



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 20, 2016 appellant, then a 57-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that she had difficulty breathing, neck, back, and hip pain, and abrasions to the left breast and right abdomen as a result of a motor vehicle accident. The accident occurred that day when she was a passenger in an employing establishment vehicle that was hit by another car. Appellant stopped work. OWCP accepted strain of muscle at neck and strain of muscle of lower back. She received continuation of pay from April 21 to May 27, 2016.

Appellant accepted a full-time modified job offer of counseling and case management on May 26, 2016, with restrictions of no pushing, pulling, lifting, squatting, or bending. She filed a claim for compensation (Form CA-7) for intermittent compensation for the period June 10 to July 13, 2016 in which she requested: 8 hours compensation on June 10 and 13, 2016 for doctor visit and off duty; 3.5 hours for physical therapy on June 16, 2016, 3 hours for physical therapy on June 20, 2016; 2.5 hours compensation for a magnetic resonance imaging (MRI) scan on June 22, 2016; 2.5 hours compensation for physical therapy on June 23, 2016; 5.5 hours compensation for a doctor visit on June 24, 2016; 40 hours compensation for the period June 27 to July 1, 2016 for doctor visits, physical therapy, and off duty; 40 hours compensation for the period July 4 to 8, 2016 for physical therapy, and off duty; and 24 hours compensation for July 11 to 13, 2016 for doctor visit.

Appellant saw Dr. Thomas Ryu,<sup>3</sup> an attending osteopath, on June 10, 2016. Dr. Ryu noted diagnoses of neck strain, back, strain, and sciatica, took appellant off work because she was not improving as expected, and recommended further studies. On June 13, 2016 he advised that appellant could return to light-duty work. A director at Weststar Physical Therapy advised that appellant attended physical therapy there on June 20, 2016. An MRI scan of the lumbar spine was done on June 22, 2016. It demonstrated straightening of lumbar lordosis, disc protrusions at L2-3, L4-5, and L5-S1 with foraminal narrowing and disc desiccation.

Appellant again saw Dr. Ryu on June 24, and July 1 and 13, 2016. Dr. Ryu reported that her neck and back pain were worse despite physical therapy, described lumbar spine tenderness on examination, reviewed the MRI scan, and added the diagnosis of stress. He referred her to psychology and orthopedics and advised that appellant should remain off work until July 27, 2016.

On July 28, 2016 OWCP paid appellant compensation for 14.5 hours: 4 hours each for June 10, 13, and 24, 2016 and 2.5 hours for June 22, 2016. Appellant accepted a modified job offer on July 29, 2016.

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<sup>2</sup> Docket No. 17-0323 (issued July 7, 2017).

<sup>3</sup> Dr. Ryu practices at an urgent care center.

An August 2, 2016 billing statement from Weststar Physical Therapy showed that appellant had physical therapy on June 16, 20, 23, 27, and July 1 and 5, 2016.

By decision dated September 16, 2016, OWCP denied appellant's claim for compensation for 122.50 hours of wage loss from June 10 to July 13, 2016 and total disability compensation from July 14 to 27, 2016. It found there was either no medical evidence and/or insufficient medical evidence to pay compensation for the additional hours claimed, and that the medical evidence did not establish continued disability from work.

OWCP issued a second decision that day, denying appellant's claim for a dental condition caused by the April 20, 2016 motor vehicle accident.

On November 29, 2016 appellant filed an appeal with the Board. By decision dated July 7, 2017, the Board found that she had not met her burden of proof to establish a dental condition caused by an accepted April 20, 2016 employment injury or that she was totally disabled for the period July 14 to 27, 2016 due to the accepted conditions. The Board further found the case not in posture for decision regarding claimed disability for the period June 10 to July 13, 2016. The Board remanded the case for OWCP to request documentation from the employing establishment regarding appellant's work status beginning June 10, 2016 with specific information regarding the days and hours worked, to be followed by an appropriate decision on the disability claimed for this period.<sup>4</sup>

During the pendency of appellant's appeal with the Board, on March 10, 2017 OWCP paid appellant 44 hours of intermittent compensation for the period July 29 through September 7, 2016.

