



## **FACTUAL HISTORY**

On September 3, 2015 appellant, then a 47-year-old examination specialist, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2015 she sustained left shoulder, neck, mid-back, and right hand injuries when she misstepped while descending stairs, contorted her body attempting to grab a hand rail, and fell forward on the remaining cement steps while in the performance of duty.<sup>3</sup> She stopped work on August 17, 2015 and returned on October 8, 2015.

Dr. John P. McConnell, a Board-certified orthopedic surgeon, in an October 1, 2015 physician's certificate, recommended appellant telework as she was unable to drive or commute to work using public transportation due to her left shoulder injury. In an October 21, 2015 report, he provided examination findings and diagnosed continued left rotator cuff strain. Dr. McConnell recommended physical therapy and indicated that appellant was capable of "tailored work." In a Family and Medical Leave Act (FMLA) form dated October 29, 2015, he noted the claimed August 6, 2015 employment injury and provided medical restrictions of no driving or commuting by public transportation. Dates of disability included 16 hours for October 6 to 7, 2015, 8 hours on October 9, 2015, 8 hours on October 21, 2015, and 40 hours for the period October 26 to 30, 2015.

In a duty status report (Form CA-17) dated October 29, 2015, Dr. McConnell indicated that appellant was capable of working, provided she teleworked as she was unable to take public transportation. The employing establishment noted on this form that she was eligible for nonrecurring telework.

On November 23, 2015 OWCP received appellant's claim for compensation (Form CA-7) for leave buy back for the period October 6 through 30, 2015.

On November 18, 2015 appellant was seen by Dr. McConnell regarding her left shoulder pain. He reported continued left shoulder pain with range of motion (ROM) testing and recommended physical therapy. Dr. McConnell released appellant to return to regular work.

On April 6, 2016 OWCP accepted appellant's claim for left rotator cuff and right wrist sprains.

In a development letter dated August 8, 2016, OWCP explained that the evidence submitted was insufficient to support the claim for wage-loss compensation for the period October 6 through 30, 2015. It requested appellant complete and resubmit a time analysis (Form CA-7a) and advised her of the type of medical evidence required to establish her claim. Appellant was afforded 30 days to submit the necessary evidence.

In response to OWCP's request appellant submitted an October 29, 2015 Form CA-17 from Dr. McConnell indicating that she could perform work in a telework capacity.

On December 2, 2016 OWCP received appellant's Forms CA-7 for leave buy back and wage-loss compensation for the period October 6 to December 11, 2015. It also received Forms

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<sup>3</sup> The record reflects that appellant received continuation of pay which covered the period prior to October 6, 2015.

CA-7a for this period requesting 182 hours of leave buy back and 29 hours of wage-loss compensation.<sup>4</sup>

In a letter dated December 14, 2016, OWCP advised appellant that a leave buy back worksheet/certification and election (Form CA-7b) was required to complete the processing of her claim for leave buy back for the periods requested.

On December 19, 2016 OWCP paid appellant wage-loss compensation for four hours on October 21, 2015.

In a letter dated January 13, 2017, the employing establishment confirmed that appellant had been allowed to telework for the period September 22 through December 11, 2015.

On July 27, 2017 OWCP referred appellant for a second opinion evaluation with Dr. Chester DiLallo, a Board-certified orthopedic surgeon, for an opinion on the diagnosed conditions causally related to the accepted August 6, 2015 employment injury, the period of disability due to the accepted employment injury, whether she was capable of working with restrictions, and whether she had continuing residuals or disability.

In an August 15, 2017 report, Dr. DiLallo, based upon a review of the record, statement of accepted facts, and appellant's physical examination diagnosed resolved right wrist sprain, resolved left rotator cuff tear, and left shoulder impingement syndrome. He indicated that appellant was not disabled due to her accepted work injury at that time. However, Dr. DiLallo concurred with Dr. McConnell that she would have difficulty using public transportation due to left shoulder restrictions and that adjustments were required for teleworking or providing transportation to work.

On August 17, 2017 OWCP received appellant's Form CA-7b requesting 48 hours of leave buy back, which included 8 hours for holiday, 40 hours for the period November 25 to December 8, 2015, and a Form CA-7a requesting 17 hours of intermittent wage-loss compensation for the period November 23 and December 9 and 11, 2015.

