United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 17-0369**
	)	**Issued: July 27, 2017**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Montgomery, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 7, 2016 appellant filed a timely appeal from June 13, September 13 and 15, and November 17, 2016 merit decisions 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.

ISSUE

The issue is whether appellant established that she was disabled from March 15 and 16 and May 20 through 26, 2016 causally related to accepted employment injuries.

FACTUAL HISTORY

On July 29, 2014 appellant, then a 57-year-old correspondence clerk, filed an occupational disease claim (Form CA-2) alleging that she developed an ear infection, a sinus

[1] 5 U.S.C. § 8101 *et seq.*

condition, and an eye condition as a result of being exposed to mold and mildew in the course of her federal employment. On July 8, 2015 OWCP accepted her claim for chronic sinusitis; allergic rhinitis; and asthma.

On April 21, 2016 appellant filed a claim for compensation (Form CA 7) for intermittent leave without pay (LWOP) from March 14 through 16, 2016. She claimed two hours of LWOP on March 14, 2016 and eight hours of LWOP on March 15 and 16, 2016.

In support of this period of disability appellant submitted a report dated March 14, 2016, signed by a nurse.

On April 29, 2016 OWCP authorized a payment for two hours of LWOP on March 14, 2016, but noted that appellant had not submitted sufficient evidence to support eight hours of LWOP on March 15 and 16, 2016. It stated that she had not submitted any medical evidence documenting disability, or documenting a medical appointment that would require her to take off work for the entire day on both days.

By decision dated June 13, 2016, OWCP denied appellant's claim for compensation to obtain medical care on March 15 and 16, 2016. It noted that the report of March 14, 2016 was not signed by a qualified physician, nor did it contain any indication that she was disabled from work on March 15 and 16, 2016.

On June 15, 2016 appellant filed a claim for compensation for LWOP for the period May 20 through 26, 2016. In support of her claim, she submitted reports from a physician assistant dated February 19 and July 22, 2016. Appellant also submitted a report from Dr. Adahli Massey, Board-certified in rheumatology, dated July 13, 2016. In this report, Dr. Massey noted appellant's asthma condition, but related that the visit was for "rheumatoid arthritis."

On July 5, 2016 appellant requested reconsideration of OWCP's June 13, 2016 decision, which had denied compensation for the March 15 and 16, 2016 alleged period of disability. In support of her request, OWCP received February 9 and July 22, 2015 reports from Dr. David R. Thrasher, Board-certified in pulmonary disease, which related that she was seen for wheezing, which was due to environmentally-induced asthma.

Appellant also submitted encounter reports from a physician assistant dated February 19 and July 22, 2016, return to work excuse slips which were either unsigned or bore an illegible signature dated February 19 and 23 and March 14, 2016; and unsigned encounter notes from an arthritis center dated July 13, 2016.

By decision dated September 13, 2016, OWCP denied appellant's claim for compensation for the period May 20 through 26, 2016 as the medical evidence of record did not support employment-related disability. It found that the reports from the physician assistant were not signed by a qualified physician, and were therefore of no probative value; that the report from Dr. Massey dealt with a condition not accepted under appellant's claim; and that the return to work slips did not excuse her from work for the claimed periods.

By decision dated September 15, 2016, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision of June 13, 2016, relating to claim for the disability for March 15 and 16, 2016. It reviewed the same evidence as in the decision dated September 13, 2016 and found that she had not provided medical documentation contemporaneous to the claimed dates.

On October 26, 2016 appellant requested reconsideration of OWCP's September 15, 2016 decision. In support of her request, she submitted an encounter note from Dr. William Jones, a Board-certified family practitioner, dated September 12, 2016. The note indicated that appellant had presented repeatedly to his office over the past two years. She also submitted encounter notes from a physician assistant dated September 29, 2016.

By decision dated November 17, 2016, OWCP reviewed the merits of appellant's claim and denied modification of its decision of September 15, 2016. It found that she had not submitted any medical evidence contemporaneous with March 15 and 16, 2016 that would indicate disability from work, or medical appointments that would prevent her from working for the entire day.

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.[2] Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.[3] Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[4] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative, and substantial medical evidence.[5]

For each period of disability claimed, the employee has the burden of proof to establish that she was disabled for work as a result of the accepted employment injury.[6] The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify her disability and entitlement to compensation.[7]

[2] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[3] *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

[4] *Donald E. Ewals*, 51 ECAB 428 (2000).

[5] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals, id.*

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

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

An injured employee may be 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]

ANALYSIS

Appellant's claim was accepted for chronic sinusitis, allergic rhinitis, and asthma. She filed claims for compensation for March 15 and 16, 2016, and for the period May 20 through 26, 2016. Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that she was disabled for work for the claimed periods due to her accepted injuries.[12]

Appellant has submitted no probative evidence specifically addressing the claimed dates of disability that would indicate she was disabled from work either directly due to her accepted injuries, or due to a medical appointment that would prevent her from working for the entire day. The evidence she submitted in support of her claims was not relevant to the claimed dates, was not signed by a physician, or was not relevant to the claimed periods of disability.

OWCP received reports from Dr. Thrasher. However, these reports were dated February 9 and July 22, 2015, predating the periods of disability alleged. While these reports noted appellant's asthma condition, they did not address her disability during the alleged periods at issue.[13]

Regarding the claim for period of disability on March 15 and 16, 2016, while the record contains an excuse note dated March 14, 2016, this note is signed by a nurse, not a qualified

[8] *See* 5 U.S.C. § 8103(a); *Gayle L. Jackson*, 57 ECAB 546-48 (2006).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation of Claims*, Chapter 2.901.19a(1) (February 2013).

[10] *Id*. at Chapter 2.901c.

[11] *Id.*

[12] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

[13] *Id*.

physician.[14] As a nurse is not considered a physician under FECA, the note, therefore, does not constitute probative medical evidence.[15]

There is also no medical evidence supporting disability from May 20 through 26, 2016. While appellant submitted a report from Dr. Massey dated July 13, 2016 in support of this claim, it did not address the claimed dates nor was it relevant to her accepted conditions.

OWCP also received a September 12, 2016 report from Dr. Jones. While Dr. Jones noted that he had seen appellant on repeated occasions during the past two years, he did not specifically address whether she was disabled during any of the dates in question, due to the accepted employment conditions.[16]

The remainder of the evidence was irrelevant to the claimed dates and was either prepared by a physician assistant, or was unsigned. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[18] As such these reports are not medical evidence and cannot establish appellant's claim for disability compensation. The Board has also held that unsigned reports or ones that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[19]

As appellant has not submitted medical reports containing medical rationale relating her claimed dates of disability to her accepted conditions, she has not met her burden of proof to establish disability for the periods March 15 and 16, 2016 or May 20 through 26, 2016.

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.

[14] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as physician as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: (2) "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] *See P.S.*, Docket No. 17-0598 (issued June 23, 2017); *R.R.*, Docket No. 16-1901 (issued April 17, 2017).

[16] *N.G.*, Docket No. 16-1421 (issued December 12, 2016).

[17] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also S.T.*, Docket No. 17-0913 (issued June 23, 2017); *David P. Sawchuk*, 57 ECAB 316 320 n.11 (2006).

[18] *R.E.*, Docket No. 16-1568 (issued February 9, 2017).

[19] *J.P.*, Docket No. 16-0501 (issued July 11, 2016).

CONCLUSION

The Board finds that appellant has failed to establish that she was disabled from March 15 and 16 and May 20 through 26, 2016 causally related to accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 17, September 15 and 13, and June 13, 2016 are affirmed.

Issued: July 27, 2017
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
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