

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

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<b>O.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0192</b>
	)	<b>Issued: September 7, 2018</b>
<b>SOCIAL SECURITY ADMINISTRATION,</b>	)	
<b>Salinas, CA, Employer</b>	)	
_____	)	

*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 November 3, 2017 appellant filed a timely appeal from an October 3, 2017 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 met her burden of proof to establish disability during intermittent periods from August 22, 2016 and continuing, causally related to her accepted 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 3, 2017 decision. The Board's jurisdiction is limited to the evidence in the case record 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 16, 2016 appellant, then a 42-year-old telephone customer services agent, filed an occupational disease claim (Form CA-2) alleging that her daily federal employment duties required repetitive computer keyboarding, which resulted in bilateral carpal tunnel syndrome. She did not initially stop work. OWCP accepted appellant's occupational disease claim for bilateral carpal tunnel syndrome.

On April 12, 20, and 25, 2017 appellant submitted Form CA-7 claims for compensation for intermittent disability from work from August 22, 2016 through January 20, 2017 and continuing. On the attached CA-7a time analysis forms appellant, noted either leave without pay (LWOP) or leave buyback.<sup>3</sup> She indicated that the reason for leave use was either "medical" or "medical/wc." On the time analysis forms submitted the employing establishment either disputed the amount of claimed hours used or indicated that the compensation claimed was not for workers' compensation. Specifically, it noted that some leave slips indicated that the claimed hours were taken under the Family and Medical Leave Act (FMLA) or did not specify the reason for the leave usage. A Form CA-7b certified by the employing establishment was not submitted.

OWCP received supporting evidence for the period beginning August 22, 2016 and continuing, which included authorization requests, a February 27, 2017 report from a physician assistant, an April 10, 2017 electromyogram and nerve conduction velocity (EMG/NCV) study, physical therapy reports, and an April 10, 2017 consultation report from Dr. Dale A. Helman, a Board-certified neurologist, who recommended electrodiagnostic testing.

In medical reports dated September 19, 2016 through March 27, 2017, Dr. Natalie Lake, a family practitioner, noted that appellant was seen for a workers' compensation injury of bilateral wrist pain and carpal tunnel syndrome.

In December 19, 2016 and March 3, 2017 reports, Dr. Yvonne Torrez, an internist, noted that appellant was seen for follow up of her work-related carpal tunnel syndrome. She diagnosed bilateral carpal tunnel syndrome and continued appellant on modified work.

In development letters dated April 25 and 28, 2017, OWCP advised appellant of the deficiencies in her claim. It noted that personal or FMLA-related time loss unrelated to the accepted August 9, 2016 work injury was not compensable. OWCP also noted that a corresponding Form CA-7b for leave buyback was required for all of appellant's claims pertaining to leave buyback. OWCP advised appellant that her reason for the claimed compensation of "medical" or "medical/wc" on all of her leave analysis (CA-7a) forms were general or vague reasons and that a specific reason for each date of compensation claimed was necessary to substantiate that the compensation claimed was related to the accepted work injury. It afforded her 30 days to submit the requested information.

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<sup>3</sup> Appellant claimed leave buyback for 48 hours from September 20 to 30, 2016; 38 hours from October 17 to 27, 2016; unspecified hours on October 31, 2016; 2.15 hours on November 17, 2016; 4 hours on December 12, 2016; 6 hours on January 11, 2017; and 16 hours from February 7 to 17, 2017.

In response to its letter, OWCP received requests for authorization, physical therapy reports, and an April 20, 2017 report from a physician assistant.

In progress reports dated April 24, May 15, and 22, 2017, Dr. Lake reported the status of appellant's bilateral carpal tunnel syndrome and de Quervain's disease reiterating his request for physical therapy and work restrictions.

Two additional Form CA-7s dated May 4 and 19, 2017 for the periods April 26 to May 1, 2017 (20 hours) and May 2 to 17, 2017 (56 hours) for LWOP were received. The corresponding time analysis forms indicated that the compensation claimed was for "medical" or "medical/wc." The employing establishment verified all of the hours appellant claimed except for the four hours claimed on May 17, 2017.

By decision dated May 30, 2017, OWCP denied appellant's claim for compensation for the period August 22, 2016 through January 20, 2017 and continuing. It found that the medical evidence of record was insufficient to establish that appellant was disabled from work due to her accepted work-related medical condition(s). OWCP noted that appellant did not address any of the three issues discussed in its letters or provide a specific reason for any of the dates that compensation was claimed as requested.

