

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

A.F., Appellant)	
)	
and)	Docket No. 20-0522
)	Issued: November 4, 2020
U.S. POSTAL SERVICE, ST. LOUIS)	
PROCESSING & DISTRIBUTION CENTER,)	
St. Louis, MO, Employer)	
)	

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 8, 2020 appellant filed a timely appeal from a December 5, 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 5, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability from August 9 through October 4, 2019, causally related to her accepted March 23, 2019 employment conditions.

FACTUAL HISTORY

On March 23, 2016 appellant, then a 52-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 19, 2016 she was sweeping mail when her boot caught on a belt attached to a pole, causing her to fall on the floor and land on her left elbow and knee, while in the performance of duty.

OWCP accepted the claim for lumbar strain, unspecified dislocation of the right little finger, and left ankle deltoid ligament sprain. Appellant stopped work intermittently and OWCP paid her wage-loss compensation. On March 22, 2016 she returned to limited-duty work. Appellant returned to full-time modified-duty work on June 2, 2017.

On August 21, 2019 OWCP expanded acceptance of the claim to include the additional condition of temporary aggravation of lumbar degenerative disc disease.

Appellant sought treatment for her conditions with Dr. Nabil Ahmad, Board-certified in pain management and physical medicine and rehabilitation. In medical reports dated August 27 and September 10 and 19, 2019, Dr. Ahmad evaluated her due to complaints of recurrent low back pain from the March 19, 2016 employment injury. He reported that appellant was currently working light duty for the employing establishment and her recurrent back pain was limiting her work ability.

In a September 19, 2019 note, Dr. Ahmad requested that appellant be excused from work due to her current medical condition on August 9, 12, 13, 16, 19, 26, and 27, September 5, 6, and 13, and October 4, 2019.

In an October 4, 2019 progress report, Dr. Ahmad evaluated appellant and administered bilateral sacroiliac joint injections to the lumbar spine.

On October 25, 2019 appellant filed a claim for compensation (Form CA-7) for leave without pay for the intermittent period of August 9 through October 4, 2019. In an attached time analysis form (Form CA-7a), she indicated that she was claiming a total of 84 hours of leave.

In a development letter dated November 4, 2019, OWCP informed appellant that it had received her Form CA-7 claiming 84 hours of compensation for the period August 9 through October 4, 2019. It notified her that payment was approved for four hours on August 27, 2019 and four hours on October 4, 2019 for attending medical appointments. However, the evidence of record was insufficient to establish disability compensation for the remainder of the claimed period because it did not appear that appellant sought medical treatment on those dates; nor did the evidence establish that she was disabled from work as a result of her accepted work-related conditions. OWCP afforded her 30 days to submit additional evidence.

Appellant subsequently submitted an October 28, 2019 progress report, from Dr. Ahmad who noted that, following the October 4, 2019 bilateral sacroiliac joint injection, she experienced good postprocedure pain relief. Dr. Ahmad further reported that she continued to have some tenderness to the left sacroiliac joint, but it was much less than before. He further noted that appellant should continue with her lifting restrictions, perform home exercises, continue taking back precautions, and avoid any activities that aggravated her symptoms.

By decision dated December 5, 2019, OWCP authorized payment for four hours of wage-loss compensation on August 27, 2019 and four hours on October 4, 2019, for attending medical appointments. The claim remained denied, however, as appellant has not provided medical evidence establishing that she was disabled from work as a result of her accepted work-related medical conditions for the remainder of the claimed period.

LEGAL PRECEDENT

Under FECA,³ the term disability is defined as incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ Disability is not synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.⁵

A claimant has the burden of proof to establish by a preponderance of the evidence that he or she is disabled from work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.⁶ Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by competent medical evidence.⁷ To meet this burden of proof, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting causal relationship between the alleged disabling condition and the accepted injury.⁸

The Board will not require OWCP to pay compensation for disability without any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to

³ *Supra* note 1.

