

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

J.C., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Saint Ann, MO, Employer)

Docket No. 15-824
Issued: June 16, 2015

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
 PATRICIA H. FITZGERALD, Deputy Chief Judge
 COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 26, 2014 appellant filed a timely appeal from a June 5, 2014 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was disabled for work for intermittent periods from March 29 to April 5, 2014 due to her accepted January 11, 2014 traumatic injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 11, 2014 appellant, then a 47-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a right knee injury when she was lifting a checked bag onto a table and felt a sharp pain in her knee. She stopped work that same date and began receiving treatment from Dr. Matthew Collard, Board-certified in osteopathic medicine. By decision dated January 30, 2014, OWCP accepted the claim for right knee sprain. Appellant returned to work with restrictions on February 6, 2014.²

In a March 6, 2014 medical report, Dr. Collard reported that appellant would be scheduled for right knee arthroscopy due to continued complaints of pain following conservative treatment. On March 31, 2014 OWCP approved appellant's request for right knee arthroscopy.

On April 8, 2014 appellant filed a claim for compensation (Form CA-7) for leave without pay from March 23 to April 5, 2014. On Form CA-7 she requested a total of 32 hours leave with 8 hours on each date for March 29, April 1, 4, and 5, 2014. Appellant noted the reason for leave as "unable to work."

By letter dated April 23, 2014, OWCP informed appellant that there was no medical evidence to substantiate that she was temporarily totally disabled or unable to perform her limited-duty assignment on March 29, April 1, 4, and 5, 2014. It advised her of the medical evidence needed and provided her 30 days to submit the requested information.

In an April 4, 2014 Preoperative Testing Order, Dr. Collard reported that appellant was diagnosed with right knee internal derangement and was scheduled for right knee arthroscopy on April 17, 2014 at Timberlake Surgery Center. Preoperative test results dated April 8, 2014 from Des Peres Hospital were submitted.

In a June 5, 2014 CA-110 telephone note, OWCP claims examiner confirmed that appellant had not been seen by Dr. Collard on April 4 or 5, 2014. Appellant's first appoint postsurgery was April 23, 2014.

By decision dated June 5, 2014, OWCP denied appellant's claim for compensation for eight hours each on March 29, April 1, 4, and 5, 2014 finding that the medical evidence of record failed to establish that she was disabled on those dates as a result of her January 11, 2014 traumatic injury. It further found that she failed to establish receiving any medical treatment on those dates as a result of her accepted injury.

² In a February 6, 2014 work status report, Dr. Collard released appellant to work with restrictions of sitting 75 percent of the time (three hours of every four hours of a shift) and limited walking.

LEGAL PRECEDENT

Under FECA,³ the term disability is defined as incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ Disability is not synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.⁵

Whether a particular injury causes an employee to be disabled and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁶ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁷ The Board will not require OWCP to pay compensation for disability without 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.⁸

OWCP's procedure manual provides that wages lost for compensable medical examination or treatment may be reimbursed.⁹ It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.¹⁰ As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. 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.¹¹

³ 5 U.S.C. §§ 8101-8193.

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

⁵ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁶ See *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

⁷ *G.T.*, 59 ECAB 447 (2008); see *Huie Lee Goal*, 1 ECAB 180,182 (1948).

⁸ *Id.*

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

¹⁰ See also *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

¹¹ *Id.*

ANALYSIS

OWCP accepted that appellant sustained a right knee sprain on January 11, 2014. Appellant stopped work on the date of injury and returned to work with restrictions on February 6, 2014. On April 8, 2014 she claimed 32 hours of leave without pay for March 29 and April 1, 4, and 5, 2014 stating that she was unable to work. The Board finds that appellant did not meet her burden of proof to establish disability compensation for those dates due to the accepted January 11, 2014 traumatic injury.¹²

In a March 6, 2014 medical report, Dr. Collard reported that appellant would be scheduled for right knee arthroscopy due to continued complaints of pain following conservative treatment. He did not restrict her from working or modify her previous work restrictions. OWCP approved appellant's request for right knee arthroscopy which was scheduled for April 17, 2014.

In an April 4, 2014 Preoperative Testing Order, Dr. Collard circled the preoperative testing that appellant should complete prior to her April 17, 2014 surgery, but the record establishes that appellant submitted for her preoperative testing on April 8, 2014. A June 5, 2014 Form CA-110 telephone note with his office confirmed that she did not have an appointment scheduled on April 4 or 5, 2014. The record contains no other evidence which would establish medical treatment on those dates. As appellant has not provided sufficient medical evidence to establish that she missed time from work due to medical treatment for her accepted conditions, the Board finds that she is not entitled to disability compensation for medical appointment on those dates.¹³

The Board further notes that there are no medical reports establishing disability on the claimed dates.¹⁴ The record does not contain a report from Dr. Collard finding appellant disabled on the dates in question due to her accepted January 11, 2014 injury. As noted above, appellant's surgery was scheduled after the claimed disability dates and there is no indication that Dr. Collard modified her work status prior to her surgery on April 17, 2014. 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.¹⁵ Thus, the Board finds that appellant has failed to establish entitlement to wage-loss compensation for the dates claimed above.¹⁶

On appeal, appellant argues that she was unable to work per Transportation Security Administration regulations because of the medication she was taking. However, she has failed to

¹² A.J., Docket No. 13-614 (issued July 9, 2013).

¹³ J.L., Docket No. 13-1016 (issued September 13, 2013).

¹⁴ *Id.*

¹⁵ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁶ R.A., Docket No. 13-1498 (issued May 19, 2014).

submit any evidence to substantiate her claim. As appellant failed to submit rationalized medical evidence establishing that she was seen for treatment of her accepted conditions on March 29, April 1, 4, and 5, 2014, or was otherwise disabled as a result of her conditions on the above-mentioned dates, she has failed to meet her burden of proof.¹⁷

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 failed to establish disability for the period March 29, April 1, 4, and 5, 2014 as a result of her accepted January 11, 2014 traumatic injury.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁷ P.Y., Docket No. 12-921 (issued February 4, 2013).