Following the Board's July 7, 2017 decision, by letter dated August 9, 2017, OWCP asked the employing establishment to provide a daily breakdown of appellant's work status during the period June 10 to July 13, 2016.

On August 25, 2017 the employing establishment forwarded documentation of appellant's work from June 10 through July 21, 2016. Absences were as follows: June 10, 2016 -- 8 hours; June 13, 2016 -- 8 hours; June 16, 2016 -- 3.5 hours; June 20, 2016 -- 3 hours; June 22, 2016 -- 2.5 hours; June 23, 2016 -- 2.5 hours; and June 24, 2016 -- 5.5 hours.

For the period June 27 to July 21, 2016, she was absent eight hours daily.

In correspondence dated August 28, 2017, OWCP informed appellant that, regarding her claimed compensation for the period June 10 to July 13, 2016, it had received evidence supporting her attendance at medical appointments on June 10, 13, 22, 24, and July 11 and 13, 2016. It asked her for evidence supporting the additional claimed absences and afforded her 30 days to respond.

Appellant forwarded documentation that she attended physical therapy on June 16 and 20, 2016.

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<sup>4</sup> *Supra* note 2.

By decision dated September 29, 2017, OWCP noted that appellant had previously been paid compensation for medical visits on June 10, 13, 22, and 24, 2016. It found that she was entitled to an additional 14.5 hours of compensation for June 16 and 20, and July 11 and 13, 2016.

As noted above, appellant had previously received disability compensation for 4 hours each on June 10, 13, and 24, 2016 and 2.5 hours on June 22, 2016. On September 29, 2017 OWCP paid appellant compensation for an additional 14.5 hours. This included 3.5 hours on June 16, 2016; 3 hours on June 20, 2016; and 4 hours each on July 11 and 13, 2016.

On October 20, 2017 appellant requested a review of the written record with a representative of OWCP's Branch of Hearings and Review. She resubmitted Dr. Ryu's July 1, 2016 report.

By decision dated March 14, 2018, an OWCP hearing representative affirmed the September 29, 2017 decision. He found that, although Dr. Ryu provided brief opinions indicating that appellant was totally disabled from work, he failed to supply sufficient medical rationale to establish such disability.

On May 4, 2018 appellant requested reconsideration. She asserted that her medical appointments were not routine, and that she had to drive long distances in California traffic to reach them.

In an attached April 26, 2018 statement, Dr. Ryu indicated that he first saw appellant on June 10, 2016 when he placed her on temporary total disability until June 13, 2016 because her neck and lumbar pain had worsened and physical therapy had not been approved. He wrote that when he next saw her on June 13, 2016 he advised that she could return to modified duty, and when he saw her on June 24, 2016 her back pain had worsened and was radiating into her left foot. Dr. Ryu noted that appellant felt that she had post-traumatic stress disorder (PTSD), and an MRI scan demonstrated a disc protrusion at L5-S1. He placed her on temporary total disability because her pain had worsened despite treatment and recommended an orthopedic referral. Dr. Ryu noted that he next saw appellant on July 1, 2017 when, despite up to 18 sessions of physical therapy, her back pain was worse, causing her to limp. He recommended continued total disability. Dr. Ryu related that he last saw appellant on July 13, 2016 when he kept her on total disability for two more weeks.

By decision dated August 2, 2018, OWCP denied modification of its prior decision. It found the medical evidence of record did not contain a sufficient explanation showing how the accepted conditions objectively worsened such that appellant was no longer able to continue to work modified duties.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</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 proven by a preponderance of the reliable, probative and substantial medical evidence.<sup>10</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>11</sup> 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 diagnosed condition and the implicated employment incident. 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 specific employment factors identified by the employee.<sup>12</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>13</sup>

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

<sup>6</sup> *See D.W.*, Docket No. 18-0644 (issued November 15, 2018).

