

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

S.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Mill Valley, CA, Employer**

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**Docket No. 19-1235
Issued: March 30, 2021**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REVERSING CASE

Before:

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

On May 16, 2019 appellant, through counsel, filed a timely appeal from an April 30, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-1235.

On December 8, 2003 appellant, then a 35-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 14, 2003 he sustained head and upper body injuries during a motor vehicle accident (MVA) when his postal vehicle was rear ended by another vehicle while in the performance of duty. He stopped work on November 15, 2003. By decision dated February 6, 2004, OWCP accepted the claim for cervical sprain. It paid appellant compensation for intermittent periods of disability on the supplemental rolls commencing December 30, 2003 and for temporary partial disability compensation through June 1, 2004 when he returned to full-time modified-duty work.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Appellant provided medical reports documenting continued treatment with his attending physician Dr. Michael Hebrard, Board-certified in physical medicine and rehabilitation.

On July 13, 2018 appellant filed a Form CA-7 for leave without pay for intermittent dates from January 18 to July 9, 2018, claiming 15 hours of leave for medical appointments. On his accompanying time analysis form (Form CA-7a), he requested 3 hours on January 18, 2018; 3.5 hours on March 5, 2018; 3 hours on April 16, 2018; 4 hours on June 1, 2018; and 1.5 hours on July 9, 2018.

OWCP received medical reports dated from January 18 through July 9, 2018 from Dr. Hebrard documenting treatment for appellant's neck sprain and related cervical conditions. In his reports, Dr. Hebrard provided findings on physical examination and opined that appellant's ongoing functional deficit was related to his work-related injury which was still present and medically disabling.

By decision dated September 11, 2018, OWCP denied appellant's claim for intermittent wage loss from January 18 to July 9, 2018.

By decision dated April 30, 2019, an OWCP hearing representative affirmed the September 11, 2018 decision.

Having reviewed the case record, the Board finds that appellant has met his burden of proof to establish entitlement to wage-loss compensation for the 15 hours of intermittent hours of disability claimed for the period January 18 and July 9, 2018. The accompanying Form CA-7a time analysis form for the period in question indicated wage loss for attending medical appointments including: 3 hours on January 18, 2018; 3.5 hours on March 5, 2018; 3 hours on April 16, 2018; 4 hours on June 1, 2018; and 1.5 hours on July 9, 2018. The record contains evidence documenting examination and treatment by Dr. Hebrard on these dates for appellant's accepted cervical strain condition.

OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.² 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.³ For a routine medical appointment, a maximum of four hours may be allowed.⁴

The Board finds that the evidence of record establishes that appellant obtained medical treatment by his attending physician, Dr. Hebrard, on the dates in question due to his work-related cervical sprain condition.⁵ Accordingly, on return of the case record OWCP shall grant

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

³ *Id.* at Chapter 2.901.19(a)(3).

⁴ *Id.* at Chapter 2.901.19(c); *T.S.*, Docket No. 19-0347 (issued July 9, 2019).

⁵ *M.A.*, Docket No. 16-1602 (issued May 22, 2017); *J.H.*, Docket No. 16-0801 (issued November 15, 2016).

compensation for appellant's 15 hours of wage loss due to medical appointments with Dr. Hebrard from January 18 to July 9, 2018.

IT IS HEREBY ORDERED THAT the April 30, 2019 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for payment consistent with this order of the Board.

Issued: March 30, 2021
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