

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

B.L., Appellant)	
)	
and)	Docket No. 19-0852
)	Issued: October 18, 2019
U.S. POSTAL SERVICE, POST OFFICE, Solvang, CA, Employer)	
)	

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 15, 2019 appellant filed a timely appeal from a February 6, 2019 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to an additional four hours of wage-loss compensation on November 30, 2018 causally related to her accepted employment conditions.

FACTUAL HISTORY

OWCP accepted that appellant, a 66-year-old retired sales, services, and distribution associate, sustained cervical disc disorder with myelopathy and cervical intervertebral disc

¹ 5 U.S.C. § 8101 *et seq.*

displacement (C5-6) without myelopathy, due to factors of her federal employment on or about July 29, 1996. It authorized a May 19, 1999 anterior cervical discectomy and fusion at C5-6.

On July 23, 2018 appellant underwent: (1) a radiofrequency facet joint nerve ablation of the left and right C4-5 joints; (2) a radiofrequency facet joint nerve ablation of the left and right C6-7 joints; and (3) a fluoroscopy for spinal injections.

In a progress report dated November 30, 2018, Dr. Benjamin Dirkx, an osteopath Board-certified in pain medicine, physical medicine, and rehabilitation, noted that appellant presented for a follow-up appointment, and that, since her last visit, she reported that her neck pain had worsened, and that she experienced muscle spasms and daily morning headaches. He listed the diagnoses as: (1) cervical disc disorder with myelopathy in the mid-cervical region; (2) carpal tunnel syndrome; (3) cervical facet arthropathy; (4) cervical myofascial strain; and (5) left occipital neuralgia. Dr. Dirkx related that he provided appellant with an out-of-work note for missing work on November 30, 2018 secondary to the appointment.

On December 27, 2018 appellant submitted a claim for compensation (Form CA-7) for intermittent periods of disability from November 26 to December 21, 2018, totaling 96 hours of leave without pay. The attached time analysis form (Form CA-7a), included an entry for a total of eight hours of leave without pay claimed for November 30, 2018, due to a workers' compensation physician visit for neck and head pain. With the Form CA-7a, appellant included a work excuse note dated November 30, 2018, from Dr. Dirkx who requested that she be excused from work secondary to a flare-up of pain.

In a development letter dated December 31, 2018, OWCP informed appellant that payment was authorized for 92 hours of wage loss for the claimed period. However, it advised that the claim was not payable in its entirety as the medical evidence submitted did not substantiate the disability for the additional four hours claimed for November 30, 2018. OWCP advised appellant of the type of medical evidence necessary and afforded her 30 days to respond.

In response, Dr. Dirkx submitted a January 9, 2019 report, noting that appellant was unable to attend work and could not perform her usual and customary duties for an extended period of time between November 26 and December 21, 2018, due to a flare-up of pain as a result of her cervical disc disorder with myelopathy in the mid-cervical region. He stated that this flare-up of pain was a result of her accepted condition which caused severe pain to the head and neck area, and concluded that she unable to attend work. Dr. Dirkx attached a copy of his treatment notes from the November 30, 2018 appointment.

By decision dated February 6, 2019, OWCP denied appellant's claim for an additional four hours of disability compensation on November 30, 2018. It found that the medical evidence of record was insufficient to establish that she was disabled from work on that date due to her accepted medical conditions.²

² Appellant voluntarily retired from the employing establishment effective January 31, 2019.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁴ 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.⁵ 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.⁶

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.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ 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 he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, 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 his or her employment, he or she is entitled to compensation for any loss of wages.¹⁰

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

³ *Supra* note 1.

⁴ *K.M.*, Docket No. 19-0367 (issued June 26, 2019); *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *see Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁵ *See Amelia S. Jefferson, id.*

⁶ *See D.W.*, Docket No. 18-0644 (issued November 15, 2018); *see Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conrad Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *S.H.*, Docket No. 18-1342 (issued February 26, 2019).

¹¹ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to an additional four additional hours of wage-loss compensation on November 30, 2018 causally related to her accepted employment conditions.

In support of her claim, appellant submitted reports from Dr. Dirkx. Dr. Dirkx opined that she would have intermittent periods of disability due to neck pain or flare-ups of her accepted cervical conditions. The Board has held that subjective complaints of pain are insufficient to establish disability from employment.¹² Dr. Dirkx did not explain with rationale why appellant's condition caused her to be disabled on that date.¹³ The Board has held that medical evidence must provide a rationalized medical opinion substantiating disability from work.¹⁴ Thus, the Board finds that reports submitted by Dr. Dirkx are insufficient to establish entitlement to an additional four hours of disability on November 30, 2018.

As the medical evidence of record is insufficient to establish causal relationship between the additional four hours of claimed disability on November 30, 2018 and appellant's accepted employment conditions, the Board finds that she 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 entitlement to an additional four additional hours of wage-loss compensation on November 30, 2018 causally related to her accepted employment conditions.

¹² *G.J.*, Docket No. 18-1335 (issued March 22, 2019).

¹³ *See V.G.*, Docket No. 18-0936 (issued February 6, 2019).

¹⁴ *K.A.*, Docket No. 16-0592 (issued October 26, 2016); *C.S.*, Docket No. 08-2218 (issued August 7, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 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