

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

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**D.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chicago, IL, Employer**

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**Docket No. 17-0818  
Issued: May 14, 2018**

*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 February 27, 2017 appellant filed a timely appeal from an October 13, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.<sup>2</sup>

**ISSUE**

The issue is whether appellant has established total disability commencing July 9, 2016 causally related to her accepted December 23, 2015 employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The record provided to the Board includes evidence received after OWCP issued its October 13, 2016 decision. The Board's jurisdiction 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 December 23, 2015 appellant, then a 32-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her left wrist, lower back, and back of her right leg when she slipped while descending stairs while in the performance of duty. She returned to limited-duty work with restrictions. OWCP accepted the claim for contusion of lower back, pelvis and left thigh, as well as left wrist contracture. It paid appellant intermittent wage-loss compensation on the supplemental rolls from March 7 to July 8, 2016. Appellant stopped work completely July 9, 2016 and has not returned.

The medical evidence of record reflects that, on June 21, 2016, appellant's treating physician Dr. Adebayo Bademosi, a Board-certified family practitioner, related that appellant was evaluated and released to return to work on June 23, 2016. In a report dated July 5, 2016, Dr. Robert Strugala, a Board-certified orthopedic surgeon, noted appellant's history of injury and pain complaints. He related that appellant was currently working in a light-duty capacity, he did not restrict appellant from continuing light-duty work.

On July 22, 2016 OWCP received a Form CA-7 claim for wage-loss compensation for disability during the period July 9 through 22, 2016.

In an August 9, 2016 development letter, OWCP advised appellant that additional evidence was needed to establish disability from work during the period claimed. It noted that the evidence of record indicated that a light/limited-duty assignment was available within her medical restrictions for the period claimed. OWCP also noted that her physician had indicated in a July 5, 2016 report that she was able to work light duty. It requested that appellant provide evidence to support why she did not work the light/limited-duty assignment during the claimed period. Appellant was afforded 30 days to submit the requested information.

In an August 11, 2016 telephone call, appellant advised OWCP that the employing establishment did not have work available for her.

On August 16, 2016 OWCP received July 1, 2016 correspondence from the employing establishment. This correspondence advised that appellant would be placed in an official leave without pay (LWOP) status, effective July 2, 2016, per an October 27, 2015 Notice of Removal. The October 27, 2015 Notice of Removal indicated that the removal action was being taken due to appellant being absent without leave and failure to maintain regular attendance. Appellant acknowledged receipt of the October 27, 2015 removal notice on November 2, 2015.

In an August 18, 2016 statement, appellant indicated that she had worked to the extent that limited duty was available prior to being placed in LWOP status by the employing establishment. She explained that she continued to submit Form CA-7 claims for compensation as she continued to receive medical treatment for her work-related injury. Appellant submitted additional Form CA-7's, claiming wage-loss compensation after July 9, 2016.

In an August 16, 2016 report, Dr. Strugala diagnosed appellant with low back pain and referred her to physical therapy. On September 6, 2016 he signed a September 2, 2016 physical

therapy note, which noted that appellant was off work on July 2, 2016. The report also indicated that appellant's rehabilitation potential/progress was good.

Copies of physical therapy notes dated September 9 and 12, 2016 were also received.

In September 14 and 15, 2016 reports, Dr. Strugala noted that appellant was currently off work. He indicated that she restarted physical therapy for chronic low back pain following a fall in December 2015. However, appellant's back pain increased with the increased exercise during physical therapy. Dr. Strugala recommended that she consult with anesthesiology pain management. He noted that magnetic resonance imaging scan revealed minimal disc bulging at L5-S1 and mild degenerative changes of the thoracic spine, but stated surgery was not indicated.

In an October 6, 2016 report, Dr. Strugala noted that appellant indicated that she had been off work due to other issues. He provided an assessment of low back pain and advised that she was provided with light-duty work restrictions.

On October 4, 2016 OWCP received a September 29, 2015 letter from E.W., an employing establishment Health and Resource Management Specialist. E.W. indicated that appellant was placed in an LWOP status as of July 2, 2016 as a result of a removal notice issued on October 27, 2015 for failure to maintain regular attendance. She stated that appellant's failure to keep a regular work schedule was not related to the work-related injury, which had occurred after the Notice of Removal was issued. E.W. also stated that limited-duty work remained available to appellant had she not been removed on July 2, 2016. A copy of the October 27, 2015 removal notice and December 28, 2015 offer of modified assignment (limited duty) for modified carrier were attached.

