

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

K.C., Appellant)	
)	
and)	Docket No. 17-1612
)	Issued: October 16, 2018
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Waseca, MN, 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 July 19, 2017 appellant filed a timely appeal from a May 18, 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 this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability on September 1 and 6, 2016 causally related to her accepted February 17, 2015 employment injury.

FACTUAL HISTORY

On February 20, 2015 appellant, then a 49-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that on February 17, 2015 she injured her back and lower extremities as a result of slipping on water and falling while in the performance of her employment duties. A

¹ 5 U.S.C. § 8101 *et seq.*

supervisor noted that appellant stopped work on February 19, 2015. On June 2, 2015 OWCP accepted her claim for aggravation of chondromalacia of the right patella and aggravation of osteoarthritis of the right knee. On August 11, 2015 it accepted the additional condition of lumbar contusion. Appellant returned to full-duty employment without restrictions on September 8, 2015.²

In a report dated August 30, 2016, Dr. Scott Stevens, a Board-certified orthopedic surgeon, examined appellant, diagnosed chondromalacia of the patella of the right knee, and assessed her with right ankle joint pain. He noted his belief that appellant experienced soft tissue and muscular pain in the ankle area due to an abnormal gait.

In a duty status report (Form CA-17) dated August 30, 2016, Dr. Stevens recommended work restrictions of: no lifting/carrying of more than 10 pounds continuously or 25 pounds intermittently; no standing, walking, bending/stooping, or twisting for more than four hours per day; no climbing for more than one to two hours per day; and to avoid kneeling. He noted that appellant could return to work on August 31, 2016, and also noted her diagnosis as patellofemoral chondromalacia.

On September 6, 2016 OWCP received a Minnesota Department of Labor and Industry form entitled "report of work ability" dated September 2, 2016, wherein Dr. Stevens noted that appellant could return to work without restrictions on August 31, 2016.

On September 8, 2016 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) for 8.5 hours on August 30, 2016, 2.5 hours on September 1, 2016, and 10 hours on September 6, 2016. She explained that she had a doctor's appointment on August 30, 2016 and was unable to return to work until the next day. Appellant explained that on September 1, 2016 a meeting was held at the employing establishment and she was found not suitable for work. On September 6, 2016 she was waiting on a new duty status report from her physician.

By development letter dated October 4, 2016, OWCP advised appellant that she had not submitted sufficient evidence to support her claim for compensation. It explained that she had been released to work on August 31, 2016 and that she had not provided medical evidence relating her absence from work on the claimed dates was due to her accepted conditions.

By letter dated October 13, 2016, a supervisor at the employing establishment noted that on September 1, 2016 the employing establishment had determined that appellant's medical work restrictions in Dr. Stevens' report dated August 30, 2016 were incomplete and provided conflicting information. Appellant was instructed to leave work at 3:00 p.m. and not to return until she had secured a medical report releasing her to regular duty with no restrictions, or a medical report with clear restrictions. The supervisor stated that she did not receive an updated duty status report allowing appellant to return to full duty without restrictions until September 6, 2016.

² By decision dated June 30, 2016, OWCP issued a schedule award for eight percent permanent impairment of the right lower extremity.

In a note dated September 2, 2016, the employing establishment approved 8.5 hours of LWOP on August 30, 2016 for a medical appointment and 2.5 hours of LWOP on September 1, 2016 in order to update her medical restrictions.

By decision dated November 30, 2016, OWCP denied appellant's claim for compensation for LWOP on August 30, and September 1 and 6, 2016. It explained that she had not provided sufficient medical evidence to establish disability subsequent to August 31, 2016.

On December 6, 2016 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. In an attached statement, she explained that Dr. Stevens provided kneeling limitations in his duty status report of August 30, 2016, which released her to work on August 31, 2016. Appellant noted that the employing establishment had rejected her work restrictions and asked her to procure a new duty status report from her physician. The employing establishment did not receive a new duty status report until the afternoon of September 6, 2016.

In a note dated March 2, 2017, Dr. Stevens recalled that he saw appellant on August 30, 2016 and that she complained of catching, locking, swelling, and pain within the right knee. He recommended that appellant return to work on August 31, 2016.

By decision dated May 18, 2017, the hearing representative accepted appellant's claim for compensation for 8.5 hours of LWOP on August 30, 2016, but found that she had not established disability on September 1 and 6, 2016. She explained that, while she recognized that the employing establishment questioned the medical evidence provided to them, that was not a basis to establish compensation for disability on September 1 and 6, 2016.

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 establishing that he or she was disabled from work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled from 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

³ *Id.*

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

⁵ See *Amelia S. Jefferson, id.*; 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).

synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ 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, he or she is entitled to compensation for any loss of wages.⁹

ANALYSIS

The Board finds that appellant has met her burden of proof to establish total disability on September 1 and 6, 2016 causally related to her accepted February 17, 2015 employment injury.

OWCP denied appellant's claim for compensation for LWOP for the two days at issue finding that she had failed to provide sufficient medical evidence to support disability as claimed on these dates.

Following appellant's work injury on February 17, 2015, OWCP accepted her claim for aggravation of chondromalacia of the right patella, aggravation of osteoarthritis of the right knee, and a lumbar sprain. She initially returned to full-duty employment without restrictions on September 8, 2015. Subsequently, in a duty status report dated August 30, 2016, Dr. Stevens recommended that appellant be assigned work restrictions due to her accepted employment conditions. However, an August 31, 2016 report of work disability completed by Dr. Stevens noted that appellant could return to work without restrictions as of that same date.

Appellant returned to work on September 1, 2016 and completed a partial workday. Near the end of the workday the employing establishment held a meeting during which it was determined that she was not suitable for work due to the report of Dr. Stevens in which he had assigned restrictions due to her accepted employment conditions. Appellant was instructed to procure an updated duty status report from her physician as to whether she was capable of a return to her employment due to her accepted employment conditions. Appellant was unable to submit the new duty status report until the afternoon of September 6, 2016.

The Board has long held that, if an employing establishment's actions prevent an employee from working due to a work-related condition, that employee is disabled within the meaning of FECA.¹⁰

The Board finds that appellant has established that she was disabled on September 1 and 6, 2016, as alleged, causally related to her February 17, 2015 employment injury. The evidence of record establishes that she returned to work on September 1, 2016 in a suitable employment position. However, appellant was thereafter denied work due to the employing establishment's attempt to clarify whether she had assigned restrictions due to her accepted employment conditions. Despite the August 31, 2016 report of work disability form of Dr. Stevens, which permitted her to return to work on an unrestricted basis, the employing establishment did not allow her to complete her work assignment. As the employing establishment sent appellant home from

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

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

¹⁰ *Claude E. Pilgreen*, 33 ECAB 566 (1982); *see B.S.*, Docket No. 11-1973 (issued May 7, 2012).

work until further medical documentation was provided regarding her ability to perform full-duty employment, it prevented her from working due to a work-related condition. Therefore, total disability benefits are owed for that period in which the employing establishment prevented appellant from working.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish total disability on September 1 and 6, 2016 causally related to her accepted February 17, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2017 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further action consistent with this decision.

Issued: October 16, 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