

ISSUES

The issues are: (1) whether OWCP abused its discretion by denying authorization for physical therapy for treatment of her accepted lower back/pelvis contusion for the period November 1 through December 31, 2018; and (2) whether appellant has met her burden of proof to establish intermittent disability from work for the period November 19 through December 6, 2018 causally related to her accepted lower back/pelvis contusion.

FACTUAL HISTORY

On September 7, 2017 appellant, then a 50-year-old contact representative, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her leg when she fell while in the performance of duty. She stopped work on that date, but returned to full-duty work on September 12, 2017. In a September 12, 2017 report, Dr. Nancy Moran, a physician specializing in family medicine, diagnosed contusion of the back and bilateral knee sprains. She referred appellant for physical therapy for treatment of back and knee conditions. Appellant began physical therapy treatment on September 17, 2017. On December 19, 2017 OWCP accepted appellant's claim for bilateral leg strains and low back/pelvis contusion. On February 8, 2018 it expanded the acceptance of the claim to include right knee meniscus tear. OWCP subsequently authorized physical therapy for treatment of appellant's left knee medial meniscus beginning September 14, 2017.

On April 2, 2018 appellant underwent an authorized right knee arthroscopy with partial medial meniscectomy and chondroplasty of medial femoral condyle and trochlear groove. She stopped work and OWCP paid her wage-loss compensation on the supplemental rolls until she returned to full-duty work on April 20, 2018. Appellant continued to receive physical therapy for treatment of her knees.

In a June 14, 2018 progress report and work status note, Dr. Michael Khadavi, a Board-certified physical medicine and rehabilitation physician, indicated that he last treated appellant for low back pain in December 2017 and that she now complained of worsening back pain. Upon examination of appellant's back, he observed that flexion and extension produced back pain. Dr. Khadavi diagnosed right knee medial meniscus tear, bilateral knee degenerative joint disease, and low back pain. He recommended that appellant continue physical therapy treatment and related that she could work full duty.

In a prescription note dated June 26, 2018, Dr. Khadavi ordered physical therapy for treatment of appellant's knee and back conditions.⁴ Appellant began physical therapy for treatment of her lower back on July 16, 2018. On August 13, 2018 OWCP authorized physical therapy for treatment of appellant's lumbar spine from July 16 to August 31, 2018.

On October 26, 2018 OWCP received an additional request authorization for physical therapy for treatment of appellant's lumbar spine. On November 6, 2018 it authorized physical therapy for treatment of her lumbar spine from November 1 to December 31, 2018.

⁴ The prescribed treatment included lumbar stabilization.

Appellant continued to receive physical therapy treatment for her lower back and knee conditions.

On November 29, 2018 OWCP received a claim for wage-loss compensation (Form CA-7) for disability from work for the period November 19 to 21, 2018. The attached Time Analysis Form (Form CA-7a) indicated that appellant was claiming compensation for 2.0 hours of leave without pay (LWOP) on each of the claimed dates due to “physical therapy -- back.” On December 10, 2018 OWCP received a Form CA-7 claiming disability from work for the period December 3 to 6, 2018. The accompanying Form CA-7a indicated that appellant was claiming compensation for 2.5 hours of LWOP used on December 3, 2018 and 1.2 hours of LWOP used on December 6, 2018 due to “physical therapy -- back.”⁵ On December 11, 2018 OWCP received a Form CA-7 claiming disability from work for the period November 27 to 29, 2018. The attached Form CA-7a indicated that appellant was claiming compensation for 2.3 hours of LWOP used on November 27, 2018 and 2.3 hours of LWOP on November 28, 2018 and 1.9 hours of LWOP on November 29, 2018 due to “physical therapy -- back.”⁶

Work status notes dated November 19, 20, 21, 27, 28, and 29, and December 3 and 6, 2018, which indicated that appellant underwent physical therapy on those dates for “low back pain.”

In a December 17, 2018 development letter, OWCP advised appellant that the evidence submitted was insufficient to establish the claimed disability for the period November 27 to December 6, 2018 due to her lower back condition and requested that she submit additional evidence to establish that she was disabled from work on those dates due to her September 7, 2017 employment injury. It afforded her 30 days to submit the necessary evidence.⁷

By decision dated January 28, 2019, OWCP denied appellant’s Form CA-7 claims for compensation for time lost from work to obtain physical therapy for her back condition during the period November 2 through December 6, 2018. It found that the medical evidence submitted was insufficient to establish that the physical therapy treatment she received for her back on the claimed dates was causally related to the accepted September 7, 2017 employment injury.

On February 6, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

By decision dated May 6, 2019, OWCP’s hearing representative remanded appellant’s case for further development of the medical evidence.

