United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
and	)	**Docket No. 19-1390**
	)	**Issued: May 7, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 10, 2019 appellant filed a timely appeal from March 26 and April 11, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish intermittent disability from work for the period September 5 through October 22, 2018 causally related to her

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the April 11, 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.*

accepted December 28, 2014 employment injury; and (2) whether OWCP properly denied mileage reimbursement for medical treatment on December 22, 2018.

FACTUAL HISTORY

On December 29, 2014 appellant filed a traumatic injury claim (Form CA-1) alleging that the previous day, she sustained a chest sprain while in the performance of duty. She clarified in a January 20, 2015 statement that the claimed incident of December 28, 2014 involved a motor vehicle incident. On March 30, 2015 OWCP accepted appellant's claim for concussion, neck sprain, chest wall contusion, bilateral knee contusion, back contusion, and lumbar sprain. Appellant stopped work on December 29, 2014 and returned to modified-duty work for four hours per day on August 5, 2015. On February 8, 2016 she returned to full-duty work. OWCP paid appellant wage-loss compensation for intermittent disability on the supplemental rolls commencing February 12, 2015.

In a report dated September 17, 2018, Dr. Victoria Do, a Board-certified family practitioner, examined appellant for complaints of neck pain. She related that appellant attributed the neck pain to a motor vehicle incident in 2014, which had returned three weeks prior. On examination of the upper extremities, Dr. Do noted C5 decreased sensation of the outer upper arm and C6 decreased sensation of the radial forearm, thumb, and index finger. On examination of the cervical spine, she noted tenderness to palpation and reduced range of motion. Dr. Do diagnosed prolapsed cervical intervertebral disc related to a known disc herniation in the cervical spine, cervical radiculopathy, and cervicalgia following a motor vehicle incident at work in December 2014. She referred appellant for physical therapy. In an accompanying work status report of even date, Dr. Do recommended work restrictions of no driving, lifting or carrying of objects over 10 pounds.

Appellant submitted physical therapy notes dated September 28 and October 10, 15, 17, and 22, 2018, in which Sarah R. Davies, a physical therapist, indicated that appellant had received treatment on those dates for cervical conditions.

On October 12, 2018 OWCP authorized physical therapy treatment from September 28 through November 9, 2018.

On October 24, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for leave without pay from September 5 to October 22, 2018. In an attached Time Analysis Form (Form CA-7a), she claimed compensation for eight hours of leave without pay from September 5 to 8, 2018. The entries on September 7 and 8, 2018 were crossed out, with the explanation she was not scheduled on those days. On October 5, 10, 12, 15, and 17, 2018 appellant worked partial days and claimed varying periods of leave on those days, noting the reason for leave use was "physical therapy." The entry for October 8, 2018 was crossed out, with the explanation "NS Day" indicating that she was not scheduled to work on that day. Appellant claimed compensation for eight hours of leave without pay on October 3, 2018 and from October 18 to 20, 2018.

In a work status report dated October 16, 2018, Dr. Do continued to recommend work restrictions of no driving, lifting or carrying of objects over 10 pounds. In a medical report of even

date, she noted that appellant's neck pain had not improved since the last visit and that appellant had begun physical therapy.

In a development letter dated November 2, 2018, OWCP requested additional medical evidence establishing appellant's disability from work during the claimed period. Appellant was afforded 30 days to submit the necessary evidence.

OWCP received a magnetic resonance imaging (MRI) scan taken on October 24, 2018 of appellant's cervical spine which demonstrated central disc herniations at C4-5 and C5-6 measuring two millimeters, as well as loss of normal lordosis, which might be related to positioning and/or spasm.

In a November 14, 2018 report, Dr. Do noted that appellant had been experiencing pain since November 25, 2017, requiring days off work or leaving early. Appellant sought treatment with a chiropractor for her pain, which made symptoms worse. Dr. Do stated that appellant had completed physical therapy with no improvement to pain. She diagnosed cervical disc displacement, cervical radiculopathy, and cervicalgia.

OWCP continued to receive progress reports from Dr. Do.

A December 28, 2018 appointment list from Select Physical Therapy indicated that appellant had received physical therapy treatments on October 22, 24, and 31, and November 2 and 6, 2018.

In a development letter dated January 11, 2019, OWCP noted that it appeared appellant was claiming a recurrence of disability. It informed her of the deficiencies of her recurrence claim, advised her of the type evidence needed, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated January 22, 2019, OWCP denied appellant's wage-loss compensation claim for the period September 5 through October 22, 2018, finding that the medical evidence of record was insufficient to establish disability during the claimed period due to the accepted employment injury.

By letter dated February 12, 2019, appellant informed OWCP that she was not receiving wage-loss compensation, even though her claim was not closed. She explained that she did not receive medical treatment when she felt better, but that her pain had returned when she began a mounted route. Appellant related that physical therapy relieved her cervical pain.

OWCP continued to receive progress reports from Dr. Do.

A March 11, 2019 physical therapy note related that appellant had been seen on October 5, 8, 10, 12, and 15, 2018.

By decision dated March 26, 2019, OWCP again denied appellant's wage-loss compensation claim commencing September 5, 2018 and continuing, finding that the medical evidence of record was insufficient to establish disability due to the accepted employment injury.

An April 8, 2019 medical authorization record indicates that travel authorization for 126 miles was requested for a December 22, 2018 date of service.

By decision dated April 11, 2019, OWCP denied appellant's request for 126 miles of travel reimbursement for December 22, 2018 finding that there was no medical evidence of record supporting that she received medical treatment for a work-related condition on that date.

