United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 16-0017**
	)	**Issued: May 12, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Bloomsburg, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 5, 2015 appellant, through counsel, filed a timely appeal from a September 30, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant was entitled to compensation for intermittent disability from May 16, 2014 to April 3, 2015; and (2) whether appellant was entitled to receive compensation at a recurrent pay rate for intermittent disability from May 16, 2014 to April 3, 2015.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This is the second appeal before the Board in this case.[2] The facts and circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The facts relevant to the present appeal are set forth below.

OWCP accepted that on October 6, 2002 appellant, then a 40-year-old part-time flexible mail clerk, sustained a lumbosacral sprain, lumbosacral radiculitis, lumbar myelopathy, degeneration of a lumbar disc, and spondylolisthesis when she pushed a hamper of mail then lifted flats of mail. After a brief period of light-duty work, appellant stopped work on December 31, 2002. She received compensation for total wage loss on the periodic rolls.

Dr. A. Loren Amacher, an attending Board-certified neurosurgeon, held appellant off work through September 2005 due to continuing right-sided L5 radiculopathy. On April 9, 2008 OWCP obtained a second opinion from Dr. Russell N. Worobec, a Board-certified orthopedic surgeon, who found appellant capable of full-time limited duty.

OWCP found a conflict of medical opinion between Dr. Worobec, a second opinion physician, and Dr. Amacher, an attending physician, regarding whether appellant remained totally disabled for work. It obtained an impartial medical opinion from Dr. Michael C. Raklewicz, a Board-certified orthopedic surgeon, who opined on June 27, 2008 that appellant had a continuing, work-related aggravation of degenerative lumbar spondylosis. Dr. Raklewicz found that appellant could perform full-time light-duty employment with restrictions.

On June 8, 2009 the employing establishment offered appellant a limited-duty assignment as a modified window distribution clerk for 37 hours a week at the Bloomsburg branch. Duties included mail breakdown, sorting mail, boxing mail, changing box locks, box audits, record keeping, ordering supplies, maintaining records, and assisting at the window as needed. The position required lifting up to 20 pounds, standing, walking, reaching, sitting, and keyboarding. Each activity was limited to four hours a day. Appellant accepted the offer on July 27, 2009.

Effective August 8, 2009, appellant was assigned to a part-time flexible window clerk position. In August 11 and 12, 2009 e-mails, the employing establishment noted that appellant had not been previously provided a regular work schedule, and appellant had only been given two hours of work on July 27, 2009.

On September 8, 2009 the employing establishment offered appellant a limited-duty assignment as a modified window distribution clerk for 40 hours a week at the Bloomsburg branch. Duties included mail breakdown, sorting mail, assisting at the window, using the computer to respond to information requests from district and operations managers, and acting as officer in charge. The position required lifting up to 20 pounds, standing, walking, reaching, sitting, and keyboarding. Sitting, walking, and computer use were limited to two hours a day, sorting mail and standing at the window to 3.5 hours a day, and lifting to 30 minutes a day. Appellant accepted the offer on September 18, 2009.

[2] Docket No. 10-90 (issued August 23, 2010).

Dr. Amacher noted in his September 22, 2009 report that appellant had returned to work and that her back was "behaving itself and [appellant was] functioning better than she ha[d] for a while."[3]

In a September 27, 2009 report, the vocational rehabilitation counselor noted that appellant had been employed for 60 days as an officer in charge at the Marion Heights branch, working 40 hours a week. He noted that appellant worked briefly at the Washingtonville branch at the end of August 2009, returned to Bloomsburg, then moved back to the Marion Heights branch on September 14, 2009. Appellant was awaiting a hand cart to enable her to perform essential job functions at Marion Heights.

By decision dated September 29, 2009, OWCP reduced appellant's wage-loss compensation to zero under sections 8106 and 8115 of FECA, based on her actual earnings as a part-time modified clerk from July 27 to September 27, 2009, which exceeded those of her date-of-injury position. Appellant appealed to the Board.

