

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability for the period April 18 to June 4, 2019 causally related to her accepted employment conditions.

FACTUAL HISTORY

On October 5, 2004 appellant, then a 58-year-old electrocardiogram technician, filed a traumatic injury claim (Form CA-1) alleging that on September 30, 2004 she sustained head and right shoulder injuries in the performance of duty when a tray fell and struck her while she was in the canteen.³ On November 17, 2004 OWCP accepted a right shoulder contusion and a neck contusion (right side).

On April 27, 2006 appellant filed a notice of recurrence (Form CA-2a). OWCP converted the recurrence claim to a claim for a new traumatic injury, and assigned File No. xxxxxx800. On July 11, 2006 it accepted the claim in OWCP File No. xxxxxx800 for neck sprain and a sprain of the right shoulder and upper arm at an unspecified site. OWCP administratively combined File No. xxxxxx861 and File No. xxxxxx800, with the latter designated as the master file.

In an April 18, 2019 unsigned state workers' compensation medical report, Dr. Pamela Law, Board-certified in physical medicine and rehabilitation, indicated that appellant complained of right neck and shoulder pain. She noted appellant's date of injury as April 17, 2006, reviewed appellant's history of medical treatment, conducted a physical examination, diagnosed a right shoulder impingement and right trapezius strain, and indicated that appellant could return to work with restrictions.

In an April 22, 2019 prescription note, Dr. Law noted that appellant had a previous arthroscopic shoulder surgery and a diagnosis of right shoulder impingement syndrome and right trapezius strain. She prescribed physical therapy twice a week for three weeks and acupuncture twice a week for three weeks.

Dr. Law, in a June 3, 2019 report, noted that appellant presented with improved neck and shoulder pain. She reported appellant's date of injury and history of treatment, and conducted a physical examination. Dr. Law diagnosed a right shoulder impingement and right trapezius strain, and she indicated that appellant could return to work with restrictions.

On June 25, 2019 appellant filed a wage-loss compensation claim (Form CA-7) for disability from work for the period April 18 to June 4, 2019. On the reverse side of the claim form, the employing establishment indicated that she had returned to modified-duty work on April 19, 2019.

On June 25, 2019 OWCP received a time analysis form (Form CA-7a), signed by appellant on June 4, 2019, for the period April 18 to June 4, 2019. Appellant requested compensation for leave without pay (LWOP) as follows: four hours on April 18, 2019 due to a doctor's appointment;

³ OWCP assigned File No. xxxxxx861 to the traumatic injury claim.

four hours on April 30, 2019 due to therapy; four hours on May 3, 2019 due to a magnetic resonance imaging (MRI) scan; four hours on May 7, 2019 due to therapy; four hours on May 14, 2019 due to therapy; four hours on May 20, 2019 due to an orthopedic doctor's appointment; four hours on May 23, 2019 due to therapy; four hours on May 30, 2019 due to therapy; four hours on June 3, 2019 due to therapy and a doctor's appointment; and four hours on June 4, 2019 due to therapy.

In a June 28, 2019 development letter, OWCP informed appellant that the documentation received to date was insufficient to establish her claim for FECA wage-loss compensation. It advised her of the type of medical evidence necessary to establish her disability claim and afforded her 30 days to submit the necessary evidence.

April 30, 2019 acupuncture treatment notes containing an illegible signature indicated that appellant presented with right shoulder pain that radiated into her neck. The note provided her history of right shoulder treatment and surgery in 2006 and diagnosed right shoulder impingement.

A May 3, 2019 right shoulder MRI scan, interpreted by Dr. Joon Dokko, a Board-certified radiologist, displayed mild degenerative changes.

Additional acupuncture notes dated May 7, 14, 23, and 30, and June 4, 2019 with an illegible signature noted appellant's right shoulder impingement diagnosis and indicated that she underwent acupuncture treatments.

In a May 20, 2019 state workers' compensation orthopedic consultation report, Dr. Joseph Faustgen, a Board-certified orthopedic surgeon, indicated that appellant presented with chronic right shoulder pain, right shoulder weakness and pain, and weakness in her periscapular muscles and neck. He noted that she appeared to have adhesive capsulitis. Dr. Faustgen also noted that appellant underwent a right rotator cuff repair 10 years prior and she had continued issues with that area. He conducted a physical examination, reviewed her right shoulder MRI scan, and diagnosed a neck strain, back sprain, right trapezius strain, right impingement syndrome, and lumbar spondylosis. Dr. Faustgen placed appellant off of work for the date of May 20, 2019 and indicated that she could return to full duty on May 21, 2019.

In July 10, 2019 summary of a telephone call (Form CA-110), OWCP indicated that it did not have all of the medical reports for the month of May which appellant claimed to have submitted.

Subsequently, a July 22, 2019 CA-110 note indicated that OWCP informed appellant that while it had received her May report which contained an impingement diagnosis, the report did not provide the diagnosis due to her accepted employment injury.

By decision dated September 5, 2019, OWCP denied appellant's wage-loss compensation claim finding that the evidence of record was insufficient to establish that she was disabled for work for the period April 18 to June 4, 2019 due to her accepted conditions.

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 preponderance 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 the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷

OWCP’s procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.⁸ 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.⁹ 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.¹⁰ 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.¹¹ 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.¹²

ANALYSIS

The Board finds that this case is not in posture for decision.

⁴ See *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

⁵ *Id.*

⁶ 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 4; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁷ *Id.* at § 10.5(f); see *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

⁹ *Id.* at Chapter 2.901.19.a.

¹⁰ *Id.* at Chapter 2.901.19.a(2).

¹¹ *Id.* at Chapter 2.901.19.a(3).

¹² *Id.* at Chapter 2.901.19.c.

OWCP's September 5, 2019 decision denied appellant's wage-loss compensation claim because the evidence of record was insufficient to establish that she was disabled for work for the period April 18 to June 4, 2019. It also noted that she had stopped work on April 18, 2019 and had not returned. However, appellant's supervisor certified on June 25, 2019 that appellant had returned to work on April 19, 2019 and her June 4, 2019 time analysis form (Form CA-7a) listed specific dates and number of hours for which she was requesting compensation, in addition to the specific reasons for taking leave for each date mentioned, primarily for medical appointments.

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹³ Section 10.126 of FECA's implementing regulations provides that a decision shall contain findings of fact and a statement of reasons and a statement of reasons.¹⁴ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹⁵

OWCP did not determine whether appellant was entitled to up to four hours of compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location during the claimed period. The Board will therefore set aside OWCP's September 5, 2019 decision. On remand OWCP shall make findings of fact and provide a statement of reasons as to whether appellant is entitled to any intermittent wage-loss compensation due to her attendance for medical examinations or treatment to be followed by a *de novo* decision regarding appellant's claim for disability compensation.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹³ 5 U.S.C. § 8124(a).

¹⁴ 20 C.F.R. § 10.126.

¹⁵ *Id.*; See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 21, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board