

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

S.G., Appellant

and

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Memphis, TN, Employer

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**Docket No. 20-0538
Issued: December 9, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On January 13, 2020 appellant filed a timely appeal from a December 19, 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.²

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP) for the period September 18 through November 1, 2019.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 19, 2019 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On October 1, 2019 appellant, then a 49-year-old contact service representative, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2019 she aggravated her preexisting scoliosis and degenerative disc disease by walking back and forth to a printer while in the performance of duty.

On October 23, 2019 appellant filed an occupational disease claim (Form CA-2) alleging that she aggravated her preexisting scoliosis and degenerative disc disease due to factors of her federal employment, including repetitive walking back and forth to a printer. She indicated that she first became aware of her condition on September 16, 2019 and realized that it was caused or aggravated by factors of her federal employment on September 18, 2019. On the reverse side of the Form CA-2 the employing establishment indicated that appellant stopped work on September 18, 2019. It controverted her claim, asserting that she had not established fact of injury, performance of duty, or causal relationship.

In an October 4, 2019 medical note, Raven Johnson Bratcher, a family nurse practitioner, indicated that appellant presented with complaints of a work-related back injury due to having to walk to a printer at least 200 feet away from her desk, at least 10 times per day. Appellant further alleged that her condition was aggravated by constantly leaning forward to see the words on her computer screen. She asserted that her work duties caused throbbing, shooting pain down her back, radiating into her hips and legs. In a duty status report (Form CA-17) of even date, Nurse Johnson Bratcher indicated that appellant required the option to stand and move around at least one hour at a time and provided work restrictions of walking no more than 100 to 150 feet from her desk to a printer.

In an attending physician's report (Form CA-20) dated October 7, 2019, Dr. Kendrick Joyce, Board-certified in internal medicine, diagnosed other intervertebral disc displacement, lumbar region, strain of muscle fascia, tendon of lower back, and strain of muscle fascia, tendon of left and right hip. He checked a box marked "Yes," indicating that appellant's condition was caused or aggravated his federal employment. Dr. Joyce noted that appellant had no period of disability and was able to resume work on October 5, 2019 with restrictions of decreased sitting.

Dr. Joyce, in a narrative report dated October 11, 2019, noted that appellant described her work duties to include walking 200 feet away from her desk to use the printer throughout the day, which she alleged takes at least 10 minutes per day. He indicated that she complained of throbbing back pain with sharp pains radiating into her hips. Dr. Joyce reiterated his prior diagnoses and concluded that, based on appellant's description of injury at work and his physical examination findings, she sustained a traumatic injury directly related to her work duties.

In a development letter dated November 5, 2019, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. In a separate development letter of even date, it requested that the employing establishment provide additional information including comments from a knowledgeable supervisor and a copy of appellant's position description. OWCP afforded both parties 30 days to submit the requested evidence and information.

Appellant submitted a July 11, 2019 reasonable accommodation request form completed by Dr. Phillip Wintz, a family medicine physician, noting that she was diagnosed with

degenerative disc disease in October 2009 and that she was limited to walking no more than 100 to 150 feet 25 percent of the day.

Appellant also submitted e-mails, dated September 16 and 19, 2019, wherein she advised her manager that she was having pain in her back from having to walk to and from the substitute printer and, due to her medical condition, she could not continue walking back and forth to the printer. She requested to change her work duties to avoid walking and alleviate her back pain.

In a November 6, 2019 Form CA-17, Nurse Johnson Bratcher reiterated appellant's restrictions to include the option to stand up and move around at least one hour at a time and no walking more than 100 to 150 feet from her desk to a printer.