On July 5, 2017 appellant requested reconsideration.

OWCP received additional physical therapy reports, notes regarding appellant's physical therapy treatments, requests for authorization, and a partial Certification of Health Care Provider for Employee's Serious Health Condition (FMLA).

Additional reports from appellant's physicians regarding her bilateral carpal tunnel condition and several excuse slips were also received. These included progress reports from Dr. Lake dated January 23, March 27, April 24, May 18, June 29, July 27, and August 30, 2017 and reports from Dr. Gregg K. Satow, a Board-certified orthopedic surgeon, dated July 24 and August 22, 2017.<sup>4</sup>

Partial reports from Dr. Lake dated September 26, October 10, and November 7, 14, and 21, 2016 and January 25, March 27, April 24, May 18 and 22, and June 29, 2017 were also received along with partial reports from Dr. Torrez dated December 19, 2016 and February 27, 2017.

Several excuse slips from doctors at Harden Urgent Care, which included Dr. Lake, Dr. Torrez, and Dr. Richard Lutz, a Board-certified orthopedic surgeon, were received. Appellant was noted to be excused from work from August 22 to 23, 2016, September 15 to 16, 2016, November 14 to 15, 2016; February 27, 2017, and May 22, 2017. Dr. Helman excused appellant from work on April 10, 2017.

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<sup>4</sup> In his August 22, 2017 report, Dr. Satow opined that appellant may return to modified work for four hours a day from August 23 to October 23, 2017.

By decision dated October 3, 2017, OWCP denied modification of its May 30, 2017 decision. It listed specific dates of medical appointments/notes and work excuses that it received from August 22, 2016 through June 29, 2017, but stated that it remained unclear what type of compensation appellant was specifically claiming as she continued to claim “medical” or “medical/wc” on her claim form. OWCP provided appellant guidance on completing Form CA-7 and CA-7a forms for taking time off from work for medical appointments when she used LWOP and personal leave.

### **LEGAL PRECEDENT**

Under FECA,<sup>5</sup> the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>6</sup> Furthermore, whether a particular injury causes 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>7</sup>

For each period of disability claimed, an employee must establish that he or she was disabled from work as a result of the accepted employment injury. 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.<sup>8</sup>

20 C.F.R. § 10.121 provides that: “If the claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is not sufficient to meet the burden of proof, OWCP will inform the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the evidence required. OWCP is not required to notify the claimant a second time if the evidence submitted in response to its first request is not sufficient to meet the burden of proof.”<sup>9</sup>

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<sup>5</sup> *Supra* note 1.

<sup>6</sup> See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>7</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>8</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>9</sup> 20 C.F.R. § 10.121; see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c) (April 1993).

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability during intermittent periods August 22, 2016 through January 20, 2017 and continuing, causally related to her accepted employment injury.

In accordance with its own regulations and procedures, upon receipt of appellant's evidence, OWCP notified appellant of the defects in the CA-7 wage-loss compensation forms she had submitted and afforded her 30 days to cure the defects. In letters dated April 25 and 28, 2017, it advised appellant that her use of "medical" and "medical/wc" were vague and insufficient as it was unclear what type of compensation appellant was specifically claiming. As well, OWCP advised her specifically of the information necessary to process her claim. While OWCP requested that appellant explain the nature of the compensation claimed for the periods claimed, on both occasions, she failed to do so. Without a response from appellant, OWCP was unable to process appellant's wage-loss compensation claims. It then advised appellant a second time of what evidence was necessary to support the claimed dates of wage-loss compensation in its May 30, 2017 decision. However, appellant still did not provide the requested information.

The Board has held that for each period of disability claimed, an employee must establish that he or she was disabled from work as a result of the accepted employment injury. 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.<sup>10</sup> As appellant did not provide a specific reason for any disability on the dates that compensation was claimed, the Board finds that the medical evidence of record is insufficient to establish that she was disabled from work during the claimed periods due to her accepted work-related medical condition(s). As such, appellant has not met 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 met her burden of proof to establish disability during intermittent periods August 22, 2016 through January 20, 2017 and continuing, causally related to her accepted employment injury.

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<sup>10</sup> *Supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 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