

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

S.M., Appellant)	
)	
and)	Docket No. 17-1557
)	Issued: September 4, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Coppell, TX, 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 10, 2017 appellant filed a timely appeal from a June 15, 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 has met her burden of proof to establish entitlement to wage-loss compensation for intermittent periods of disability from September 13, 2016 through April 7, 2017.

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided the Board includes evidence received after OWCP issued the June 15, 2017 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

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On December 31, 2007 appellant, then a 35-year-old window clerk, filed an occupational disease claim (Form CA-2) asserting that repetitive lifting and placing boxes on the counter while at work caused a pop in her neck and lumbar region. OWCP accepted the claim, assigned File No. xxxxxx015, for displacement of cervical intervertebral disc without myelopathy, lumbar sprain, brachial radiculitis and cervical spondylosis without myelopathy and paid appellant intermittent wage-loss compensation benefits on the supplemental rolls. It also authorized a July 13, 2011 C5-6 anterior cervical discectomy/fusion.

On September 11, 2013 appellant, then working as a distribution clerk/sales associate, filed a traumatic injury claim (Form CA-1) asserting that she felt pain in her back and right leg while bending down to pick up a tub of newspapers off a pallet at work. She stopped work on September 11, 2013 and returned to full-time, limited duty on November 18, 2013. OWCP assigned OWCP File No. xxxxxx739 to this traumatic injury claim, and accepted the claim for lumbar sprain and aggravation of preexisting thoracic or lumbosacral neuritis or radiculitis. Appellant stopped work again on December 16, 2013 and returned to part-time, limited duty with restrictions on December 23, 2014. OWCP paid intermittent wage-loss benefits. On March 27, 2014 OWCP combined case File No. xxxxxx739 (for the traumatic September 11, 2013 injury) with the current claim (File No. xxxxxx015), with the latter claim serving as the master file.

By decision dated September 1, 2016, OWCP issued a schedule award for nine percent right upper extremity permanent impairment and nine percent left upper extremity permanent impairment. The award ran for 56.16 weeks for the period February 2, 2016 to March 1, 2017.

On April 26, 2017 appellant filed a wage-loss compensation claim (Form CA-7) for intermittent dates of disability during the period September 13, 2016 through April 7, 2017.

In a March 16, 2017 report, Dr. Candice Addison, a general practitioner, related that appellant was disabled from March 15 to 17, 2017 due to flare up of cervical disc displacement, brachial neuritis and lumbar sprain.

In a March 28, 2017 report, Dr. Francisco J. Battle, a neurosurgeon, indicated that appellant was temporarily totally disabled.

In May 1 and 3, 2017 development letters, OWCP requested additional medical information to establish disability for work during the period claimed. It afforded appellant 30 days to submit the requested information.

In March 8 and 22, and April 11, 2017 return to work/school forms, Dr. Addison indicated that appellant was totally incapacitated due to work injury flare ups. In a March 22, 2017 work

³ Docket No. 13-2044 (issued February 20, 2014).

capacity evaluation (Form OWCP-5c), she diagnosed cervical and lumbar nerve root impingement. Dr. Addison advised that appellant was only able to work four hours a day with restrictions.

By decision dated June 15, 2017, OWCP denied appellant's claim for disability compensation for the period September 13, 2016 through April 7, 2017 as the medical evidence of record was insufficient to support that she was disabled as a result of her accepted work-related medical conditions.⁴ It noted that there was insufficient evidence to support time loss for attendance at doctor appointments claimed on December 12 and 15, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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

Disability means "the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."⁷ The question of whether an employee is disabled for work is an issue that must be resolved by competent medical evidence.⁸ The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.⁹

For each period of disability claimed, the employee has the burden of establishing that she was disabled from work as a result of the accepted employment injury.¹⁰ 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 his or her disability and entitlement to compensation.¹¹

A schedule award is payable consecutively, but not concurrently, with an award for wage loss for the same injury.¹² If a claimant loses wages to obtain medical treatment during the period

⁴ OWCP authorized payment of wage-loss compensation for attendance at doctor appointments on November 4 and December 14, 2016.