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

<sup>8</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>9</sup> *Id.*

<sup>10</sup> *T.O.*, Docket No. 17-1177 (issued November 2, 2018).

<sup>11</sup> *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

<sup>12</sup> *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

<sup>13</sup> *Supra* note 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.<sup>14</sup>

OWCP's procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.<sup>15</sup> A claimant 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.<sup>16</sup> Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.<sup>17</sup> The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable.<sup>18</sup> For a routine medical appointment, a maximum of four hours of compensation may be allowed. However, 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. The claims for wage loss should be considered on a case-by-case basis.<sup>19</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period June 10 to July 13, 2016 causally related to the April 20, 2016 employment injury.

Medical evidence relevant to this period includes reports from Dr. Ryu dated June 10 to July 13, 2016. Dr. Ryu initially took appellant off work on June 10, 2016 because she was not improving as expected and recommended further studies. He continued to advise that she remain off work until July 27, 2016.

In his April 26, 2018 statement, Dr. Ryu described appellant's treatment beginning June 10, 2016 when he placed her on temporary total disability. He advised that this was done because her pain had worsened despite treatment and that when he saw her on July 1, 2017, despite having up to 18 sessions of physical therapy, her back pain was worse and caused her to limp.

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<sup>14</sup> See *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

<sup>16</sup> *Id.* at Chapter 2.901.19.a; see *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

<sup>17</sup> *Id.* at Chapter 2.901.19.a(2).

<sup>18</sup> *Id.* at Chapter 2.901.19.a(3).

<sup>19</sup> *Id.* at Chapter 2.901.19.c.

Dr. Ryu noted that when he last saw her on July 13, 2017, her symptoms continued and he kept her on total disability for two more weeks.

The accepted conditions are neck and lumbar strains caused by an April 20, 2016 motor vehicle accident. Dr. Ryu did not explain in any of his reports how and/or why these conditions caused appellant's continued disability. He did not explain the mechanics of how the April 20, 2016 employment injury caused his diagnosed condition of sciatica. Furthermore, Dr. Ryu did not exhibit any knowledge of the modified duties appellant was performing in June 2016 or explain why she could not work due to the accepted conditions.<sup>20</sup>

The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>21</sup> Dr. Ryu did explain why the accepted conditions prevented appellant from performing her modified job duties when she stopped work. As he provided insufficient medical rationale to support that appellant was totally disabled due to the accepted neck and lumbar strains caused by the April 20, 2016 motor vehicle accident, his opinion is insufficient to meet appellant's burden of proof to establish that appellant was totally disabled for the period June 10 through July 13, 2016.<sup>22</sup>

The record contains evidence, however, that appellant was examined by Dr. Ryu on July 1, 2016, a date she was scheduled for work. OWCP did not compensate her for a medical visit that day. The case will therefore be remanded for payment for the appropriate amount of wage-loss compensation for medical appointments.

On appeal appellant contends that she is entitled to more than the four hours paid for wage loss for attending medical appointment due to travel. As noted, a claimant 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. 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.<sup>23</sup> Appellant, however, has not submitted evidence to support entitlement to monetary compensation greater than that paid.

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.

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<sup>20</sup> See *M.S.*, Docket No. 18-0877 (issued November 21, 2018).

<sup>21</sup> See *M.C.*, Docket No. 18-1391 (issued February 1, 2019).

<sup>22</sup> See *supra* note 20.

<sup>23</sup> *Supra* note 19; see also *G.J.*, Docket No. 18-1335 (issued March 22, 2019).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period June 10 through July 13, 2016 due to accepted conditions. The Board further finds that upon return of the case record to OWCP, it shall pay appellant compensation for a medical appointment with Dr. Ryu on July 1, 2016.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for payment pursuant to this decision.

Issued: May 21, 2019  
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