

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

_____)	
J.B., Appellant)	
)	
and)	Docket No. 17-0655
)	Issued: May 7, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Rossville, GA, 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 January 31, 2017 appellant filed a timely appeal from a January 9, 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 over the merits of the case.²

ISSUE

The issue is whether appellant met her burden of proof to establish compensation for medical treatment or that she was disabled for the period May 10 through 12, 2016 due to her accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided the Board includes evidence received after OWCP issued its January 9, 2017 decision. The Board's review is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 9, 2015 appellant, then a 47-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging a left shoulder condition. She indicated that she became aware of her left shoulder condition as of June 1, 2014 and first realized that it was caused or aggravated by her employment duties on July 30, 2015. Appellant was working in a limited-duty capacity due to a right hand/wrist injury on January 2, 2014.³ She stopped work on February 7, 2015 and underwent left shoulder surgery on February 9, 2015. Appellant returned to work part time on May 4, 2015 and resumed full-time duties later on July 15, 2015. On November 25, 2015 OWCP accepted the claim for adhesive capsulitis of left shoulder and left rotator cuff tear. In December 2015, appellant transferred from the employing establishment in Georgia to Utah and began work as a data conversion specialist.⁴

On May 16, 2016 OWCP received appellant's Form CA-7 requesting wage-loss compensation for May 10, 11, and 12, 2016. The accompanying time analysis form (Form CA-7a) indicated that appellant took eight hours leave without pay on May 10, 2016 for a magnetic resonance imaging (MRI) scan with anesthesia, on May 11, 2016 for physician appointment to discuss MRI scan results, and eight hours of leave without pay on May 12, 2016 awaiting clearance to return to work.

In a May 19, 2016 development letter, OWCP advised appellant that the necessary medical documentation pertaining to the dates claimed due to lost time from work to attend a medical appointment or therapy session had not been received. It requested that she submit a medical note or therapy slip verifying treatment on May 10, 2016 due to the work-related injury. OWCP noted that the medical care appellant received on May 11, 2016 was after her scheduled work hours of 7:30 a.m. to 4:00 p.m., and indicated that claims for medical appointments outside of work hours were not compensable. It requested supporting documentation from appellant's physician which verified the time of her May 11, 2016 appointment. OWCP also noted that there was no medical evidence that appellant was found incapable of working on May 12, 2016. It requested a comprehensive narrative report from appellant's physician which provided a well-rationalized opinion as to how and why she was incapable of working on May 12, 2016. Appellant was afforded 30 days for a response.

On May 23, 2016 OWCP received a progress note from Dr. Amy P. Powell, an internist specializing in sports medicine, dated May 12, 2016. In this report Dr. Powell related that appellant was seen on May 11, 2016 in follow up of left shoulder pain after a left shoulder MRI scan was completed. She noted an impression of left shoulder proximal biceps tendinopathy after a work-related injury back in 2014. Intra-articular injections into the biceps were recommended along with physical therapy. The report was dictated at 5:55 p.m. on May 11, 2016.

³ Under OWCP File No. xxxxxx974, it accepted that the October 2, 2013 injury, resulted in closed fracture of middle or proximal phalanx or phalanges right, and right carpal tunnel syndrome. These cases have been combined, with the OWCP File No. xxxxxx857 serving as the master file.

⁴ On April 1, 2016 OWCP received a Form CA-7 requesting wage-loss compensation from February 7 through April 17, 2015.

By decision also dated July 11, 2016, OWCP denied appellant's claim for compensation for the period May 10 through 12, 2016. It found that the medical evidence submitted did not establish that she was disabled as a result of her accepted work-related medical conditions.

On August 15, 2016 OWCP received appellant's August 5, 2016 request for review of the written record by a representative of OWCP's Branch of Hearings and Review. The request was postmarked August 8, 2016.

By decision dated January 9, 2017, an OWCP hearing representative affirmed the July 11, 2016 OWCP decision denying disability compensation for the period May 10 through 12, 2016 as there was no medical evidence of record establishing disability.⁵

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

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁸ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁹ 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.¹⁰

⁵ However, the hearing representative set aside the July 11, 2016 decision pertaining to wage loss due to an arthroscopy for the period February 7 through April 17, 2015 and remanded the case to OWCP for further development and issuance of a *de novo* decision of whether the February 9, 2015 surgery and resultant disability were related to the accepted left shoulder rotator cuff tear and adhesive capsulitis. This period of disability is therefore not before the Board as it is in an interlocutory posture. *See* 20 C.F.R. § 501.2(c)(2).

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

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 *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Id.*

¹⁰ *Id.*

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.¹¹ Appellant would be entitled to compensation for any time missed from work due to medical examination or treatment for an employment-related condition.¹² 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.¹³ 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.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish compensation for medical treatment or that she was disabled for the period May 10 through 12, 2016 due to her accepted employment injury.

The record reflects that appellant saw Dr. Powell on May 11, 2016 to review the results of a left shoulder MRI scan.¹⁵ The date of the particular MRI scan reviewed on May 11, 2016 was not mentioned. Dr. Powell related an impression of left shoulder proximal biceps tendinopathy and the report was dictated at 5:55 p.m. and transcribed the following day. OWCP requested supporting documentation that the May 11, 2016 appointment was during appellant's scheduled work hours, however, no documentation was received. Appellant has therefore not established that she was disabled from work on May 11, 2016 due to this medical appointment. Accordingly, she is not entitled to compensation for the May 11, 2016 medical appointment.

Appellant also claimed eight hours of compensation on May 10, 2016 to obtain medical treatment for MRI scan -- anesthesia and eight hours on May 12, 2016 while "awaiting clearance to return to work." Although it appears that she underwent the MRI scan on May 10, 2016 beginning at 12:35 p.m. and ending at 1:30 p.m., there is no opinion of record from a physician establishing that appellant was disabled as a result of her accepted employment injuries on those dates. Dr. Powell's May 11, 2016 report does not address disability from work on any of the dates in question. 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

¹¹ 5 U.S.C. § 8103(a).

¹² 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).

¹³ *G.B.*, Docket No. 16-0515 (issued September 14, 2016); *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

¹⁵ *Id.* (no more than four hours of compensation or continuation of pay is allowed for routine medical appointments).

is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁶

Appellant therefore has not established that she was entitled to wage-loss compensation from May 10 to 12, 2016 due to her accepted June 1, 2014 employment injury.

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 met her burden of proof to establish compensation for medical treatment or that she was disabled for the period May 10 through 12, 2016 due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 9, 2017 is affirmed.

Issued: May 7, 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 *L.L.*, Docket No. 15-1489 (issued December 18, 2015); *William A. Archer*, 55 ECAB 674 (2004).