By decision and order issued August 23, 2010,[4] the Board reversed OWCP's September 29, 2009 decision, finding that OWCP improperly found that the position of modified clerk properly represented appellant's wage-earning capacity. The Board found that OWCP failed to establish that appellant performed the position consistently for 60 days prior to issuing the loss of wage-earning capacity determination. The record demonstrated that appellant performed a variety of tasks in more than one employing establishment branch office, with disparate requirements and tours of duty.

In a September 2, 2010 e-mail, an employing establishment human resource manager advised OWCP that the full-time officer in charge position appellant performed since September 2009 was that of an acting postmaster. The employing establishment characterized the job as a temporary, voluntary detail "to a vacant higher level EAS-13 [Executive and Administrative] postmaster position." The manager noted that appellant performed "all of the duties of a level 13 postmaster," working by herself in an office.

Effective August 27, 2011, the employing establishment reassigned appellant to a nontraditional, full-time (NTFT) window distribution clerk position, with a work schedule of 30 hours a week.

On January 30, 2012 the employing establishment reposted appellant to an "unassigned regular" position "due to operational needs."

Dr. Emmanuel Jacob, an attending Board-certified physiatrist, submitted reports from March 19, 2013 onward diagnosing severe lumbosacral pain, lumbar neuritis, lumbar disc disease with myelopathy, lumbosacral disc degeneration, and lumbar spondylolisthesis with

[3] Dr. Amacher retired in July 2010. As of May 18, 2010, she diagnosed L5-S1 spondylolisthesis with chronic L5 radiculopathy.

[4] Docket No. 10-90 (issued August 23, 2010).

aggravation. He limited appellant to light duty, with lifting, pushing, pulling, and carrying limited to 20 pounds.

On March 27, 2013 the employing establishment offered appellant a modified, limited-duty position as an NTFT distribution window clerk for 30 hours a week. The job required standing up to five hours a day, lifting and pushing up to 20 pounds, and bending as needed. Appellant accepted the position on April 4, 2013.

In a September 19, 2013 letter, the employing establishment requested that OWCP perform an informal loss of wage-earning capacity determination, as appellant had been working consistently since April 4, 2013 in the modified clerk assignment. It explained that she was "essentially working full duty, as well as working overtime."

Dr. Jacob administered lumbar acupuncture treatment, approved by OWCP, on the following dates in 2014: May 16 and 30; June 13; August 8 and 19; September 5. He held appellant off work on the following dates due to treatment and prescribed rest: May 16, 17, 30, and 31; June 13 and 14; August 9 and 10; and September 5 and 6. Appellant filed claims for compensation (Form CA-7) for absences on May 3, 16, 17, 30, and 31, June 13 and 14, July 14 to 18, and 26, August 8 and 23, and September 5, 2014. On each of the claim forms, the employing establishment asserted that appellant was not entitled to additional compensation because she had worked the full 30 hours a week of her bid position, and also worked extra hours or overtime. It provided time keeping records for each pay period, verifying that appellant had worked at least 30 hours a week.

The employing establishment explained that appellant was an NTFT employee working 30 hours a week. Based on the employing establishment's remarks, OWCP advised appellant that she could not be paid compensation over and above her 30 hours a week schedule as an NTFT employee.

On September 8, 2014 the employing establishment offered appellant an NTFT position as a distribution window clerk for 30 hours a week. The job required standing up to 1 hour a day, lifting and pushing up to 20 pounds, and bending for up to 10 minutes a day. Appellant accepted the position on September 17, 2014.[5]

Dr. Jacob administered acupuncture treatment, authorized by OWCP, on the following dates: September 19, October 3 and 17, November 14, December 4, 12 and 26, 2014; January 9 and 23, February 6 and 20, March 9 and 20, and April 3, 2015. Appellant claimed compensation for work absences on September 19, 20, October 3, 4, 17 and 18, November 20 and 27, December 4, 5, 12, 13, and 26, 2014, January 9, February 20, March 9 and 20, 2015. The employing establishment noted on each claim form and in time keeping records that appellant was not entitled to wage-loss compensation as she had worked at least 30 hours a week in each pay period claimed.