LEGAL PRECEDENT -- ISSUE 1

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.[3] 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.[4] 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.[5]

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.[6] Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.[7]

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 their disability and entitlement to compensation.[8]

ANALYSIS -- ISSUE 1

The Board finds that appellant has established entitlement to up to four hours of wage-loss compensation on October 5, 10, 12, 15, and 17, 2018. The Board further finds that she has not met her burden of proof to establish disability for the remaining claimed disability from September 5 through October 22, 2018 causally related to her December 28, 2014 employment injury.

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

[4] *Id.*

[5] 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 3; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

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

[7] *Id.*

[8] *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

Based upon Dr. Do's referral for physical therapy, OWCP authorized appellant's physical therapy treatments from September 28 through November 9, 2018. During the claimed dates of disability wage loss, the record reflects that appellant underwent physical therapy treatments on October 5, 10, 12, 15, and 17, 2018.

The Board has long recognized that, under section 8103 of FECA, payment of expenses incidental to the securing of medical services encompasses payment for loss of wages incurred while obtaining medical treatment.[9] An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury.[10] OWCP's procedures provide that, in general, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments.[11] Accordingly, the Board finds that appellant is entitled to up to four hours of compensation or attending physical therapy appointments on October 5, 10, 12, 15, and 17, 2018 due to her accepted employment injury.

Regarding the remaining claimed disability from September 5 through October 22, 2018, the Board finds that appellant has not submitted rationalized medical evidence explaining how the accepted employment injury caused her intermittent disability from work.

On September 17, 2018 Dr. Do diagnosed prolapsed cervical intervertebral disc, cervical radiculopathy, and cervicalgia related to a known disc herniation in the cervical spine following a motor vehicle incident at work in December 2014. She continued to offer these diagnoses in her subsequent progress reports. However, Dr. Do did not provide medical rationale explaining why appellant's current conditions were due to the accepted December 28, 2014 employment injury.[12] She also related in her November 14, 2018 report that appellant's neck pain had worsened since November 25, 2017, requiring days off from work. In so far as Dr. Do related that appellant's cervicalgia and worsening pain complaints were due to her accepted employment injury, she failed to provide rationale explaining how objective medical findings of her accepted conditions, rather than mere recitation of appellant's complaints caused her disability.[13]

While Dr. Do indicated that appellant had work restrictions as of September 17, 2018, which included driving, lifting, and carrying restrictions, she did not provide objective findings related to appellant's accepted employment conditions that explained why appellant required these work restrictions.[14] Her reports, are therefore insufficient to establish that appellant sought

[9] *See B.W.*, Docket No. 19-0049 (issued April 25, 2019).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013); *see also B.W.*, *id.*

[11] *Id.*

[12] *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *J.M.*, Docket No. 18-0847 (issued December 5, 2019).

[13] *S.M.*, Docket No. 19-0658 (issued March 17, 2020); *B.R.*, Docket No. 18-0339 (issued January 24, 2019).

[14] *K.D.*, Docket No. 19-0628 (issued November 5, 2019); *A.T.*, Docket No. 19-0410 (issued August 13, 2019).

medical treatment from Dr. Do or was disabled from work during the claimed period due to appellant's accepted employment injury.[15]

Appellant also submitted a diagnostic MRI scan report dated October 24, 2018. However, this diagnostic study lacks probative value, as it does not address whether the accepted employment injury resulted in her period of disability on specific dates.[16]

The Board finds that appellant has not provided sufficiently rationalized medical opinion evidence to establish that she was disabled from work for the remainder of the period September 5 through October 22, 2018 causally related to the accepted employment injury. Thus, appellant 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.

LEGAL PRECEDENT -- ISSUE 2

OWCP regulations provide that the employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances, or supplies.[17] To determine a reasonable travel distance, it will consider the availability of services, the employee's condition, and the means of transportation. Effective August 29, 2011, the most recent regulations provide that a round-trip distance of up to 100 miles is considered a reasonable distance to travel.[18] If round-trip travel of more than 100 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior authorization with information describing the circumstances and necessity for such travel expenses. OWCP will approve the request if it determines that the travel expenses are reasonable and necessary and are related to obtaining authorized medical services, appliances, or supplies.[19]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for travel reimbursement on December 22, 2018.

OWCP received a request for reimbursement of 126 miles of travel on December 22, 2018. Since the request for reimbursement exceeded the 100 mile limit, appellant was required to submit a request to OWCP for prior travel authorization, with information describing the circumstances

[15] *S.M., supra* note 13; *see also S.K.*, Docket No. 18-1537 (issued June 20, 2019).

[16] *F.S.*, Docket No. 19-0205 (issued June 19, 2019).

[17] 20 C.F.R. § 10.315(a).

[18] *Id.*

[19] *Id.* at § 10.315(b).

and necessity for the travel expense.[20] OWCP did not receive such a request for prior authorization and the record does not substantiate any medical treatment on December 22, 2018. The Board therefore finds that OWCP properly denied appellant's request for travel reimbursement.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish entitlement to up to four hours of wage-loss compensation for time lost due to physical therapy appointments on October 5, 10, 12, 15, and 17, 2018. On return of the case record OWCP shall authorize wage-loss compensation consistent with this decision of the Board. The Board further finds, however, that appellant has not met her burden of proof to establish disability for the remaining claimed disability from September 5 to October 22, 2018 causally related to her accepted December 28, 2014 employment injury. The Board also finds that OWCP did not abuse its discretion by denying her request for travel reimbursement for 126 miles on December 22, 2018.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed, as modified. The April 11, 2019 decision is affirmed.

Issued: May 7, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[20] *Id.*