

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

R.M., Appellant	)	
	)	
and	)	<b>Docket No. 19-1044</b>
	)	<b>Issued: December 10, 2019</b>
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>INTERNAL REVENUE SERVICE, Fresno, CA,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 11, 2019 appellant, through counsel, filed a timely appeal from a March 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> The record also contains January 18 and March 1 and 7, 2019 decisions denying appellant's claim for wage-loss compensation for intermittent periods of disability. Appellant has not appealed these decisions and thus they are not before the Board at this time. *See* 20 C.F.R. § 501.3.

Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### **ISSUE**

The issue is whether appellant has met her burden of proof to establish entitlement to two hours of wage-loss compensation on May 22, 2018 to pick up prescribed medication.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>5</sup> The facts and circumstances as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On January 11, 2000 appellant, then a 35-year-old customer service representative, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome causally related to factors of her federal employment. OWCP accepted the claim, assigned OWCP File No. xxxxxx348, for bilateral carpal tunnel syndrome and neck strain. Appellant underwent a right carpal tunnel release on July 26, 2000 and a left carpal tunnel release on October 11, 2000. She returned to modified employment on January 1, 2001.

OWCP subsequently accepted appellant's October 6, 2016 occupational disease claim for a permanent aggravation of primary osteoarthritis of the bilateral hands. It assigned OWCP File No. xxxxxx608.

Appellant continued to claim compensation for periods of disability from employment under OWCP File No. xxxxxx348. By decisions dated February 25 and October 30, 2002, January 13 and August 16, 2004, and September 9, 2005, OWCP found that she had failed to meet her burden of proof to establish a recurrence of disability in 2001 causally related to her accepted employment injury. By decision dated September 21, 2006, it denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed to the Board. By order dated May 21, 2007, the Board set aside the September 21, 2006 decision, finding that her request for reconsideration was timely filed.<sup>6</sup> The Board remanded the case for OWCP to consider appellant's timely reconsideration request.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that, following the March 8, 2019 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.*

<sup>5</sup> *Order Remanding Case*, Docket No. 07-0183 (issued May 21, 2007); Docket No. 08-0622 (issued October 22, 2008).

<sup>6</sup> *Id.*

By decision dated September 28, 2007, OWCP denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated October 22, 2008, the Board affirmed the September 28, 2007 decision.<sup>7</sup>

On May 23, 2018 appellant filed a claim for compensation (Form CA-7) for two hours of leave without pay (LWOP) that she used on May 22, 2018 to pick up a new prescription for her hands and fingers.<sup>8</sup>

In a development letter dated June 19, 2018, OWCP notified appellant that it had not received any evidence supporting her claim for compensation on May 22, 2018 to obtain medical treatment.<sup>9</sup> It advised her of the type of evidence required to establish that she had received treatment on that date due to her employment injury. OWCP afforded appellant 30 days to submit the necessary evidence.

In a June 27, 2018 response, appellant related that she had to use two hours of LWOP to obtain a prescription for a topical gel for her hands that her physician believed might work better than her ibuprofen cream, which had run out. She advised that she had driven to work after obtaining her prescription at the pharmacy.

By decision dated July 26, 2018, OWCP denied appellant's claim for compensation for time lost on May 22, 2018. It found that she had not submitted any evidence establishing that she missed time from work on May 22, 2018 to obtain medical treatment causally related to her accepted employment injury.

On July 31, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on January 10, 2019. During the hearing, appellant related that she had no more ibuprofen cream, and her physician had given her a new prescription for a

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<sup>7</sup> *Id.*

<sup>8</sup> On May 17, 2018, Dr. Sanjay J. Chauhan, a Board-certified neurologist, requested that OWCP authorize Voltaren gel, noting that appellant would use the gel instead of ibuprofen cream.

<sup>9</sup> By decision dated January 17, 2017, OWCP denied appellant's claim for wage-loss compensation beginning October 24, 2016; however, by decision dated September 12, 2017 an OWCP hearing representative vacated the decision and remanded the case for further adjudication after OWCP had combined the case files for OWCP File Nos. xxxxxx348 and xxxxxx608. By decision dated February 27, 2018, it denied her claim for intermittent wage-loss compensation on September 11, 12, and 26 and October 2, 2017, and February 6, 2018 and continuing. By decision dated February 28, 2018, OWCP denied her claim for wage-loss compensation beginning October 24, 2016. By decision dated October 31, 2018, an OWCP hearing representative vacated the February 27 and 28, 2018 decisions, finding that OWCP should review a report from an impartial medical examiner provided under OWCP File No. xxxxxx608 before adjudicating the disability claims. By decision dated January 18, 2019, OWCP denied appellant's request for intermittent time lost to obtain medical care from September 26 through November 21, 2018. By decision dated March 1, 2019, it denied wage-loss compensation for intermittent periods in 2016 through 2018. By decision dated March 7, 2019, OWCP denied appellant's request for time lost to obtain medical care on November 28, 2018.

Motrin gel. She took off work from 4:00 p.m. to 6:00 p.m. and went to a local pharmacy to fill the prescription. Appellant's scheduled regular work hours were from 4:00 p.m. until 12:30 a.m.

By decision dated March 8, 2019, OWCP's hearing representative affirmed the July 26, 2018 decision. She found that appellant was not entitled to compensation for time lost from work to pick up prescribed medication.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> A claimant is entitled to compensation for any time missed from work due to medical treatment for an employment-related condition. OWCP's obligation to pay for medical expenses and 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.<sup>13</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish entitlement to two hours of wage-loss compensation on May 22, 2018 to pick up prescribed medication.

Appellant claimed two hours of wage-loss compensation on May 22, 2018 to pick up a prescription for a new hand and finger cream at a pharmacy. OWCP's procedures provide that an employee is entitled to wages lost while undergoing examination, testing, or treatment for an employment-related injury.<sup>14</sup> The hours appellant claimed on May 22, 2018 were not for a medical examination or treatment, but rather to pick up medication. The medical evidence does not support that she received medical care on this date due to her accepted employment injury. The Board thus finds that appellant was not entitled to two hours of wage-loss compensation on May 22, 2018 to pick up prescribed medication.<sup>15</sup>

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<sup>10</sup> *Supra* note 3.

<sup>11</sup> *V.B.*, Docket No. 18-1273 (issued March 4, 2019).

<sup>12</sup> 5 U.S.C. § 8103(a).

<sup>13</sup> *J.B.*, Docket No. 17-0655 (issued May 7, 2018); *S.C.*, Docket No. 16-0284 (issued June 27, 2016).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19 (February 2013).

<sup>15</sup> *See S.M.*, Docket No. 17-1557 (issued September 4, 2018); *D.B.*, Docket No. 12-0591 (issued October 11, 2012).

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 not met her burden of proof to establish entitlement to two hours of wage-loss compensation on May 22, 2018 to pick up prescribed medication.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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