[5] On November 5, 2014 the employing establishment offered appellant a modified NTFT flex position as a sales distribution associate, working 30 hours a week. The job required sitting for four hours, standing for one hour, and lifting and carrying up to 20 pounds. Appellant did not accept the position.

In a February 10, 2015 letter, the employing establishment explained that effective August 27, 2011 appellant "was converted from a part-time flexible employee to a nontraditional full-time employee." Her schedule remained at 30 hours a week. The employing establishment noted that appellant had performed "this job, without incident, since April 4, 2013."[6]

Effective March 21, 2015, appellant was promoted to a full-time lead sales and services associate, a bid position. She then claimed compensation for attending an April 3, 2015 medical appointment. The employing establishment asserted that as appellant was now full time, but had worked and been paid for more than 40 hours a week, she was not entitled to additional compensation.

Counsel submitted a June 19, 2015 letter asserting that appellant was entitled to a recurrent pay rate as she worked full-time as a postmaster from 2009 through March 27, 2013. He contended that under FECA Bulletin No. 09-05, the employing establishment's withdrawal of the full-time postmaster position appellant had performed from 2009 to March 27, 2013 constituted a recurrence of disability, triggering a recurrent pay rate.

OWCP advised counsel by letter dated June 19, 2015 that appellant was "entitled to compensation benefits for attending medical appointments that are supported by medical evidence. Such payments are based on the difference between the pay rate in effect on May 16, 2014 for the job held on the date of the recurrence on February 4, 2003 and the recurrent pay rate in effect on February 4, 2003 for the PTF [part-time flexible] clerk job." OWCP explained that appellant was not entitled to a recurrent pay rate based on the Postmaster's job as it was a voluntary detail with an end date and it was not a light-duty job due to the work injury.

In June 25 and September 27, 2015 letters, appellant requested that OWCP issue a formal decision with appeal rights. She argued that the postmaster position was a light-duty assignment after she had been off work for seven years due to the accepted injury. Appellant denied that it was a voluntary detail, as there was no work available at her previous duty station. She explained that there was no set end date, that the employing establishment terminated the detail and assigned her to a 30-hour-a-week position. Appellant asserted that from July 30, 2012 to January 25, 2013, she worked as officer-in-charge at the Numidia Post Office for 44 hours a week, and from January 25 to March 26, 2013 worked as officer-in-charge of the Gordon Post Office for 43.5 hours a week. She was presented with a limited-duty job offer on March 28, 2013 for 30 hours a week, but the position required additional hours, sometimes exceeding 40 hours a week.

By decision dated September 30, 2015, OWCP denied compensation for May 16, 17, 31, June 14, 27, August 8, 19, 20, September 4, 5, 19, 20, October 3, 4, December 13, 26, and 27, 2014, and January 9 and April 3, 2015, based on the employing establishment's assertion that she had been "fully paid by them based on the job [she was] performing for 30 hours per week and

[6] On April 23, 2015 the employing establishment offered appellant a "rehabilitation modified position" as a sales and services distribution associate, within her previous physical restrictions. Appellant accepted the job on May 12, 2015. In a June 10, 2015 e-mail, the employing establishment explained that appellant was not a part-time flexible clerk. Appellant was a regular NFTE clerk. Her bid job was 30 hours per week. Appellant bid a new job that began March 12, 2015 that is 40 hours per week."

that no leave without pay can be verified." However, OWCP noted that if appellant submitted additional medical evidence establishing entitlement to compensation on or after May 16, 2014, she would not be entitled to a recurrent pay rate as she did not return to full duty. It noted that, if appellant were to establish entitlement to compensation, any payments would be made by "separate actions by [OWCP]."

LEGAL PRECEDENT -- ISSUE 1

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.[7]

An injured employee is entitled to compensation for lost wages incurred while obtaining authorized medical services.[8] This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location.[9] As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments.[10] 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.[11]

OWCP's procedures provide that prior to adjudicating a claim for compensation, it must first "establish that the claimant actually lost time from work on the dates claimed. Clear verification of dates and hours lost should be provided by the [employing establishment]" on the claim form or supporting documentation.[12]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a lumbosacral sprain, lumbosacral radiculopathy, lumbar myelopathy, degeneration of a lumbar disc, and spondylolisthesis on October 6, 2002, at which time she was a part-time flexible clerk. Appellant was off work from December 31, 2002 through July 27, 2009, when she returned to work in a part-time limited-duty assignment. She performed a series of modified-duty assignments. Beginning on April 4, 2013 appellant worked as an NTFT modified, limited-duty window clerk. Her assigned tour was 30 hours a week.

