

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

S.S., Appellant)	
)	
and)	Docket No. 17-1380
)	Issued: October 11, 2017
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Oklahoma City, OK, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 5, 2017 appellant filed a timely appeal from a May 10, 2017 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 to consider the merits of this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish total disability on February 16 and 17, 2017, causally related to a January 13, 2016 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the May 10, 2017 decision OWCP received additional evidence in this claim. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. Thus, the Board lacks jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-0176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

FACTUAL HISTORY

On January 13, 2016 appellant, then a 41-year-old electronic technician, filed a traumatic injury claim (Form CA-1) alleging that on that day he injured his left ankle when he tripped over a vacuum. He stopped work on January 14, 2016 and returned to work on January 16, 2016. On April 8, 2016 OWCP accepted the claim for right arm muscle, fascia, and biceps long head tendon strain.

Appellant underwent authorized right shoulder arthroscopic surgery on November 11, 2016. He stopped work on November 12, 2016. Appellant accepted a temporary job offer and returned to work with restrictions on January 2, 2017. He received wage-loss compensation benefits from November 12, 2016 to January 7, 2017.

On February 15, 2017 Dr. Ryan Nelson, a treating Board-certified orthopedic surgeon, referred appellant for phase 3 physical therapy twice per week after he had completed phase 2. In a February 15, 2017 report, he diagnosed right rotator cuff syndrome, right shoulder pain, complete right rotator cuff tear, right shoulder superior glenoid labrum lesion, and right proximal tendon traumatic rupture. Dr. Nelson provided examination findings and indicated that appellant was capable of performing light-duty work.

On February 21, 2017 OWCP authorized further physical therapy treatment.

On February 27, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for February 16 and 17, 2017. The reverse side of the form contained the following entry: “[The employing establishment] verified [eight] hours LWOP [leave without pay].”

In a letter dated March 9, 2017, OWCP noted that it had received appellant’s wage-loss compensation claim. It requested that he submit medical evidence supporting his claimed disability for the two days in question. Appellant was afforded him 30 days to submit the necessary evidence.

A March 27, 2017 physical therapy reevaluation note, related that appellant had attended 12 physical therapy sessions during the period February 6 to March 27, 2017.

On April 5, 2017 appellant reported that Dr. Nelson had approved strength training physical therapy for him during a visit on February 15, 2017. He claimed the strength training began on February 16, 2017 in the afternoon and that following this training he was very sore and thus unable to work the night of February 16, 2017.

OWCP received a March 30, 2017 physical therapy ledger noting February 16, 2017 as the date of service with the provider name, description of treatment, and cost also included.

By decision dated May 10, 2017, OWCP denied appellant’s claim for wage-loss compensation for February 16 and 17, 2017. It found that he had not submitted the requested medical evidence supporting his claim for wage-loss compensation.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁴ For each period of disability claimed, the employee has the burden of proof to establish that he was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁶

Under FECA the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wages.

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 their disability and entitlement to compensation.¹⁰

ANALYSIS

OWCP accepted the conditions of right arm muscle, fascia, and biceps long head tendon strain and authorized right shoulder arthroscopic surgery. Appellant returned to modified work on January 2, 2017 and filed a claim for wage-loss compensation for February 16 and 17, 2017.

Appellant seeks wage-loss compensation for physical therapy treatments on February 16, 2017 and due to pain and soreness from the physical therapy on the following day on

³ *Supra* note 1.

⁴ *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁵ *See id. Amelia S. Jefferson*; *see also David H. Goss*, 32 ECAB 24 (1980).

⁶ *See Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

February 17, 2017. The record reflects that on February 15, 2017 Dr. Nelson referred appellant for phase 3 of his physical therapy. The record contains a March 30, 2017 physical therapy ledger noting that appellant received physical therapy treatments on February 16, 2017. OWCP procedures provide that wage loss for compensable medical examinations or treatment may be reimbursed.¹¹ The Board has held that, for a routine medical appointment, a maximum of four hours of compensation is usually allowed.¹² Accordingly, the Board finds that appellant is entitled to four hours of compensation on February 16, 2017 for attending a physical therapy session, as claimed on the Form CA-7.

Regarding appellant's request for compensation for his soreness on February 17, 2017, there is no medical evidence to establish that he was disabled on that date or had a medical appointment related to treatment of his accepted conditions. OWCP therefore properly denied wage-loss compensation for this date. As previously noted, it does not pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.

Therefore, the Board finds that appellant has established entitlement to four hours of compensation for February 16, 2017. Appellant has not established entitlement to additional compensation for February 17, 2017 as claimed.

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 has established entitlement to four hours of compensation on February 16, 2017 and has not established total disability on February 17, 2017, causally related to a January 13, 2016 employment injury.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

¹² *William A. Archer supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 10, 2017 is affirmed as modified.

Issued: October 11, 2017
Washington, DC

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

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

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