

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

T.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Nashville, TN, Employer**

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**Docket No. 18-0435
Issued: July 10, 2018**

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 December 27, 2017 appellant filed a timely appeal from December 12, 2017 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ 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 this case.

¹ The record contains an October 4, 2017 decision denying appellant's request for wage-loss compensation from July 8 through August 4, 2017. She requested a review of the written record on this decision by an OWCP hearing representative on October 19, 2017. As this case is in an interlocutory posture, the issue of disability from July 8 through August 4, 2017 is not currently before the Board. *See* 20 C.F.R. § 501.2(c)(2); *S.H.*, Docket No. 14-0421, n.4 (issued August 27, 2014).

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that she was totally disabled from September 16 through 30, 2017 causally related to her November 28, 2016 employment injury.

FACTUAL HISTORY

On November 28, 2016 appellant, then a 40-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right leg and back while in the performance of duty. OWCP accepted the claim, assigned File No. xxxxxx433, for a right knee contusion and a strain of the muscle, fascia, and tendon of the lower back. Appellant stopped work on November 28, 2016.

On January 19, 2017 Dr. Charles Kaelin, a Board-certified orthopedic surgeon, released appellant to resume her regular work duties. OWCP paid her intermittent wage-loss compensation from January 13 to April 28, 2017 for time lost from work.

Appellant filed a traumatic injury claim (Form CA-1) alleging that on March 8, 2017 she injured her left back and shoulder in the performance of duty. OWCP assigned File No. xxxxxx426 and accepted the claim for a left shoulder contusion and sprain of the ligaments of the thoracic spine.³

On May 22, 2017 appellant filed claims for compensation (Form CA-7) for total disability beginning April 29, 2017. OWCP paid her wage-loss compensation for total disability on the supplemental rolls from April 29 to July 7, 2017.

In a July 18, 2017 report, Dr. Mitul K. Patel, a Board-certified orthopedic surgeon, noted that OWCP had denied his request for authorization of a discectomy at L5-S1. He related that appellant had two workers' compensation claims for injuries on November 28, 2016 and March 8, 2017. Dr. Patel found that a magnetic resonance imaging (MRI) scan study after the November 28, 2016 employment injury was "fairly normal," but that the MRI scan study after the March 8, 2017 employment injury showed a new left L5-S1 disc herniation.⁴ He attributed appellant's need for continued treatment and the lumbar discectomy to the March 8, 2017 work injury. Dr. Patel related that she had no disability due to the November 28, 2016 employment injury, but was off work as a result of left leg radiculopathy due to her March 8, 2017 work injury.⁵

³ By decision dated November 15, 2017, issued under File No. xxxxxx426, OWCP denied appellant's request for wage-loss compensation beginning July 8, 2017.

⁴ An MRI scan study obtained July 3, 2017 revealed a left disc extrusion at L5-S1 that had increased in size compared with a December 6, 2016 study, moderate-to-severe left lateral recess stenosis, displacement of the descending S1 nerve root, and moderate bilateral foraminal stenosis with abutment of the L5 existing nerve root, and mild bilateral foraminal stenosis at L4-5.

⁵ In a July 18, 2017 work restriction evaluation (OWCP-5c), Dr. Patel found that appellant could resume work considering only the November 28, 2016 employment injury, but was disabled from work as a result of her March 8, 2017 employment injury.

On October 17, 2017 appellant filed CA-7 forms requesting wage-loss compensation from September 16 to 29, 2017 and on September 30, 2017.

In an October 19, 2017 report, Dr. Kaelin discussed appellant's complaints of continued severe pain in her low back. He diagnosed lumbar and other intervertebral disc displacement. Dr. Kaelin noted that Dr. Patel had recommended surgery and that there was a question of causation. He advised that appellant's condition, "clearly appears to be related to [appellant's] work from our opinion." Dr. Kaelin found that she could return to regular employment.

OWCP, on November 7, 2017, requested that appellant submit evidence supporting disability from employment on September 30, 2017.⁶ It noted that she was claiming time lost from work to attend a medical appointment, but had not submitted medical evidence supporting that she received treatment on that date. OWCP further advised that it generally allowed no more than four hours for medical care.

By decision dated December 12, 2017, OWCP denied appellant's claim for compensation for disability from September 16 through 29, 2017. In another decision dated December 12, 2017, it denied her request for wage-loss compensation on September 30, 2017. OWCP found that appellant had not submitted medical evidence supporting that she was disabled from employment due to her November 28, 2016 work injury.⁷

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁸ 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.⁹ 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.¹⁰

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.¹¹ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹² An employee who has a physical impairment causally related to her federal employment,

⁶ Dr. Patel, on October 30, 2017, noted that appellant had resumed her usual employment. He diagnosed lumbar disc displacement and noted that her pain had improved.

⁷ OWCP administratively combined File No. xxxxxx433 and File No. xxxxxx426, with File No. xxxxxx433 serving as the Master File.

⁸ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

⁹ See *Amelia S. Jefferson*, *id.*

¹⁰ See *Edward H. Horton*, 41 ECAB 301 (1989).

¹¹ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

¹² *Roberta L. Kaamoana*, 54 ECAB 150 (2002).

but who nonetheless has the capacity to earn the wages that she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹³ 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 or her employment, she 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 her disability and entitlement to compensation.¹⁴

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish total disability for the period September 16 through 30, 2017, causally related to her November 28, 2016 employment injury.

OWCP accepted that appellant sustained a right knee contusion and a low back strain on November 28, 2016, assigned File No. xxxxxx433. It further accepted that on March 8, 2017 she sustained a left shoulder contusion and sprain of the ligaments of the thoracic spine under File No. xxxxxx426.

Appellant received wage-loss compensation from OWCP on the supplemental rolls under File No. xxxxxx433 from April 29 to July 7, 2017. On July 18, 2017 Dr. Patel advised that she had no further disability due to her November 28, 2016 work injury, but required lumbar surgery as a result of the March 8, 2017 employment injury.

Appellant requested wage-loss compensation for disability due to her November 28, 2016 employment injury from September 16 to 29, 2017 and on September 30, 2017. She did not, however, submit medical evidence supporting that she was unable to work during this closed ended period due to either disability from work or the need for medical treatment resulting from her November 28, 2016 employment injury. On October 19, 2017 Dr. Kaelin diagnosed lumbar and other intervertebral disc displacement and noted that her condition was work related. He found that appellant could perform her usual work duties. Dr. Kaelin failed to address disability from employment during the relevant period of September 16 to 29, 2017. As noted, the Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁵

The issue of whether a claimant's disability from work is related to an accepted condition must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to the employment injury and

¹³ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁴ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁵ *See Fereidoon Kharabi*, *id.*

supports that conclusion with sound medical reasoning.¹⁶ Appellant failed to submit such evidence and thus has not met her burden of proof.¹⁷

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant met her burden of proof to establish total disability from September 16 through 30, 2017 causally related to her November 28, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 10, 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

¹⁶ See *G.B.*, Docket No. 16-1033 (issued December 5, 2016).

¹⁷ See *K.A.*, Docket No. 17-1718 (issued February 12, 2018).