

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

A.R., Appellant)	
)	
and)	Docket No. 19-0385
)	Issued: December 9, 2019
U.S. POSTAL SERVICE, PARK PLACE POST)	
OFFICE, Houston, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 10, 2018 appellant filed a timely appeal from an October 31, 2018 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 31, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period from June 9 through July 6, 2018 causally related to her December 6, 2017 employment injury.

FACTUAL HISTORY

On December 18, 2017 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2017 she strained her right shoulder while in the performance of duty. OWCP accepted the claim for a strain of other specified parts of the right shoulder girdle and a sprain of the ligaments of the cervical spine. Appellant stopped work on December 6, 2017. On February 26, 2018 she accepted a modified position at the employing establishment. OWCP paid appellant wage-loss compensation on the supplemental rolls for intermittent time lost from work beginning February 2, 2018.

In work excuses dated June 11 to 13 and 20 to 22, 2018, Dr. James Costello, a chiropractor, indicated that appellant had received physical therapy treatment on those dates and requested that she be excused from work. The record also supports that she received physical therapy on June 26, 27, and 29 and July 2, 5, and 6, 2018.

On June 25, 2018 OWCP authorized physical therapy treatment from May 28 to July 6, 2018.

In a progress report dated June 25, 2018, Dr. Charles E. Willis, II, Board-certified in anesthesiology and pain management, found that appellant's condition had not changed and that she should continue working with restrictions. In a duty status report (Form CA-17) of even date, he diagnosed cervical sprain and right shoulder sprain and provided work restrictions similar to those set forth in prior reports, including lifting and carrying up to 15 pounds intermittently, sitting for four hours per day, standing and walking for eight hours per day, and operating a motor vehicle for one hour per day.³

On June 28, 2018 appellant filed a claim for compensation (Form CA-7) for the period from June 9 to 22, 2018.

In a July 9, 2018 development letter, OWCP advised appellant that additional evidence was needed to establish disability from work for the period June 9 through 22, 2018. It requested that she submit a comprehensive medical report from her physician which explained how her accepted condition had worsened such that she could no longer perform the duties of her position. OWCP afforded appellant 30 days to submit the necessary evidence.

On July 13, 2018 appellant accepted a March 6, 2018 job offer for a modified position within Dr. Willis' work restrictions.

³ The work restrictions by Dr. Willis in the June 25, 2018 duty status report (Form CA-17) was unchanged from those set forth in prior duty status reports dated February through May 2018.

In a July 20, 2018 development letter, OWCP requested that appellant submit additional evidence supporting her claim for disability from work for the period June 23 to July 6, 2018. It advised her that the medical evidence should contain an explanation, with objective findings, supporting disability from employment. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received a July 23, 2018 duty status report (Form CA-17) from Dr. Willis, who indicated that appellant could work with restrictions. In a progress report of even date, Dr. Willis opined that her condition was unchanged and that she should continue to work with restrictions.

On July 27, 2018 appellant filed a claim for compensation (Form CA-7) claiming wage loss for the period from July 7 to 20, 2018.

By decision dated October 31, 2018, OWCP denied appellant's claim for wage-loss compensation from June 9 through 22, 2018 and June 23 through July 6, 2018. It found that the evidence she had submitted failed to establish that she was disabled from her modified employment during the claimed period causally related to her accepted employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the preponderance of the evidence.⁵ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁷

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.⁸ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁹ 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 received at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹⁰ When,

⁴ *Supra* note 1.

⁵ *See E.B.*, Docket No. 17-1160 (issued December 19, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁶ *Id.*

⁷ *See B.W.*, Docket No. 19-0049 (issued April 25, 2019); *Edward H. Horton*, 41 ECAB 301 (1989).

⁸ *V.G.*, Docket No. 18-0936 (issued February 6, 2019); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

⁹ *J.A.*, Docket No. 19-0776 (issued September 25, 2019); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁰ *C.S.*, Docket No. 17-1686 (issued February 5, 2019).

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 her employment, she is entitled to compensation for any loss of wages.

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

ANALYSIS

The Board finds that appellant has met her burden of proof to establish disability for time lost for medical appointments on June 11 to 13, 20 to 22, and 25 to 29, and July 2, 5, and 6, 2018, but has not met her burden of proof to establish disability for the remaining dates from June 9 through July 6, 2018, causally related to her December 6, 2017 employment injury.

Appellant filed a claim for wage-loss compensation for the period from June 9 through July 6, 2018. OWCP authorized physical therapy treatments from May 28 to July 6, 2018. Appellant underwent physical therapy treatments on June 11 to 13, 20 to 22, and 26 to 29, and July 2, 5, and 6, 2018. She also obtained medical treatment on June 25, 2018 from Dr. Willis, who completed a duty status report (Form CA-17) on that date regarding her accepted employment injury.

The Board has long recognized that, under section 8103 of FECA, payment of expenses incidental to the securing of medical services encompasses payment for loss of wages incurred while obtaining medical treatment.¹² An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury.¹³ OWCP's procedures provide that, in general, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments.¹⁴ Accordingly, the Board finds that appellant is entitled to up to four hours of compensation on the above-listed dates for attending physical therapy and a physician's appointment due to her accepted employment injury.¹⁵

Regarding the remaining dates claimed, there is no medical evidence of record to establish disability from employment. In progress reports dated June 25 and July 23, 2018, Dr. Willis opined that appellant's condition was unchanged and that she should continue working with restrictions. He completed duty status reports of even date providing work restrictions similar to those in his prior reports. As previously noted, OWCP does not pay compensation for disability

¹¹ C.S., *id.*; *William A. Archer*, 55 ECAB 674 (2004).

¹² *See B.W.*, Docket No. 19-0049 (issued April 25, 2019).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013); *see also B.W.*, *id.*

¹⁴ *Id.*

¹⁵ *B.W.*, *supra* note 12.

in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.¹⁶ Appellant has, therefore, not met her burden of proof to establish her claim for disability for the dates upon which she did not obtain physical therapy or medical treatment.¹⁷

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish disability for time lost for medical appointments on June 11 to 13, 20 to 22, and 25 to 29, and July 2, 5, and 6, 2018, but has not met her burden of proof to establish disability for the remaining dates from June 9 through July 6, 2018, causally related to her December 6, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2018 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: December 9, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ *T.H.*, Docket No. 19-0436 (issued August 13, 2019).

¹⁷ *Id.*