

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

A.L., Appellant)	
)	
and)	Docket No. 17-1975
)	Issued: August 21, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Anchorage, AK, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 September 22, 2017 appellant, through counsel, filed a timely appeal from a June 30, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The record provided the Board includes evidence received after OWCP issued its June 30, 2017 decision. The Board's jurisdiction is limited to the evidence in the case record that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to an additional four hours of wage-loss compensation on May 9, 2016 and for total disability compensation from May 10 to May 14, 2016 causally related to the accepted January 16, 2010 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.⁴ The relevant facts are as follows.

On January 23, 2010 appellant, then a 49-year-old window clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2010 she experienced lower back pain radiating down both legs in the performance of her federal employment duties. On January 21, 2011 OWCP accepted the claim for temporary aggravation of intervertebral disc protrusion (disc bulge) at L4-5. Appellant stopped work following the injury and eventually returned to full-time light-duty work. OWCP paid intermittent wage-loss on the supplemental rolls from March 4, 2010 through May 9, 2016.

By preliminary notice dated March 17, 2016, OWCP advised appellant that she had been offered suitable work by the employing establishment on February 10, 2016. It advised that she had 30 days to accept the position or provide written reasons for refusing the position. If appellant refused the position or did not respond, her right to both wage-loss compensation and schedule award benefits would be terminated.

On May 5, 2016 OWCP received a May 4, 2016 authorization request from Dr. Lawrence W. Stinson, Board-certified in anesthesiology and pain medicine, to perform a lumbar epidural steroid injection. The requested lumbosacral spinal injection was to occur on May 10, 2016.

In a May 9, 2016 development letter, OWCP advised appellant that the evidence of record was insufficient to authorize the requested lumbosacral spinal injection. It indicated that there was no medical documentation from her physician with respect to the proposed medical treatment. OWCP advised appellant to have her physician submit a detailed medical narrative with medical rationale supporting why the requested medical treatment was causally related to the accepted January 16, 2010 employment injury. It further advised that a decision on the authorization request

⁴ Docket No. 14-1480 (issued January 20, 2015). The Board found that OWCP properly denied reconsideration of a May 19, 2013 decision denying a wage-loss claim for the period December 6, 2012 through January 11, 2013.

would be deferred for 30 days to afford her the opportunity to submit the requested documentation.⁵ In a separate letter of May 9, 2016, OWCP advised that the requested lumbar spinal injection could not be approved.

OWCP received a May 9, 2016 report from Dr. Stinson. In his May 9, 2016 report, Dr. Stinson indicated that appellant returned to the clinic after three months for reevaluation of her lumbar and bilateral extremity symptoms. He noted that she had lumbar disc displacement with associated bilateral extremity radiculitis. Dr. Stinson related that although appellant was trying to work full time, her symptoms had again elevated to the point where they interfered with her ability to function and work. He noted that epidural steroid injections had been the only modality of treatment which had provided relief to appellant and lasted for several weeks to several months at a time. Different treatment options were discussed and appellant elected to pursue a lumbar epidural steroid injection.

By decision dated May 10, 2016, OWCP terminated appellant's entitlement to compensation for wage loss and schedule award benefits effective the same day based on refusal of suitable work pursuant to 5 U.S.C. § 8106(c)(2).

On July 20, 2016 OWCP received a May 10, 2016 report from Dr. Stinson, which noted that appellant underwent a lumbar epidural steroid injection that day. Also on July 20, 2016 it received an undated note from Dr. Stinson's office manager, who indicated that appellant wanted the lumbar epidural steroid injections to alleviate her current pain levels so that she could continue to work. Dr. Stinson noted that appellant lived in Alaska and there was no surgeon willing to accept Federal Workers' Compensation to perform the needed surgery for her lumbar disc displacement. The office manager explained that the epidural steroid injections were the only modality of treatment which provided appellant relief for several weeks to several months at a time.

On July 16, 2016 appellant underwent a second opinion examination with Dr. Ronald L. Teed, a Board-certified orthopedic surgeon. Based on Dr. Teed's July 16, 2016 report, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits as a result of the accepted work injury on July 28, 2016.

On August 26, 2016 appellant filed a claim for compensation (Form CA-7) requesting total disability compensation benefits for the period May 9 through 14, 2016. In the accompanying time analysis form (Form CA-7a), appellant claimed a total of 40 hours for the period May 9 through 14, 2016. This included: eight hours leave without pay (LWOP) for a doctor's visit on May 9; eight hours LWOP on May 10 for an epidural injection and recovery; and eight hours LWOP per day for May 12, 13, and 14 for recovery.