In a narrative statement dated November 11, 2019, appellant indicated that she had two preexisting conditions of scoliosis and degenerative disc disease, but that her recent diagnoses for a lower back strain and bilateral hip strains were not preexisting conditions. She alleged that these new conditions were a result of her walking back and forth to make several trips to the printer at work. Appellant explained that the printer she usually used had broken and the working printers were located 200 feet from where she sat. She provided an example that on September 16, 2019 when she stood up to start walking to the printer, she felt a really sharp pain that went from her lower back down to both hips. Appellant indicated that she immediately went to her lead supervisor and told her that she had injured her back while walking to the printer and requested a change in work duties. This continued over a period of time. Appellant later sought the assistance of a union representative and was provided a reasonable accommodation. She indicated that she initially filed a Form CA-1, but was later advised to file a Form CA-2.

In a December 16, 2019 response to OWCP's development questionnaire, S.G., a manager with the employing establishment, indicated that she could not determine if appellant's claim was accurate since she was alleging pain and pain is subjective. She noted that, on the date in question, appellant had to make several trips to and from the printer. S.G. asserted that appellant was told by a manager and a lead supervisor to wait until the end of her tour to print out the required documents, but she did not do so. She also attached a copy of appellant's job description.

In a telephone memorandum (Form CA-110) dated December 19, 2019, an OWCP claims examiner confirmed with the employing establishment that appellant had filed a Form CA-2 and thus, the claim had been developed as one for an occupational disease and not a traumatic injury. The claims examiner further advised that he had inadvertently sent an incorrect letter to address acceptance of appellant's claim as one for a traumatic injury.³ He indicated that, if appellant had been paid COP she would have to repay it, as she would not have been entitled to it. The claims examiner added that appellant would be able to file a claim for compensation (Form CA-7) for any disability from work.

On December 19, 2019 OWCP accepted appellant's occupational disease claim for the following conditions: strain of muscle; fascia and tendon of right hip; strain of muscle; fascia and

³ On December 6, 2019 OWCP had advised appellant that her September 16, 2019 traumatic injury claim had been accepted for the following conditions: strain of muscle, fascia and tendon of right hip, strain of muscle, fascia and tendon of left hip, aggravation of intervertebral disc displacement, lumbar region, and strain of muscle, fascia and tendon of lower back.

tendon of left hip; aggravation of intervertebral disc displacement, lumbar region, and strain of muscle; fascia and tendon of lower back.

By decision dated December 19, 2019, OWCP denied appellant's claim for COP, finding that she was not entitled to it because she had alleged an occupational disease and not a traumatic injury occurring during one work shift. It advised her that the denial of COP did not affect her entitlement to compensation, and that she could, therefore, file a claim for compensation (Form CA-7) for wage loss due to her accepted employment injury.

LEGAL PRECEDENT

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.⁴ A traumatic injury means a condition of the body caused by a specific event or incident or a series of events or incidents, within a single workday or shift.⁵ Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of body.⁶

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to COP for the period September 18 through November 1, 2019.

Appellant filed a Form CA-2 alleging that she aggravated her preexisting scoliosis and degenerative disc disease due factors of her federal employment, including repetitive walking back and forth to a printer over a period of time. In a subsequent statement dated November 11, 2019, she explained that the printer she usually used had broken and the working printers were located 200 feet from where she sat. As her injury occurred over more than a single workday or shift, the Board finds that OWCP properly determined that appellant's claim was one for an occupational disease rather than a traumatic injury.⁸ Consequently, appellant is not eligible for COP.⁹

⁴ 20 C.F.R. § 10.5(q).

⁵ *Id.* at § 10.5(ee).

⁶ *Id.*

⁷ 20 C.F.R. § 10.205(a)(1-3); *see also* C.C., Docket No. 18-0912 (issued July 11, 2019); J.M., Docket No. 09-1563 (issued February 26, 2010).

⁸ *Supra* note 6; *see also* A.B., Docket No. 19-0842 (issued September 17, 2019); J.F., Docket No. 10-2134 (issued July 6, 2011).

⁹ *See id.*; *see also* C.C., Docket No. 18-0912 (issued July 11, 2019); J.V., Docket No. 15-0942 (issued March 8, 2016).

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 COP for the period September 18 through November 1, 2019.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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