

ISSUES

The issues are: (1) whether appellant has established entitlement to continuation of pay for the period December 21, 2018 through February 3, 2019; and (2) whether OWCP properly determined that appellant abandoned her request for an oral hearing before an OWCP hearing representative.

FACTUAL HISTORY

On December 27, 2018 appellant, then a 46-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained neck strain on December 20, 2018 when her vehicle was side-swiped while in the performance of duty. She stopped work on January 2, 2019. OWCP accepted appellant's claim for sprain of ligaments of the thoracic spine and strain of the muscle, fascia, and tendon at the neck level.

In the attending physician's report portion of an Authorization for Examination And/Or Treatment (Form CA-16) dated December 20, 2018, Dr. Scott Jones, Board-certified in preventative medicine, diagnosed cervical and thoracic strain. He noted that appellant had no period of disability and was able to resume light work on that date, with restrictions of no lifting, pushing/pulling greater than 10 pounds, no reaching overhead, and no delivery with employing establishment vehicles.

In a work status report dated December 27, 2018, Dr. Jones diagnosed cervicalgia, thoracic spine pain, strain of muscle and tendon of unspecified wall of thorax and cervical disc disorder with radiculopathy. He found that appellant could: work with restrictions of lifting, pushing, and pulling up to 10 pounds; no over-the-shoulder activity; and avoiding repetitive head and neck turning. In an accompanying duty status report (Form CA-17) of the same date, Dr. Jones advised her to resume work on that date and recommended work restrictions of lifting/carrying no more than 10 pounds and no more than six hours of driving per day. On the supervisor's side of the duty status report, a supervisor noted that limited duty would be provided excluding bedrest.

On January 9, 2019 the employing establishment challenged appellant's claim and controverted entitlement of continuation of pay. It noted that she worked continuously after the injury occurred, visiting a physician seven days after the date of the claimed incident. The employing establishment noted that appellant subsequently claimed temporary total disability.

In a development letter dated January 14, 2019, OWCP informed appellant of the deficiencies of her claim and requested additional medical evidence. It explained that she had not submitted a physician's opinion as to how her injury resulted in her diagnosed conditions. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a report dated December 21, 2018 wherein Dr. Jones diagnosed cervicalgia, thoracic spine pain, strain of the muscle and tendon of an unspecified wall of the thorax (initial encounter), and strain of the muscle, fascia, and tendon at neck level. Dr. Jones noted that appellant's diagnoses were related to a traffic accident at work and recommended work restrictions of lifting, pushing, or pulling up to 10 pounds, no over-the-shoulder activity, and avoiding repetitive head and neck turning. In a Form CA-17 dated December 21, 2018, he related that

appellant would work full time with lifting and carrying limited to 10 pounds, no over-the-shoulder activity, and no repetitive head/neck turning.

In a Form CA-17 report dated January 4, 2019, Dr. Jones recommended work restrictions including no lifting/carrying over 10 pounds and no over-the-shoulder activity. In a work status report of the same date, he diagnosed cervicalgia, thoracic spine pain, strain of the muscle and tendon of an unspecified wall of the thorax, and cervical disc disorder with radiculopathy. Dr. Jones recommended work restrictions including lifting/pulling/pushing up to 10 pounds, avoiding over-the-shoulder activity, and ability to change positions from sitting to standing periodically.

In a work activity status report dated January 14, 2019, Dr. Gustavo M. Galeano, a family medicine specialist, diagnosed strain of the muscle and tendon of an unspecified wall of the thorax. He recommended that appellant return to work on January 14, 2019 with restrictions of lifting up to 10 pounds continuously; pushing/pulling up to 10 pounds continuously, no driving of employing establishment vehicles; and no bending or twisting of the trunk. A report of the same date from Dr. Galeano diagnosed strain of the thoracic region and strain of the neck muscle. He stated that appellant was approximately 25 percent of the way toward meeting the physical requirements of her position. Dr. Galeano recommended that appellant return to work on that date with restrictions of lifting up to 10 pounds continuously, pushing/pulling up to 10 pounds continuously, and no driving of employing establishment vehicles.