On May 8, 2019 OWCP referred appellant’s claim, along with a statement of accepted facts (SOAF), to an OWCP district medical adviser (DMA) in order to determine whether the physical therapy treatment that appellant received from November 19 through December 6, 2018 for her low back was medically necessary to treat appellant’s accepted low back contusion. The SOAF,

⁵ Appellant also claimed compensation for LWOP used for physical therapy for her accepted knee condition.

⁶ The hours claimed for treatment of appellant’s back condition the period November 19 through December 6, 2018 total 16.2 hours.

⁷ OWCP also informed appellant that it was authorizing wage-loss compensation for time loss from work due to medical treatment for her right knee received on November 29, December 3, December 4, and December 6, 2018 for a total of 8.9 hours.

dated May 8, 2019, listed the accepted conditions and noted generally that “The claimant participated in physical therapy.”

In a May 15, 2019 report, Dr. Kevin Kuhn, a Board-certified orthopedic surgeon serving as the DMA, indicated that he had reviewed the SOAF and the medical records provided. He noted that appellant’s claim was accepted for bilateral leg strains, contusion of the lower back, and right knee medial meniscus tear. Dr. Kuhn opined that physical therapy for a back contusion from November 19 to December 6, 2018 was not causally related to the accepted medical conditions. He explained that appellant’s ongoing symptoms were “likely secondary to her preexisting osteoarthritis.” Dr. Kuhn related that the current request for therapy was more than seven months after her April 2, 2018 right knee surgery and outside of the recommended treatment window.

By decision dated May 20, 2019, OWCP denied authorization for physical therapy treatment for her lower back for the period November 19 through December 6, 2018, because the medical evidence of record was insufficient to establish that the requested medical treatment was medically necessary to treat her accepted September 7, 2017 employment injury. It also denied appellant’s Form CA-7 claim for wage-loss compensation for the entire period claimed because the medical evidence of record was insufficient to establish that she was disabled from work on the claimed dates due to her accepted injury.

On May 29, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review. During the hearing held on September 11, 2019, appellant testified that in November and December 2018 she underwent physical therapy treatment for both her back and right knee conditions because she was still in pain following her September 7, 2017 employment injury.

OWCP subsequently received physical therapy prescription notes and medical records dated April 19 to December 20, 2018 by Dr. Scott M. Abraham, a Board-certified orthopedic surgeon.

By decision dated October 29, 2019, OWCP’s hearing representative affirmed the May 20, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.⁸ In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.⁹ OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP’s authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It

⁸ 5 U.S.C. § 8103(a); *see M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.B.*, 58 ECAB 588 (2007).

⁹ 5 U.S.C. § 8103.

is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹⁰

While OWCP is obligated to pay for treatment of employment-related conditions, a claimant has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.¹¹ Causal relationship requires supporting rationalized medical evidence.¹² Therefore, in order to prove that, a procedure is warranted, a claimant must establish that the procedure was for a condition causally related to the employment injury and that the procedure was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.¹³

OWCP procedures provide:

“For most orthopedic injuries, PT [physical therapy] services within the first 120 days after a traumatic injury are allowed without any prior authorization required, and it is also customary to automatically authorize PT postoperatively for orthopedic surgeries, usually for a period of 60 days postsurgery. If a request for therapy beyond these time frames is received, OWCP needs to review the file to determine whether further services should be authorized.”¹⁴

To determine whether a claimant requires physical therapy beyond the initial authorization period, OWCP reviews the record to determine whether the need for PT is due to the accepted work injury and whether the additional therapy is expected to yield functional improvement. Additionally, its procedures provide, “To authorize additional physical therapy for pain or to maintain function, OWCP should ensure that the pain is associated with measurable objective findings such as muscle spasm, atrophy and/or radiologic changes in joints, muscles, or bones, or that pain has placed measurable limitations upon the claimant’s physical activities.”¹⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP abused its discretion by denying authorization for physical therapy for treatment of her accepted lower back/pelvis contusion for the period November 1 through December 31, 2018

On October 25, 2018 appellant requested authorization for physical therapy treatment to treat her lumbar spine. On November 6, 2018 OWCP authorized physical therapy treatment for the period November 1 to December 31, 2018 to treat her lumbar spine. Work status notes indicate

¹⁰ *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

¹¹ *See L.S.*, Docket No. 18-1746 (issued April 9, 2019); *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

¹² *K.W.*, Docket No. 18-1523 (issued May 22, 2019).

¹³ *Id.*

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Physical Therapy*, Chapter 2.810.19 (September 2010).

