

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

|                               |   |                                 |
|-------------------------------|---|---------------------------------|
| M.B., Appellant               | ) |                                 |
|                               | ) |                                 |
| and                           | ) | <b>Docket No. 19-1049</b>       |
|                               | ) | <b>Issued: October 21, 2019</b> |
| U.S. POSTAL SERVICE, LAX      | ) |                                 |
| INTERNATIONAL SERVICE CENTER, | ) |                                 |
| Los Angeles, CA, 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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 10, 2019 appellant filed a timely appeal from a March 21, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. 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 entitlement to wage-loss compensation on October 29 and December 11, 2018, and January 3, 2019 due to attendance at medical appointments.

## FACTUAL HISTORY

On February 21, 2018 appellant, then a 60-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a bilateral knee condition due to factors of her federal employment including prolonged standing and walking. She first became aware of her condition and its relationship to her federal employment on December 6, 2017. Appellant did not stop work. OWCP accepted the claim for bilateral knee strain and bilateral knee osteoarthritis.

On November 2, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for disability on October 29, 2018. On the back of the form, the employing establishment noted her work hours as 11:00 p.m. to 7:30 a.m. In a time analysis form (Form CA-7a) appellant claimed four hours for a medical appointment on October 29, 2018.

In support of her claim, appellant submitted an appointment confirmation for October 29, 2018 with Dr. Christopher P. DeCarlo, a physiatrist and sports medicine physician, and an October 30, 2018 request or notification of absence requesting four hours of leave for a medical appointment due to her accepted employment condition on October 29, 2018. The notification form noted a scheduled reporting time of 11:00 p.m. The appointment confirmation noted a time in of 2:10 p.m. and time out of 2:30 p.m.

On December 13, 2018 OWCP received an appointment confirmation form noting that appellant was scheduled to receive acupuncture for both knees on December 11, 2018 with Johannes Schothorst, Lac. Ph.d. The time in for the appointment was 8:00 a.m. and time out was 9:00 a.m.

On December 20, 2018 appellant filed a wage-loss compensation claim (Form CA-7) for the period October 29 to December 11, 2018. On the back of the form the employing establishment noted there was no need for appellant to leave work at 2:55 a.m. for her medical appointments. In a Form CA-7a, appellant claimed four hours of OWCP leave for medical appointments on October 29 and December 11, 2018. The employing establishment indicated that appellant came to work at 2:55 a.m. on October 29, 2018 when her medical appointment was scheduled for 2:00 p.m. that day and on December 11, 2018 she left work at 2:55 a.m. for a medical appointment scheduled for 8:00 a.m.

Appellant, on January 10, 2019, filed a wage-loss compensation claim (Form CA-7) for January 3, 2019. On the back of the form, the employing establishment noted appellant's work shift was from 11:00 p.m. to 7:30 a.m. On a time analysis form (Form CA-7a), appellant claimed 3.92 hours of OWCP leave for a January 3, 2019 medical appointment. On both forms, the employing establishment wrote that appellant clocked out at 3:00 a.m. for an appointment scheduled for 9:00 a.m. and there was no need to clock out as her work shift ended at 7:30 a.m.

In a development letter dated January 14, 2019, OWCP informed appellant that the evidence of record failed to establish that her time loss from work was due to her attending medical appointments for her accepted conditions. It requested clarification and evidence to establish wage loss for the dates and hours claimed due to attending medical appointments for the accepted conditions. OWCP afforded appellant 30 days to provide the requested information.<sup>3</sup> No response was received.

By decision dated March 21, 2019, OWCP denied appellant's claim for wage-loss compensation due to time lost from work to attend medical appointments on October 29 and December 11, 2018 and January 3, 2019. It noted that her shift started at 11:00 p.m. and ended at 7:30 a.m. OWCP found appellant was not entitled to wage-loss compensation as her medical appointments were outside her regular work schedule and had not resulted in time lost from work.

### **LEGAL PRECEDENT**

OWCP procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.<sup>4</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>5</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>6</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>7</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>8</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation on October 29 and December 11, 2018 and January 3, 2019 due to attendance at medical appointments.

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<sup>3</sup> Subsequent to OWCP's request, it received medical evidence covering the period December 11, 2018 through March 7, 2019. None of the medical evidence identified the time of any medical appointment.

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

<sup>5</sup> *Id.* at Chapter 2.901.19(a); *see T.S.*, Docket No. 19-0347 (issued July 9, 2019); *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

<sup>6</sup> *Id.* at Chapter 2.901.19(a)(2).

<sup>7</sup> *Id.* at Chapter 2.901.19(a)(3).

<sup>8</sup> *Id.* at Chapter 2.901.19(c).

Appellant filed claims for wage-loss compensation for alleging that she was owed compensation for times she was attending medical appointments. The employing establishment contested her claims because appellant's work shift was from 11:00 p.m. to 7:30 a.m., while her medical appointments were scheduled for times outside of her regular work shift. As noted above, wage-loss compensation is not payable for medical treatment received during off-duty work hours.<sup>9</sup> The evidence of record establishes that appellant's medical treatment occurred during off-duty work hours. Thus, appellant has not met her burden of proof to establish that she is entitled to wage-loss compensation for the dates claimed.

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 wage-loss compensation on October 29 and December 11, 2018 and January 3, 2019 for attendance at medical appointments.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2019  
Washington, DC

Christopher J. Godfrey, 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

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<sup>9</sup> *Supra* note 6.