[7] 5 U.S.C. § 8102(a).

[8] 5 U.S.C. § 8103(a) (2006); *see Gayle L. Jackson*, 57 ECAB 546 (2006).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19a(1) (February 2013).

[10] *Id.* at Chapter 2.901.19a(3)c (February 2013).

[11] *Id.*

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.5a(1) (February 2013).

Dr. Jacob, an attending Board-certified physiatrist, administered lumbar acupuncture treatment, approved by OWCP on intermittent dates from May 16, 2014 to April 3, 2015. Appellant filed claims for compensation due to time lost from work to attend the acupuncture appointments. On each of the claim forms, the employing establishment contended that appellant was not entitled to wage-loss compensation as she had worked her full 60-hour tour in each pay period in which compensation was claimed. Although appellant voluntarily worked overtime in each pay period, her bidded position guaranteed only 30 hours of work each week. Her job as of April 3, 2015 was for a full 40 hours a week, but appellant worked more than 40 hours in the pay period in question. OWCP denied compensation by decision dated September 30, 2015, finding that appellant did not demonstrate that she lost any time from work due to the acupuncture appointments because she had worked her full tour of duty in each pay period claimed.

The Board finds that appellant has not established her claims for wage-loss compensation for intermittent dates from May 16, 2014 to April 3, 2015. Appellant did not meet the threshold requirement of establishing that she lost time from work on the dates claimed. The employing establishment stated on each claim form that she had worked a full tour of duty, and was therefore not entitled to wage-loss compensation above and beyond her assigned work hours. It provided time keeping records substantiating that appellant worked a full tour of duty in each pay period.[13] Appellant failed to submit any evidence in support of her claim. OWCP's September 30, 2015 decision is therefore proper under the law and facts of this case.

On appeal, counsel contends that appellant was entitled to receive compensation for work absences beyond her assigned tours of duty from May 16, 2014 to April 3, 2015 because her date-of-injury position was equivalent to a full-time job. He asserts that because appellant worked more than 40 hours a week prior to the accepted October 6, 2002 employment injury, although classified as a part-time flexible employee, OWCP was obligated to compensate her for the difference between her assigned tour and 40 hours a week. Counsel also contends that the officer-in-charge position appellant performed from September 2009 through August 27, 2011 was equivalent to a full-time job although her assigned tour was less than 40 hours a week. The Board notes that these arguments intermingle the issues of pay rate with entitlement. While the number of hours worked beyond an assigned tour can influence a postal employee's compensation rate, this is distinct from the entitlement issue. There is no evidence that appellant had wage loss for the claimed periods, such that attending the acupuncture appointments prevented her from working her assigned tour of duty for any of the dates claimed.

[13] *Id.*

The Board finds that the issue of whether appellant is entitled to a recurrent pay rate is moot, as appellant did not establish an entitlement to compensation for the claimed period.[14]

CONCLUSION

The Board finds that appellant has not established entitlement to compensation for intermittent work absences from May 16, 2014 to April 3, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2015 is affirmed.

Issued: May 12, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[14] On appeal, counsel contends that appellant is entitled to a recurrent pay rate as she worked as an acting postmaster position for 40 or more hours a week from 2010 to 2013. He also asserts that appellant is entitled to a recurrent pay rate under paragraph eight of FECA Bulletin No. 09-05, as she returned to full-time, regular employment. Counsel also argues that appellant falls into Category B of FECA Bulletin No. 09-05, as no loss of wage-earning capacity decision had been issued, the medical evidence established continuing residuals, light duty was no longer available, and there was no indication that a retroactive loss of wage-earning capacity determination should be made. As set forth above, the issue of a recurrent pay rate for the claimed period is moot, as OWCP denied compensation for the claimed period.