In November 29, 2017 supplemental report, Dr. DiLallo diagnosed left shoulder impingement based on physical findings and magnetic resonance imaging (MRI) scan. He opined that the accepted left rotator cuff tear was unsubstantiated, the accepted right wrist sprain had resolved, and the left shoulder impingement syndrome was a direct result of the accepted August 6, 2015 employment injury. Dr. DiLallo again concurred with Dr. McConnell that it would be difficult for appellant to use public transportation due to medication and left shoulder restrictions.

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<sup>4</sup> On the Form CA-7a appellant claimed 16 hours of disability for October 6 and 7, 2015, 8 hours of disability for October 9, 2015, 2 hours of other leave for a physician's appointment on October 16, 2015, 8 hours of disability for October 21, 2015, 8 hours of disability for October 26, 2015, 32 hours of disability for October 27 to 30, 2015, 24 hours of disability for the period November 2 to 4, 2015, 16 hours of disability for November 9 and 10, 2015, 8 hours of disability for November 12, 2015, 24 hours of disability for the period November 16 to 18, 2015, 4 hours of disability for November 19, 2015, 8 hours of disability for November 20, 2015, 8 hours of disability for November 23, 2015, 24 hours of disability for November 25, 27, and 30, 2015, 16 hours of disability for December 4 and 8, 2015, 5 hours of disability for December 9, 2015, and 4 hours of disability for December 11, 2015.

By decision dated December 1, 2017, OWCP denied appellant's claim for compensation for the period October 6 through December 11, 2015. It explained that her claim had been accepted for right wrist and left rotator cuff sprains. OWCP noted that appellant had been allowed to telework during the period at issue and that the medical evidence did not support disability due to the accepted conditions.

On December 30, 2017 appellant requested an oral hearing before an OWCP hearing representative. The hearing was held on May 30, 2018.

On January 8, 2018 OWCP received an undated physician's certificate indicating that appellant had an appointment on November 18, 2015 at 1:10 p.m. with Dr. McConnell. It also received a premium pay request history from webTA noting denied and approved telework. The form noted 16 hours of telework had been denied for November 16 and 17, 2015.<sup>5</sup>

On June 19 and 21, 2018 OWCP received an undated report from Dr. Brett A. Wohler, a Board-certified family medicine physician, who advised that appellant had been under his care since March 8, 2016. Based upon a review of appellant's time and attendance and medical records, Dr. Wohler opined that she sustained intermittent periods of disability due to her accepted left rotator cuff and right wrist strains. He listed the dates of flare-ups and resulting disability as October 6, 7, 9, 21, and 26 to 30, and November 2 to 4, and 9, 10, and 16 to 18, 2015. Dr. Wohler also listed partial days on November 19 and 20, and 23, 25, 26, 27, and 30, and December 4, 8, 9, and 11, 2015. He described the flare-ups as increased neck and left shoulder to left bicep to elbow pain, loss of use and/or strength in the left shoulder/arm, additional swelling, limited ROM, and sleep disturbance due to left rotator cuff strain.

By decision dated August 2, 2018, OWCP's hearing representative affirmed in part the denial of the claim for compensation for the period October 6 through December 11, 2015. He found that the evidence established entitlement to compensation for November 16 and 17, 2015 as the evidence established that appellant's request for telework was denied. The hearing representative found Dr. Wohler's opinion unpersuasive regarding disability as he accepted, without objective evidence, her statement regarding her disability for the periods in question.

On August 15, 2018 OWCP paid appellant four hours of compensation for a medical appointment on November 18, 2015 and two days of wage-loss compensation for November 16 and 17, 2015.

On November 19, 2018 appellant requested reconsideration and submitted additional evidence in support of her claim. The evidence included e-mail correspondence dated November 1, 2015, from her supervisor showing approval for 40 hours of FMLA annual during pay period 21, an October 16, 2015 e-mail from her supervisor denying her request for advanced sick leave, and time and attendance sheets for October 18 to 31 and November 1 to 14, 2015.

By decision dated December 6, 2018, OWCP denied modification finding the medical evidence insufficient to establish disability for the claimed period.

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<sup>5</sup> Appellant also submitted a denial of her telework request by her supervisor for this period.