⁵ OWCP noted that a second opinion examination had been requested to determine the relationship of her claimed condition and the factors of her federal employment, and sent a May 5, 2016 letter regarding her no-show for the examination scheduled for May 3, 2016. In the May 5, 2016 letter, it issued a notice of proposed suspension for appellant's nonattendance/obstruction of the scheduled examination, pursuant to 5 U.S.C. § 8123(d). OWCP accorded appellant 14 days to submit a written explanation to establish good cause for her failure to attend and fully cooperate with the examination.

In an August 29, 2016 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim for wage-loss compensation for the period claimed. It advised her as to the medical and factual evidence required and afforded her 30 days to provide the requested information.

Medical reports dated February 2, July 11, and August 17, 2016 from Dr. Stinson were received.

By decision dated October 3, 2016, OWCP denied appellant's claim for wage-loss compensation for the period May 9 to 14, 2016. It found that she had failed to submit medical evidence sufficient to establish total disability during the claimed period. OWCP noted that the additional evidence received did not address disability for the claimed period.

On October 4, 2016 OWCP received additional evidence. In a September 28, 2016 statement, appellant related that she was unable to work before receiving her May 10, 2016 lumbar epidural steroid injection and for a few days thereafter. She also submitted a procedure reminder from Advanced Pain Centers of Alaska for a May 10, 2016 lumbar epidural steroid injection, discharge instructions for May 10, 2016 epidural steroid injection, a copy of undated prescription information, duplicative copies of Dr. Stinson's May 10, 2016 report, and a February 2, 2016 report amended September 14, 2016, which noted appellant underwent lumbar epidural steroid injection procedures.

In a May 19, 2016 report, Dr. Stinson stated that appellant was seen on May 9, 2016. He requested that she be excused from work from May 9 to 14, 2016. Dr. Stinson noted that if no medical problems arose with appellant's recovery from the medical procedure, she could return to work on May 16, 2016.

On October 13, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on May 17, 2017, regarding OWCP's denial of total disability compensation benefits claimed for the period May 9 to 14, 2016.

By decision dated June 30, 2017, an OWCP hearing representative modified the October 3, 2016 decision to allow payment of four hours' LWOP for May 9, 2016 to attend a medical appointment, but affirmed the denial of compensation for the period May 10 through 14, 2016. The hearing representative explained that appellant's wage-loss compensation benefits were terminated effective May 10, 2016 for refusal of suitable work. Therefore the only date when wage-loss compensation could be paid was May 9, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.⁶ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was

⁶ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

receiving at the time of the injury, *i.e.*, a physical impairment resulting in a loss of wage-earning capacity.⁷

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.⁸ Appellant would be entitled to compensation for any time missed from work due to medical examination or treatment for an employment-related condition.⁹ 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.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has not established that she was entitled to additional wage-loss compensation from May 9 to 14, 2016. .

OWCP paid appellant for four hours of wage-loss compensation on May 9, 2016, secondary to her medical appointment with Dr. Stinson on that day. In his May 9, 2016 report, Dr. Stinson related that appellant was seen on that day for reevaluation of her lumbar and bilateral extremity symptoms. As previously noted, four hours of compensation are allowed for routine medical appointments, unless the evidence of record substantiates that the nature of the medical procedure or the need to travel a substantial distance necessitated that a longer period of time be authorized.¹² There is no evidence of record that appellant required more than four hours for this routine medical appointment. Therefore OWCP properly denied appellant's request for an additional four hours of wage loss on May 9, 2016.

Appellant underwent a non-OWCP authorized lumbar epidural steroid injection on May 10, 2016. She filed a claim for compensation for the period through May 14, 2016. However, on May 10, 2016 OWCP had already terminated appellant's entitlement to wage-loss and schedule

⁷ 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).

⁸ 5 U.S.C. § 8103(a).

⁹ *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).

¹⁰ *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981); *G.B.*, Docket No. 16-0515 (issued September 14, 2016).

¹¹ *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

¹² *Id.*

award compensation, effective that day for refusal of suitable work. Section 8106(c)(2) of FECA provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not entitled to compensation.¹³ As appellant did not appeal this suitable work termination decision, she was not entitled to wage-loss compensation as of May 10, 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.

CONCLUSION

The Board finds that appellant has not established that she was entitled to an additional four hours of wage-loss compensation on May 9, 2016 and to total disability compensation from May 10 to 14, 2016 causally related to the accepted January 16, 2010 work injury.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2018
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

¹³ 5 U.S.C. § 8106(c)(2); *see also Geraldine Foster*, 54 ECAB 435 (2003).