In an undated attending physician's report (Form CA-20), Dr. Galeano diagnosed thoracic/back/neck strain, noting a period of partial disability beginning December 20, 2018, the same date appellant was able to resume light work. He noted that appellant should be on modified duty with restrictions of no driving company vehicles, no lifting or pushing over 10 pounds, and sitting or walking as needed.

In a work activity status report dated January 22, 2019, Dr. Galeano diagnosed strain of the muscle and tendon of an unspecified wall of the thorax and recommended that appellant return to work on January 22, 2019 with restrictions of lifting up to 10 pounds continuously, pushing/pulling up to 10 pounds continuously, no driving of employing establishment vehicles, and no bending or twisting of the trunk. In a report of the same date, he diagnosed strain of the thoracic region and recommended work restrictions of lifting up to 10 pounds continuously, pushing/pulling up to 10 pounds continuously, and no driving of employing establishment vehicles.

In a work activity status report dated January 28, 2019, Dr. Galeano recommended that appellant return to regular duty as of January 28, 2019. However, in another work activity status report of the same date, he recommended that she return to work on January 28, 2019 with the same restrictions as in his January 22, 2019 report. Dr. Galeano diagnosed thoracic strain in another report of the same date and recommended the same work restrictions. He repeated appellant's work restrictions regarding lifting/pushing/pulling, driving, and bending/twisting in a work activity status report dated February 4, 2019.

By decision dated February 22, 2019, OWCP found that appellant was not entitled to continuation of pay for the period December 21, 2018 through February 3, 2019 because the

medical evidence of record did not establish that she was temporarily totally disabled from work during that period.

On March 6, 2019 appellant requested an oral hearing before an OWCP hearing representative.

In a letter dated June 7, 2019, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for Monday, July 9, 2019 at 11:30 a.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode. OWCP's hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing.

By decision dated July 19, 2019, OWCP's hearing representative determined that appellant had abandoned her request for an oral hearing, finding that appellant had received a 30-day advance written notice of the hearing scheduled for July 9, 2019, but failed to appear. OWCP's hearing representative further noted that there was no indication in the case record that appellant had contacted OWCP to request a postponement prior to the hearing or provide an explanation to OWCP for her failure to appear at the hearing within 10 days of the scheduled hearing. Consequently, appellant was deemed to have abandoned her request for an oral hearing.

LEGAL PRECEDENT -- ISSUE 1

Section 8118 of FECA provides for payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim with her immediate supervisor for a period of wage loss due to a traumatic injury on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of FECA.³

FECA's implementing regulations provide in pertinent part:

“An employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when, and only when:

- (a) The disability was not caused by a traumatic injury;
- (b) The employee is not a citizen of the United States or Canada;
- (c) No written claim was filed within 30 days from the date of injury;
- (d) The injury was not reported until after employment has been terminated;
- (e) The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties;

³ 5 U.S.C. § 8118; 20 C.F.R. §§ 10.5(q), (ee); *A.F.*, Docket No. 14-1838 (issued January 22, 2015); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

(f) The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or

(g) Work did not stop until more than 45 days following the injury.⁴

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly determined that appellant was not entitled to continuation of pay.

Appellant submitted reports from Dr. Jones and Galeano from December 20, 2018 containing work restrictions related to appellant's accepted conditions of sprain of ligaments of the thoracic spine and strain of the muscle, fascia, and tendon at the neck level. On February 22, 2019 OWCP found that appellant was not entitled to continuation of pay for the period December 21, 2018 through February 3, 2019 because the medical evidence did not establish that she was temporarily totally disabled from work during this period, though it did establish that she was released to return to work with restrictions. The Board finds that this denial of continuation of pay was erroneous, as it was not based on any of the categories outlined in section 10.220 of FECA's implementing regulations.⁵ Therefore, upon return of the case record OWCP shall pay continuation of pay compensation as set forth in this decision.

CONCLUSION

The Board finds appellant has established entitlement to continuation of pay for the period December 21, 2018 through February 3, 2019.

⁴ 20 C.F.R. § 10.220. *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.11 (June 2012).

⁵ *Supra* note 4. There is no evidence of record that the employing establishment provided appellant a written job offer advising her that a modified job was available.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 2, 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