⁵ *Supra* note 1.

⁶ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *G.T.*, Docket No. 07-1345 (issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 20 C.F.R. § 10.5(f).

⁸ *See R.C.*, 59 ECAB 546, 551 (2008).

⁹ 20 C.F.R. § 10.501(a).

¹⁰ *See Amelia S. Jefferson*, 57 ECAB 183 (2005). *See also* 20 C.F.R. § 10.501(a).

¹¹ *See William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.4(a)(3) (February 2013).

of a schedule award (e.g., claims hours due to a medical appointment with the treating physician), compensation for the hours lost may be paid concurrently with a schedule award, as time lost for medical appointments is not considered disability.¹³ However, time lost for disability surrounding the appointment (if any) cannot be paid concurrently with a schedule award.¹⁴

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.¹⁵ Appellant would be entitled to compensation for any time missed from work due to medical examination or treatment for an employment-related condition.¹⁶ 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.¹⁷ 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.¹⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation for intermittent periods of disability from work from September 13, 2016 to April 7, 2017.

OWCP accepted that appellant sustained displacement of cervical intervertebral disc without myelopathy, lumbar sprain, brachial radiculitis and cervical spondylosis without myelopathy as a result of her December 2007 occupational injury. It also accepted that she sustained a lumbar sprain and aggravation of preexisting thoracic or lumbosacral neuritis or radiculitis for her September 11, 2013 traumatic injury. Appellant received a schedule award for the period February 2, 2016 through March 4, 2017.

Appellant claimed compensation for intermittent periods of disability for the period September 13, 2016 through April 7, 2017. At the outset, the Board notes that the periods of wage loss claimed during the period February 2, 2016 through March 4, 2017 due to disability from work, would not be payable as appellant was being compensated for a schedule award during that

¹³ *Id.*

¹⁴ *Id.* at Chapter 2.808.4(a)(4).

¹⁵ 5 U.S.C. § 8103(a).

¹⁶ 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).

¹⁷ *G.B.*, Docket No. 16-0515 (issued September 14, 2016); *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

period.¹⁹ A schedule award is payable consecutively, but not concurrently, with an award for wage loss for the same injury.²⁰

For the periods of wage loss claimed following the schedule award, the Board finds that the evidence of record is insufficient to discharge appellant's burden of proof. In reports commencing March 8, 2017, Dr. Addison indicated that appellant was incapacitated due to flare ups of her accepted conditions. Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.²¹ The Board has held that, when a physician's statements regarding an employee's ability to work consists only of a repetition of the employee's complaints that she hurts too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.²² The Board has held that a medical opinion not fortified by medical rationale is of little probative value.²³ Dr. Addison did not provide sufficient medical rationale, supported by objective medical findings, explaining why appellant was disabled from work. Her opinion is therefore of limited probative value.

Appellant was also seen by Dr. Battle on March 28, 2017, however, he deferred an opinion regarding appellant's work restrictions and limitation to Dr. Addison. Dr. Battle's report therefore does not support a period of disability.

The Board also finds that OWCP properly denied appellant's request for wage-loss compensation due to medical treatment/medical appointments.

With regard to appellant's claim for compensation for medical treatment/medical appointments, OWCP specifically denied her claimed dates of December 12 and 15, 2016 as there was no medical notes or therapy slips verifying treatment due to the work-related injury for the dates claimed. The Board notes that the record is devoid of medical evidence to support that appellant received medical care on these dates due to her accepted employment injury. Absent such evidence, appellant is not entitled to compensation for medical treatment on the claimed dates.²⁴

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.

¹⁹ *E.S.*, Docket No. 16-1248 (issued May 15, 2017).

²⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.4(a)(3) (February 2013).

²¹ *See R.C.*, Docket No. 17-0748 (issued July 20, 2018).

²² *John L. Clark*, 32 ECAB 1618 (1981).

²³ *See D.Q.*, Docket No. 17-1220 (issued May 18, 2018); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

²⁴ *See J.B.*, Docket No. 17-0655 (issued May 7, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation for intermittent periods of disability from work from September 13, 2016 through April 7, 2017.

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2017 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 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