## 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 weight of the evidence.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.<sup>9</sup> When the physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she was unable to work, without objective findings of disability being shown, the physician has not presented a medical opinion, supported by medical rationale, on the issue of disability or a basis for payment of compensation.<sup>10</sup>

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. 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.<sup>11</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period October 6 through December 11, 2015, causally related to her accepted August 6, 2015 employment injury.

In support of her claim for disability, appellant submitted reports from Dr. McConnell and Dr. Wohler. Beginning with his October 1, 2015 physician's certificate, Dr. McConnell related that she was restricted to telework as she could not drive or commute using public transportation. He found that appellant was capable of working provided telework was available in a Form CA-17 dated October 29, 2015 and in an October 29, 2015 FMLA form. On November 18, 2015 Dr. McConnell noted that she could return to regular work. The employing establishment had confirmed by letter dated January 13, 2017 that telework was available from September 22 until December 11, 2015, and the record reflects that appellant did perform telework during the period in question. The Board has held that medical evidence must directly address the specific dates of

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<sup>6</sup> *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

<sup>7</sup> *Id.*

<sup>8</sup> 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 6; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>9</sup> *B.R.*, Docket No. 18-0339 (issued January 24, 2019).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

disability claimed and must provide a medical opinion substantiating disability from work.<sup>12</sup> Therefore, since Dr. McConnell's only work restriction was telework and as telework was available within appellant's restrictions during the time period in question, the Board finds that his reports do not substantiate that she was disabled from work, on the intermittent dates alleged.<sup>13</sup> As such his reports are insufficient to establish her claim for intermittent periods of disability.

Dr. Wohler reported that appellant had been under his care since March 8, 2016. Based on his review of her time and attendance records during the period in question, he determined that she had flare-ups and resulting disability due to her accepted right wrist sprain and left rotator cuff sprain on the dates claimed by appellant. Dr. Wohler explained that the flare-ups included neck and left shoulder to left bicep to elbow pain, loss of use and/or strength in the left shoulder/arm, additional swelling, limited ROM, and sleep disturbance due to left rotator cuff strain. The Board finds that he failed to address why appellant could not perform her telework duties during the alleged dates of disability, due to objective medical findings rather than mere recitation of her complaints.<sup>14</sup> Without medical rationale explaining why she was disabled on each specific date alleged, Dr. Wohler's report is insufficient to meet her burden of proof.<sup>15</sup> His report, is insufficient to establish that appellant was disabled from work during the claimed period due to her accepted conditions.<sup>16</sup>

The record also contains reports dated August 15 and November 29, 2017 from Dr. DiLallo, an OWCP referral physician, opining that appellant was capable of teleworking during the period in question. As telework was available during the dates of disability alleged, his reports support a finding that she was not disabled from work during the dates alleged.<sup>17</sup>

The Board also notes that OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.<sup>18</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. For a routine medical appointment, a maximum of four hours may be allowed.<sup>19</sup> The record reflects that OWCP has paid wage loss for some medical appointments. While appellant has also alleged two hours of lost wages on October 16, 2015 for

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<sup>12</sup> *G.J.*, Docket No. 18-1335 (issued March 22, 2019); *K.A.*, Docket No. 16-0592 (issued October 26, 2016); *C.S.*, Docket No. 08-2218 (issued August 7, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>13</sup> *See J.P.*, Docket No. 18-1396 (issued January 23, 2020).

<sup>14</sup> *Supra* note 9.

<sup>15</sup> *K.D.*, Docket No. 19-0628 (issued November 5, 2019); *A.T.*, Docket No. 19-0410 (issued August 13, 2019).

<sup>16</sup> *See S.K.*, Docket No. 18-1537 (issued June 20, 2019).

<sup>17</sup> *Supra* note 11.

<sup>18</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013); *V.H.*, Docket No. 19-0807 (issued December 3, 2019).

<sup>19</sup> *Id.*

a medical appointment, the record does not reflect that she obtained medical care on October 16, 2015 for her accepted employment injury.

On appeal appellant asserts that the evidence of record establishes her claim for intermittent disability. Contrary to her assertion, she has failed to submit any rationalized medical opinion evidence establishing disability causally related to the accepted August 6, 2015 employment injury. As such, 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.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period October 6 through December 11, 2015, causally related to her accepted August 6, 2015 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2020  
Washington, DC

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

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

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