

On appeal, appellant contends that OWCP should have paid two hours of compensation on July 29, 2014 to attend a presurgical appointment for a procedure authorized by OWCP. She notes that the employing establishment approved two hours of leave for the same visit.

FACTUAL HISTORY

OWCP accepted that appellant, a 60-year-old legal assistant, sustained a temporary aggravation of localized primary osteoarthritis of the right hip, localized primary osteoarthritis of the right lower leg, pain in joint of right pelvic region and thigh, and localized primary osteoarthritis of the right pelvic region and thigh as a result of tripping and falling at work on January 6, 2012. It authorized a right total hip arthroplasty which was performed on August 6, 2014 by Dr. Richard L. Meyer, Jr., a Board-certified orthopedic surgeon. Appellant received wage-loss compensation for intermittent periods between November 15, 2012 and October 24, 2014.

On August 25, 2014 appellant filed a claim for compensation (Form CA-7) for wage loss due to disability on July 29, 2014.

In an August 27, 2014 letter, OWCP advised appellant that it had not received any evidence to support her claim and afforded her 30 days to submit additional evidence to establish disability for work that day.

In response, appellant submitted a September 15, 2014 letter explaining that she had used leave without pay (LWOP) on July 29, 2014 to attend a presurgical clearance appointment with Dr. Christopher Lege, a Board-certified internist, before the August 6, 2014 hip replacement surgery.³ She provided a July 29, 2014 report from Dr. Lege, confirming that appellant had been seen that day for “pre-op clearance” and could return to work on July 30, 2014.

On July 31, 2014 Dr. Rodrigo Saenz, a Board-certified radiologist, found no acute cardiopulmonary process. On August 6, 2014 he found postoperative changes from right total hip arthroplasty.

In a September 3, 2014 report, Dr. Meyer released appellant to work effective September 5, 2014 with the following restrictions: no reaching above the head or side-to-side; lifting no more than five pounds; and no stooping or bending from low positions.

By decision dated December 28, 2015, OWCP denied appellant’s claim for disability compensation, finding that she had submitted no medical evidence that the accepted January 6, 2012 injuries disabled her from work on July 29, 2014.

LEGAL PRECEDENT

Section 8102(a) of FECA⁴ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: “The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal

³ Appellant also requested a correction to her listed name.

⁴ 5 U.S.C. § 8102(a).

injury sustained while in the performance of his duty....” In general the term “disability” under FECA means “incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”⁵ This meaning, for brevity, is expressed as disability from work.⁶ For each period of disability claimed, the employee has the burden of proving that she was disabled for work as a result of the accepted employment injury.⁷ Whether a particular injury caused an employee to be disabled from employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.⁸

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.⁹ Appellant would be entitled to compensation for any time missed from work due to medical examination or treatment for an employment-related condition.¹⁰ However, OWCP’s obligation to pay for expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.¹¹ 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.¹²

ANALYSIS

OWCP accepted that appellant sustained employment-related injuries to the pelvis and right lower extremity on January 6, 2012, requiring right hip surgery on August 6, 2014. On August 25, 2014 appellant claimed compensation to attend a July 29, 2014 appointment with Dr. Lege, an attending Board-certified internist, to obtain presurgical clearance for the August 6, 2014 procedure. In support of her claim, appellant submitted Dr. Lege’s July 29, 2014 note confirming a “pre-op clearance” on that date. She also explained in a September 15, 2014 letter that she used two hours of leave without pay (LWOP) on July 29, 2014 to receive medical clearance for right hip surgery approved by OWCP.

⁵ 20 C.F.R. § 10.5(f). See also *William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

⁶ See *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁷ See *William A. Archer*, 55 ECAB 674 (2004).

⁸ See *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁹ 5 U.S.C. § 8103(a).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19a (February 2013). See also *Vincent E. Washington*, 40 ECAB 1242 (1989).

¹¹ *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹² See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

OWCP denied the claim on December 28, 2015, finding that appellant had submitted insufficient medical evidence that the accepted injuries disabled her from work on July 29, 2014. On appeal, appellant contends that OWCP should have paid two hours of compensation to reimburse LWOP used to attend the July 29, 2014 appointment.

The Board finds that Dr. Lege's July 29, 2014 report is sufficient to establish two hours of compensation for the date claimed. It is dated July 29, 2014, the date for which appellant claimed compensation. Dr. Lege confirmed that the appointment was for a presurgical clearance. Also, the appointment was within a week of the August 6, 2014 right hip arthroplasty approved by OWCP. The specificity of Dr. Lege's report, and the proximity of the appointment to the approved surgery demonstrate that the July 29, 2014 presurgical clearance was incidental to an accepted injury for which surgery was authorized. Therefore, appellant has established disability for two hours of wage-loss compensation for the July 29, 2014 appointment. OWCP's December 28, 2015 decision denying that compensation is reversed. The case is returned to OWCP for payment of two hours of wage-loss compensation on July 29, 2014.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish disability on July 29, 2014 to attend a medical appointment.

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2015 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 14, 2016
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