such, appellant has met his burden of proof to establish compensation for two hours on July 18, 2014. The case will be remanded to OWCP for appropriate action.

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ *See Amelia S. Jefferson*, 57 ECAB 183 (2005). *See also David H. Goss*, 32 ECAB 24, 27 (1980).

⁶ *See William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁷ Federal (FECA) Procedure Manual, Part 8 - Rehabilitation, *Introduction to Rehabilitation*, Chapter 8.100(4)(a)(2) (August 2012).

CONCLUSION

The Board finds that appellant has established entitlement to wage-loss benefits for two hours on July 18, 2014.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for appropriate action consistent with this decision.

Issued: August 14, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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