



## ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period March 13, 2018 through April 20, 2019, causally related to her accepted February 28, 2017 employment injury.

## FACTUAL HISTORY

On March 14, 2017 appellant, then a 53-year-old postal support employee, filed a traumatic injury claim (Form CA-1) alleging that on February 28, 2017 she developed right lumbar regional peripheral neuropathy/radiculopathy, which included pain, burning, and swelling in her hip, buttock, tailbone, lower back, and thigh that sometimes radiated to her knee and heel due to repetitive lifting of heavy mail trays and tubs while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx841. On September 17, 2019 it accepted the claim for: traumatic rupture of lumbar intervertebral disc, L1-2 and L3-4; intervertebral disc disorders with radiculopathy, lumbar region; spondylolisthesis, lumbar region; Achilles tendinitis, right and left legs; and trochanteric bursitis, right hip. Because the September 17, 2019 decision contained errors in the statement of facts, OWCP issued a corrected decision on September 26, 2019.<sup>4</sup>

Appellant had a prior claim for a July 18, 2016 traumatic injury, which OWCP accepted for trochanteric bursitis, right hip, bilateral strain of Achilles tendon, and bilateral Achilles tendinitis under OWCP File No. xxxxxx117. By decision dated July 2, 2018, OWCP granted appellant a schedule award for 10 percent permanent impairment of each lower extremity. The period of the award ran for 57.6 weeks from March 13, 2018 through April 20, 2019. On July 25, 2018 OWCP issued a corrected schedule award decision to correct a typographical error regarding the effective date of appellant's pay rate delineated in the July 2, 2018 decision.<sup>5</sup>

On September 30, 2019 appellant filed claims for compensation (Form CA-7) for disability from work during the period July 1, 2017 through September 30, 2019 under OWCP File No. xxxxxx841.

OWCP, in a December 12, 2019 development letter, advised appellant of the type of medical evidence needed to establish her claims for disability from work for the period July 1, 2017 through September 30, 2019. It afforded her 30 days to submit the necessary evidence.

In a September 14, 2020 letter to OWCP, appellant, through counsel, noted excessive delays in the issuance of her compensation payment for the period July 1, 2017 through September 30, 2019. Counsel requested prompt payment.

A September 24, 2020 memorandum of telephone call (Form CA-110) indicated that OWCP advised counsel that a compensation payment was forthcoming for the period July 1, 2017 through March 12, 2018 and that appellant was not entitled to compensation for the period

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<sup>4</sup> The Board notes that in its September 26, 2019 decision, OWCP treated appellant's traumatic injury claim as an occupational disease claim (Form CA-2).

<sup>5</sup> Subsequently, appellant filed a claim for an April 29, 2017 traumatic injury, which OWCP accepted for other intervertebral disc displacement and other intervertebral disc degeneration of the thoracic region under OWCP File No. xxxxxx273. On September 23, 2020 OWCP administratively combined the claims assigned OWCP File Nos. xxxxxx841, xxxxxx117, and xxxxxx273, with OWCP File No. xxxxxx117 serving as the master file.

March 3, 2018 through April 20, 2019 because she had received schedule award compensation for 10 percent permanent impairment of each leg for the period March 3, 2018 through April 20, 2019 under OWCP File No. xxxxxx117. It then advised that she would be paid compensation for the period April 21 through September 30, 2019.<sup>6</sup>

In response to a congressional inquiry regarding appellant's claim for compensation, by letter dated October 23, 2020, OWCP noted that it had processed a wage-loss compensation payment for the period July 1, 2017 to March 12, 2018 and compensation was not payable for the period March 13, 2018 to April 20, 2019 because appellant received schedule award compensation for the same body part during the claimed period of disability. It also noted that wage-loss compensation payments had been processed for the period April 21 to September 30, 2019.

In a January 4, 2021 letter, counsel informed OWCP that its automated payment system indicated that on October 30, 2020 a compensation payment was issued to appellant in the amount of \$20,498.77 for the period July 1, 2017 to April 12, 2018. However, he cited OWCP's procedures and Board precedent and contended that appellant was also entitled to wage-loss compensation for the period March 13, 2018 through September 30, 2019 because her claims under OWCP File Nos. xxxxxx117, xxxxxx841, and xxxxxx273 involved different injuries.

