

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability for the period January 21 to February 3, 2018 causally related to her accepted October 24, 2012 employment injury.

FACTUAL HISTORY

On October 31, 2012 appellant, then a 47-year-old housekeeping aid leader, filed a traumatic injury claim (Form CA-1) alleging that on October 24, 2012 she sustained neck and right arm injuries when hanging cubicle curtains while in the performance of duty. She stopped work on October 24, 2012 and returned on October 27, 2012. OWCP initially accepted the claim for a neck sprain, and subsequently expanded acceptance of the claim to include bilateral carpal tunnel syndrome and lesion of the ulnar nerve, left upper limb. It paid appellant medical benefits and intermittent periods of wage-loss compensation on the supplemental rolls as of December 2, 2012.⁴

In a January 30, 2018 duty status report (Form CA-17), Dr. John O'Keefe, an orthopedic surgeon, noted that appellant had severe carpal tunnel syndrome. He indicated that she could return to light duty on February 5, 2018. Dr. O'Keefe related that appellant was given an urgent carpal tunnel injection to the right wrist and that she was in need of carpal tunnel release surgery.

In a February 1, 2018 statement, appellant indicated that she was off work due to an emergency injection in her right wrist to stop tingling, numbness, pain, and swelling in her right hand.

On February 6, 2018 appellant filed a claim for compensation (Form CA-7) claiming intermittent wage loss from January 21 to February 3, 2018. She also completed a February 2, 2018 time analysis form (Form CA-7a), which indicated that she used: six hours of leave without pay (LWOP) on January 30, 2018 for a physician visit; nine hours of LWOP on January 31, 2018; and eight hours of LWOP on February 1, 2018, noting "off-work [physician] order."

In a development letter dated February 20, 2018, OWCP informed appellant that the evidence of record was insufficient to support her claim for compensation for the period January 21 through February 3, 2018. It advised her of the type of evidence needed and afforded her 30 days to submit additional evidence.

In a January 30, 2018 report, Dr. O'Keefe noted that appellant had bilateral carpal tunnel syndrome symptoms. He indicated that she was experiencing intense numbness that was keeping her awake at night and that she had failed to improve with medications, splinting, and therapy. Dr. O'Keefe requested authorization for an open median nerve release and opined that appellant's duties caused a recurrence of her cumulative trauma disorder of the right carpal tunnel. He indicated that he was administering an "unauthorized cortisone injection with ultrasound guidance

⁴ The present claim was assigned OWCP File No. xxxxxx213 by OWCP. Appellant had a prior claim accepted for left carpal tunnel syndrome under OWCP File No. xxxxxx528, and a prior claim accepted for sciatica and a lumbar sprain under OWPC File No. xxxxxx968. OWCP has administratively combined OWCP File Nos. xxxxxx213, xxxxxx528, and xxxxx968, with OWCP File No. xxxxxx213 serving as the master file.

to the right wrist.” Dr. O’Keefe placed appellant off work for the remainder of the week with a return to work on February 5, 2018 with restrictions.

By decision dated April 11, 2018, OWCP denied in part appellant’s claim for wage-loss compensation for the period January 21 through February 3, 2018. It explained that it received a January 30, 2018 treatment note from Dr. O’Keefe which supported that she was evaluated on that date and that wage-loss compensation was paid for four hours for the medical appointment. OWCP noted that payment for more than four hours is not permitted, unless the employee lived in a rural area or in other special circumstances that did not apply to appellant. It further explained that payment for the remaining dates could not be authorized as the disability appeared to be attributable to a medical procedure that was not authorized by OWCP and there was no explanation provided to support why she was unable to work on those dates.

On April 12, 2018 OWCP paid appellant for four hours of wage-loss compensation for the January 30, 2018 medical appointment.

On April 25, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was scheduled for September 13, 2018. Appellant explained that she was claiming more than eight hours of LWOP on one of the dates because she worked a flexible schedule comprised of nine hours per day with one day off every other week. Counsel argued that the injection was administered to resolve her symptoms and that she was disabled due to these symptoms and not secondary to the injection itself.

By decision dated October 24, 2018, OWCP’s hearing representative affirmed the April 11, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight 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 from work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁷

Under FECA 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 physical 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 the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁸ Furthermore, whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical

⁵ See *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

⁶ *Id.*

⁷ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁸ *Id.*

issues which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁹

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁰ Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's claimed disability and the accepted employment injury. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the claimed period of disability.¹¹

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 their disability and entitlement to compensation.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period January 21 to February 3, 2018, causally related to her accepted October 24, 2012 employment injury.

Appellant alleged on the Form CA-7a that she was entitled to six hours of LWOP on January 30, 2018 for a physician visit. She also claimed nine hours of LWOP on January 31, 2018 and eight hours of LWOP on February 1, 2018, and indicated "off-work [physician] order."

The record reflects that appellant was paid for four hours for her medical appointment on January 30, 2018.¹³ The Board has previously held that an employee who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.¹⁴ As a rule, no more than four hours of compensation 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.¹⁵ As the evidence of record did not

⁹ *T.O.*, Docket No. 17-1177 (issued November 2, 2018).

¹⁰ *Supra* note 5.

¹¹ *See R.H.*, Docket No. 18-1382 (issued February 14, 2019).

¹² *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

¹³ In order to establish entitlement to compensation for any time missed from work due to medical treatment for an employment-related condition, a claimant must submit supporting medical evidence. *See S.H.*, Docket No. 18-1634 (issued May 13, 2019); *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹⁴ *S.H.*, *id.*; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

¹⁵ *Id.*; *see also E.W.*, Docket No. 17-1988 (issued January 28, 2019).

substantiate a need for more than four hours of compensation for appellant's routine medical appointment, appellant has not established entitlement to additional wage-loss compensation due to medical treatment on January 30, 2019.

Regarding the additional two hours on January 30, 2018, the nine hours of LWOP on January 31, 2018, and the eight hours of LWOP on February 1, 2018, the medical evidence of record does not establish that appellant attended any other medical appointment or was disabled from work during this time frame as a result of her accepted October 24, 2012 employment injury.¹⁶

The only medical evidence which addressed the claimed dates of disability was a report dated January 30, 2018 from Dr. O'Keefe. He conducted an examination, diagnosed bilateral carpal tunnel syndrome, and administered a corticosteroid injection indicating that it provided "complete relief of [appellant's] pain." Dr. O'Keefe recommended that appellant be off work for the rest of the day and excused her from work for the remainder of the week with a return to work on February 5, 2018. He did not provide objective findings or medical rationale to explain why the corticosteroid injection was medically necessary due to her accepted conditions or why she remained disabled from work on the claimed dates. Dr. O'Keefe's report, therefore, is of diminished probative value and is insufficient to establish appellant's disability claim.¹⁷

As noted above, appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that her claimed intermittent disability from work for the period January 21 to February 3, 2018, was causally related to her accepted October 24, 2012 employment injury.¹⁸ She has not met this burden of proof.¹⁹

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 intermittent disability for the period January 21 to February 3, 2018 causally related to her accepted October 24, 2012 employment injury.

¹⁶ *G.T.*, 59 ECAB 447 (2008); *see Huie Lee Goal*, 1 ECAB 180, 182 (1948).

¹⁷ *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *S.B.*, Docket No. 13-1162 (issued December 12, 2013). Insofar as Dr. O'Keefe suggested that appellant's continued employment duties caused disability, she may file a new claim for occupational disease.

¹⁸ *See supra* note 11; *see also Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁹ *See T.J.*, Docket No. 18-0619 (issued October 22 2018); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2019
Washington, DC

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

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

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