

at work. OWCP accepted appellant's claim on March 15, 2000 for lumbar strain. It authorized wage-loss compensation.

Appellant accepted a light-duty position at the employing establishment as a modified carrier effective November 17, 2001. By decision dated March 14, 2002, OWCP found that the modified carrier position fairly and reasonably represented her wage-earning capacity and reduced her compensation benefits to zero based on her actual earnings.

Appellant filed claims for intermittent wage-loss compensation (Form CA-7) beginning June 25, 2002, which OWCP authorized.

Appellant filed a notice of recurrence of disability (Form CA-2a) on September 26, 2005 and listed her date of recurrence as January 7, 2005. She asserted that she was required to exceed her restrictions at work. OWCP authorized wage-loss compensation beginning October 15, 2005 and on December 13, 2005 appellant was placed on the periodic rolls. It thereafter accepted the additional conditions of displacement of lumbar intervertebral disc at L4-5 and L5-S1. Appellant returned to light-duty work at the employing establishment on January 25, 2006. She requested and received intermittent periods of wage-loss compensation. On October 24, 2006 appellant underwent an authorized left L4-5 lateral microdiscectomy and was placed on total disability.

Appellant accepted a modified full-time work assignment at the employing establishment on April 18, 2007. By decision dated June 29, 2007, OWCP found that appellant's new modified position, effective April 18, 2007, fairly and reasonably represented her wage-earning capacity. OWCP reduced appellant's compensation benefits to zero based on her actual earnings.

Appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation beginning February 10, 2009. On November 16, 2009 OWCP accepted that appellant sustained a recurrence of disability on February 10, 2009, authorized compensation benefits, and modified the June 29, 2007 wage-earning capacity decision based on a material change in her injury-related condition.

Appellant accepted a new modified-duty position at the employing establishment on July 30, 2010. On July 22, 2014 she accepted another modified position as a passport scheduler. The employing establishment removed appellant from her light-duty passport scheduler position on May 4, 2015. Beginning on May 4, 2015 appellant filed a series of claims for compensation (Form CA-7) and OWCP authorized compensation benefits. Appellant returned to full-time light-duty work at the employing establishment on September 19, 2015 as a modified city carrier, but stopped work that same day and filed claims for compensation. OWCP authorized compensation benefits.

On December 1, 2015 appellant notified OWCP by telephone that she had returned to work for approximately two hours a day delivering express mail. Appellant submitted claims for compensation and OWCP authorized compensation for approximately six hours a day through November 11, 2016.

In letters dated May 23 and July 6, 2016, OWCP informed the employing establishment that appellant could work with restrictions and instructed the employing establishment to provide appellant a full-time job within her restrictions.

On November 30, 2016 appellant filed a claim for compensation (Form CA-7) requesting intermittent wage-loss compensation from November 12 through 25, 2016.

In a letter dated December 8, 2016, OWCP authorized compensation benefits from November 12 through 24, 2016 for 32.92 hours. It found that appellant had not submitted medical evidence supporting disability for eight hours of work on Friday, November 25, 2016. OWCP afforded appellant 30 days to submit the necessary medical opinion evidence to establish that she was disabled for eight hours on November 25, 2016.

Appellant telephoned OWCP on December 12, 2016 and asserted that the employing establishment did not have work available for her on November 25, 2016, the Friday after Thanksgiving. In one of three letters dated December 16, 2016, a manager of customer service noted that appellant worked 16 hours and 8 minutes during the period Saturday, November 12 through November 25, 2016. The manager asserted that there was no further work available to appellant.

On December 13, 2016 the employing establishment completed appellant's time analysis form and indicated that she worked less than two hours a day on November 29 and December 1, 2, 3, 5, 7, 8, and 9, 2016 as there was no work available. Appellant used a full eight hours of leave without pay on December 5, 2016 as there was no work available. On December 16, 2016 OWCP authorized compensation benefits for the period November 26 through December 9, 2016 in the amount of \$1,475.87.

On January 11, 2017 OWCP telephoned the employing establishment to ascertain if work was available for appellant on November 25, 2016. The employing establishment responded that there was work available for appellant on November 25, 2016 and that there was always work available for appellant.

By decision dated January 11, 2017, OWCP denied appellant's claim for eight hours of compensation on November 25, 2016. It noted that appellant had not provided medical evidence supporting that she was disabled on November 25, 2016 due to her accepted employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ The term disability is defined as the incapacity because of an employment injury to earn the wages the

² *Id.*

³ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show an inability to perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁵

OWCP regulations have codified this burden by noting that compensation for wage loss due to disability is available only for any periods during which the employee's work-related medical condition prevents her from earning the wages earned before the work-related injury. An employee is not entitled to compensation for any wage loss to the extent that evidence establishes that an employee had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.⁶

ANALYSIS

The Board finds this case not in posture for a decision.

Appellant notified OWCP by telephone on December 1, 2015 that she had returned to work for approximately two hours a day delivering express mail. The record does not contain a copy of this job description and there is no evidence that the employing establishment offered appellant either a full-time job within her restrictions or a part-time job working more than two hours a day on or after December 1, 2015. OWCP authorized compensation benefits from December 1, 2015 through November 11, 2016 for approximately six hours a day.

Appellant filed a claim for compensation on November 30, 2016 for the dates of November 12 through 25, 2016. The employing establishment noted that on November 25, 2016 appellant used a full eight hours of leave without pay and had not provided medical evidence in support of total disability for that day.

OWCP authorized compensation from November 12 through 23, 2016, but requested additional information in support of appellant's claim for eight hours of leave without pay on November 25, 2016. A manager of customer service provided a note dated December 16, 2016 reporting that for the period September 17 through November 30, 2016 appellant had worked 15.54 hours during that period. The supervisor noted that there was no further work available to

⁴ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁵ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ 20 C.F.R. § 10.500(a).

her. OWCP then contacted the employing establishment *via* telephone on January 11, 2017 and asked if there was work available for appellant on that date. The employing establishment representative claimed that there was work available for appellant on November 25, 2016 and that there was always work available for appellant.

The Board finds factual inconsistencies in the record such that it is unable to determine whether there was appropriate light-duty work available for appellant on November 25, 2016.

On remand OWCP must develop the case and make factual findings on the status of appellant's employment at the time she requested compensation on November 25, 2016. Once factual findings are made, OWCP should evaluate the evidence to determine whether appellant established eight hours of disability on November 25, 2016.

CONCLUSION

The Board finds that this case is not in posture for decision and must be remanded for additional development of the factual evidence from the employing establishment.

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2017 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: August 28, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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