¹⁵ *Id.*

that appellant underwent physical therapy treatment for her low back on November 19, 20, 21, 27, 28, and 29, and December 3 and 6, 2018. On May 8, 2019 OWCP referred appellant's claim, along with a statement of accepted facts (SOAF), to an OWCP district medical adviser (DMA) in order to determine whether the physical therapy treatment that appellant received from November 19 through December 6, 2018 for her low back was medically necessary to treat appellant's accepted low back contusion. The SOAF, dated May 8, 2019, listed the accepted conditions and noted generally that "The claimant participated in physical therapy." In a May 15, 2019 report, Dr. Kevin Kuhn, a Board-certified orthopedic surgeon serving as the DMA, indicated that he had reviewed the SOAF and the medical records provided. He noted that appellant's claim was accepted for bilateral leg strains, contusion of the lower back, and right knee medial meniscus tear. Dr. Kuhn opined that physical therapy for a back contusion from November 19 to December 6, 2018 was not causally related to the accepted medical conditions. By decision dated May 20, 2019, OWCP subsequently denied authorization for physical therapy treatment for the period November 19 through December 6, 2018, finding that the medical evidence of record was insufficient to establish that the requested medical treatment was medically necessary to treat her accepted September 7, 2017 employment injury.

The Board finds that OWCP's denial of authorization for physical therapy for treatment of the lower back constitutes a rescission, as OWCP had previously authorized physical therapy treatment for the period November 1 to December 31, 2018 for treatment of her lumbar spine.¹⁶ As OWCP was attempting to rescind acceptance of a period of authorization for physical/occupational therapy, it must follow its established procedures for rescinding the prior authorization for medical treatment.¹⁷ Its procedures require a proposed and final decision rescinding the original finding.¹⁸ These procedures further provide that a rescission decision should contain a brief background of the claim, discuss the evidence on which the original decision was based, and explain why OWCP finds that the decision should be rescinded.¹⁹

In this case, OWCP did not follow the specific procedures for a rescission decision.²⁰ Moreover, the SOAF sent to the DMA was inaccurate as it did not acknowledge that physical therapy for treatment of the back had already been authorized. Thus, the Board finds that OWCP abused its discretion.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA²¹ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial

¹⁶ See *R.C.*, Docket No. 16-0594 (issued December 1, 2016) (as OWCP had previously informed appellant that payment for compensation benefits was authorized for intermittent periods of disability, its subsequent decision denying appellant's claim for compensation for the entire period constituted a rescission).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at Chapter 2.1400.19(d).

²⁰ See *D.S.*, Docket No. 17-0250 (issued August 29, 2017); see also *S.R.*, Docket No. 12-1401 (issued December 11, 2012).

²¹ *Supra* note 2.

evidence.²² The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.²³ 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.²⁴

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 the reliable, probative, and substantial medical evidence. 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 his or her disability and entitlement to compensation.

OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.²⁵ 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.²⁶ 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.²⁷ 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. 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.²⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has established entitlement for 16.2 hours of wage loss for the period November 19 through December 6, 2018.

Appellant submitted several Form CA-7 claims for wage-loss compensation for intermittent periods of disability from November 19 through December 6, 2018. She indicated that her reason for using leave was physical therapy for treatment of her knee and/or back. With regard to physical therapy treatment of her back condition, appellant claimed 2 hours each of

²² See *B.K.*, Docket No. 18-0386 (issued September 14, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

²³ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

²⁴ See *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, *supra* note 14.

²⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

²⁶ *Id.* at Chapter 2.901.19a; *M.B.*, Docket No. 19-1049 (issued October 21, 2019).

²⁷ *Id.* at Chapter 2.901.19a(2).

²⁸ *Id.* at Chapter 2.901.19c.

LWOP on November 19, 20, and 21; 2.3 hours of LWOP on November 27 and 28; 1.9 hours on November 29; 2.5 hours on December 3, 2018; and 1.2 hours on December 6, 2018. OWCP paid wage-loss compensation for 8.9 hours of time lost from work due to physical therapy treatments for appellant's right knee, but denied wage-loss compensation for the remaining 16.2 hours of time lost from work for physical therapy treatment for her low back.

The record contains work status notes dated November 19, 20, 21, 27, 28, and 29, and December 3 and 6, 2018, which establish that appellant underwent physical therapy treatment on the claimed dates for her low back. As noted above, an employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment. For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed.²⁹ The Board thus finds that appellant has met her burden of proof to establish entitlement to a total of 16.2 hours of wage-loss compensation for the period November 19 through December 6, 2018 due to treatment of her low back condition. The case shall, therefore, be remanded for payment.

CONCLUSION

The Board finds that OWCP abused its discretion by denying authorization for physical therapy for treatment of her accepted lower back/pelvis contusion for the period November 1 through December 31, 2018. The Board further finds that appellant has established entitlement for 16.2 hours of wage loss for the period November 19 through December 6, 2018.

²⁹ *Supra* note 16.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2019 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for payment consistent with this decision of the Board.

Issued: March 31, 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