⁴ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁵ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁶ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *B.R.*, Docket No. 18-0339 (issued January 24, 2019).

compensation.⁹ 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.¹⁰

OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.¹¹ A claimant who has returned to work following an accepted injury or illness may need to undergo examination, testing, or treatment and such employee may be paid compensation for wage loss while obtaining medical services or treatment, including a reasonable time spent traveling to and from the medical provider's location.¹² 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.¹³ 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.¹⁴ For a routine medical appointment, a maximum of four hours 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 medical care.¹⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period August 9 through October 4, 2019, causally related to her accepted employment conditions.

In a September 19, 2019 note, Dr. Ahmad requested that appellant be excused from work on August 9, 12, 13, 16, 19, 26, and 27, September 5, 6, and 13, and October 4, 2019, due to her current medical condition. While he identified the dates in question, he failed to address the specific medical condition that rendered her incapable of performing modified-duty work, such that it could be related to the March 19, 2016 employment injury.¹⁶ Without medical rationale explaining why appellant was disabled from work on each specific date alleged, Dr. Ahmad's report is insufficient to meet her burden of proof.¹⁷

⁹ *Id.*

¹⁰ *See D.T.*, Docket No. 19-1064 (issued February 20, 2020).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

¹² *Id.* at Chapter 2.901.19(a); *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

¹³ *Id.* at Chapter 2.901.19(a)(2).

¹⁴ *Id.* at Chapter 2.901.19(a)(3).

¹⁵ *Id.* at Chapter 2.901.19(c); *T.S.*, Docket No. 19-0347 (issued July 9, 2019).

¹⁶ *D.W.*, Docket No. 17-1954 (issued April 18, 2018).

¹⁷ *K.D.*, Docket No. 19-0628 (issued November 5, 2019); *A.T.*, Docket No. 19-0410 (issued August 13, 2019).

Dr. Ahmad's progress reports also fail to establish appellant's claim for intermittent disability during the period in question. He noted that her complaints of recurrent low back pain was limiting her ability to work. However, Dr. Ahmad failed to provide an opinion that appellant was disabled from work during the claimed period as a result of her accepted employment conditions.¹⁸ Rather, he recommended that she continue with her current, previously implemented, work restrictions. Given that appellant's work restrictions remained unchanged, the Board finds that Dr. Ahmad's reports do not substantiate that she was disabled from modified-duty work on the intermittent dates claimed.¹⁹ As such, Dr. Ahmad's progress reports fail to establish that she was disabled during the claimed period due to her accepted employment conditions.²⁰

The Board also notes that OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.²¹ 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.²² While appellant alleged eight hours of wage loss for attending medical appointments on August 27 and October 4, 2019, the medical evidence of record does not establish that she attended any other medical appointment or was disabled from work during this time frame as a result of the accepted employment injuries.²³ The record reflects that OWCP paid her four hours of wage loss on August 27, 2019 and four hours on October 4, 2019 for attending medical appointments. As the evidence of record did not substantiate a need for more than four hours of compensation for appellant's routine medical appointments, she has not established entitlement to additional wage-loss compensation due to medical treatment on August 27 and October 4, 2019.²⁴

The Board finds that appellant failed to submit probative evidence contemporaneous to the claimed dates of disability sufficient to establish that she was totally disabled from work due to her accepted injury.²⁵ As such, she 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.

¹⁸ *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).

¹⁹ *See J.P.*, Docket No. 18-1396 (issued January 23, 2020).

²⁰ *See S.K.*, Docket No. 18-1537 (issued June 20, 2019).

²¹ *Supra* note 11.

²² *Id.*

²³ *V.H.*, Docket No. 19-0807 (issued December 3, 2019).

²⁴ *Id.*

²⁵ *A.L.*, Docket No. 17-1975 (issued August 21, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish intermittent disability for the period August 9 through October 4, 2019 causally related to the accepted March 19, 2016 employment conditions.

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 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