By decision dated October 13, 2016, OWCP denied appellant's claim for wage-loss compensation for disability during the period commencing July 9, 2016. It found that the medical evidence of record established that she would have been able to continue working in her limited-duty position at the employing establishment had she not been issued a termination notice for cause.<sup>3</sup>

### **LEGAL PRECEDENT**

Section 8102(a) of FECA<sup>4</sup> sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty. In general the term disability under FECA means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.<sup>5</sup> This meaning, for brevity, is expressed as disability from work.<sup>6</sup> For each

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<sup>3</sup> Appellant's removal from the employing establishment was effective October 25, 2016.

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> 20 C.F.R. § 10.5(f); *see also William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

<sup>6</sup> *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

period of disability claimed, the employee has the burden of proving that he or she was disabled from work as a result of the accepted employment injury.<sup>7</sup> Whether a particular injury caused an employee to be disabled from employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.<sup>8</sup>

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless 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 under FECA, and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>9</sup>

In cases where employment has in fact been terminated for misconduct and disability is subsequently claimed, the Board has noted that in general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.<sup>10</sup> Where employment is terminated, disability benefits would be payable if the evidence of record established that the claimant was terminated due to injury-related physical inability to perform assigned duties or the medical evidence of record established that the claimant was unable to work due to an injury-related disabling condition.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has failed to establish that she was disabled begin commencing July 9, 2016 causally related to her accepted December 23, 2015 employment injury.

OWCP accepted appellant's claim for contusion of lower back, pelvis, left thigh, and left wrist contracture as a result of a December 23, 2015 work injury. Following her work injury, appellant worked a limited-duty modified carrier position. Effective July 2, 2016, she was placed in LWOP status as a result of a removal notice issued on October 27, 2015 for failure to maintain regular attendance.<sup>12</sup> Appellant filed wage-loss compensation claims for disability commencing July 9, 2016, which OWCP denied.

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<sup>7</sup> See *William A. Archer*, 55 ECAB 674 (2004).

<sup>8</sup> See *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>9</sup> *Id.*

<sup>10</sup> See *Ralph Dennis Flanagan*, Docket No. 94-1569 (issued May 28, 1996).

<sup>11</sup> *Id.*

<sup>12</sup> See *supra* note 3.

There is no evidence that appellant was placed on LWOP status during the claimed period because of her accepted injury. The employing establishment advised that appropriate limited duty would have been provided, but for her removal on July 2, 2016.<sup>13</sup>

At the time of her placement on LWOP on July 2, 2016, there was also no medical evidence that her accepted conditions precluded her from performing her assigned light duties or that she was unable to work due to an injury-related disabling condition. Dr. Bademosi, appellant's family practitioner, had released her to return to work on June 23, 2016. Dr. Strugala indicated in his July 5, 2016 report that appellant was performing light-duty work. He did not opine that she was unable to continue with this work. Following his July 5, 2016 report, Dr. Strugala related that appellant was off work, however he never explained that she was disabled from her light-duty work. He again reiterated in his October 6, 2016 report that she was provided with light-duty work restrictions. As previously noted, the Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed.<sup>14</sup> There is no medical evidence of record which establishes that appellant was disabled from work due to the accepted December 23, 2015 employment after July 9, 2016.

The Board has held that, when a claimant stops work for reasons unrelated to his or her accepted employment injury, he or she has no disability within the meaning of FECA.<sup>15</sup> Accordingly, the Board finds that there is no basis for entitlement to wage-loss compensation for the period July 9, 2016 and continuing.

As appellant failed to submit evidence sufficient to establish employment-related disability for the period July 9, 2016 and continuing, she has failed to meet her burden of proof.

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 total disability commencing July 9, 2016, causally related to her accepted December 23, 2015 employment injury.

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<sup>13</sup> See *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>14</sup> *Supra* note 9.

<sup>15</sup> *V.M.*, Docket No. 16-0062 (issued May 18, 2016); *V.B.*, Docket No. 12-114 (issued June 13, 2101); *E.S.*, Docket No. 11-657 (issued February 9, 2012); see *John W. Normand*, 39 ECAB 1378 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated October 13, 2016 is affirmed.

Issued: May 14, 2018  
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  
Employees' Compensation Appeals Board