By letter dated January 19, 2021, OWCP informed appellant that she could not concurrently receive schedule award compensation and wage-loss compensation for disability from work. It explained that, since she had previously received schedule award compensation for both lower extremities for the period March 13, 2018 through April 20, 2019 under OWCP File No. xxxxxx117, wage-loss compensation was not payable under OWCP File No. xxxxxx841 for the same period as the accepted conditions in both claims included the lower extremities. OWCP advised that appellant's request for an additional schedule award had been referred to an OWCP district medical adviser for review in her claim under OWCP File No. xxxxxx117.

In a February 12, 2021 letter, appellant, through counsel, responded to OWCP's January 19, 2021 letter. Counsel again cited OWCP's procedures and contended that appellant was entitled to wage-loss compensation for the entire claimed period of disability from work as her claims involved different body parts. He requested that OWCP issue a decision on this matter with appeal rights.

By decision dated February 17, 2021, OWCP denied appellant's claim for disability for the period March 13, 2018 through April 20, 2019, finding that she could not concurrently receive schedule award compensation and wage-loss compensation for disability from work "for the same body parts."

On March 1, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on June 9, 2021.

In an August 19, 2021 decision, an OWCP hearing representative affirmed the February 17, 2021 decision.

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<sup>6</sup> The record indicates that OWCP paid appellant wage-loss compensation on the supplemental rolls for the periods July 1, 2017 through March 12, 2018, April 21 through May 29, 2019, and June 24 through September 30, 2019.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>7</sup> has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>8</sup>

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>9</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.<sup>10</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>11</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>12</sup>

A schedule award is payable consecutively, but not concurrently, with an award for wage loss for disability for the same injury.<sup>13</sup> A schedule award for one injury may be paid concurrently with compensation for wage loss paid for another injury, as long as the two injuries do not involve the same part of the body and/or extremity.<sup>14</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period March 13, 2018 through April 20, 2019, causally related to her accepted February 28, 2017 employment injury.

OWCP accepted that appellant sustained: trochanteric bursitis, right hip; strain of Achilles, right leg; and Achilles tendinitis, left leg as a result of her July 18, 2016 traumatic injury under

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<sup>7</sup> *Supra* note 2.

<sup>8</sup> *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *Id.* at § 10.5(f); *see e.g.*, *G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>10</sup> *G.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>11</sup> *See L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>12</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.4a(3) (February 2013); *see S.M.*, Docket No. 17-1557 (issued September 4, 2018); *E.S.*, Docket No. 16-1248 (issued May 15, 2017); *S.W.*, Docket No. 10-2071 (issued July 11, 2011).

<sup>14</sup> *Id.* at Chapter 2.808.4a(5); *Michael J. Biggs*, 54 ECAB 595, 596-97 (2003).

OWCP File No. xxxxxx117. Appellant received a schedule award 10 percent permanent impairment of each leg for the period March 13, 2018 through April 20, 2019 in OWCP File No. xxxxxx117. OWCP subsequently accepted that appellant sustained traumatic rupture of lumbar intervertebral disc, L1-2 and L3-4; intervertebral disc disorders with radiculopathy, lumbar region; spondylolisthesis, lumbar region; Achilles tendinitis, right and left legs; and trochanteric bursitis, right hip due to her February 28, 2017 occupational disease injury under OWCP File No. xxxxxx841.

Appellant claimed compensation for disability for the period July 1, 2017 through September 30, 2019 under OWCP File No. xxxxxx841. OWCP paid appellant compensation for disability from work during the period July 1, 2017 through April 12, 2018 and April 21 through September 30, 2019 and, by decision dated February 17, 2021, it denied appellant's claim for wage-loss compensation for the period March 13, 2018 through April 20, 2019. In an August 19, 2021 decision, OWCP's hearing representative affirmed the February 17, 2021 decision.

The Board finds that wage-loss compensation claimed for the period March 13, 2018 through April 20, 2019 due to disability from work in OWCP File No. xxxxxx841, is not payable as appellant was being compensated for a schedule award during that same period in OWCP File No. xxxxxx117 for injuries to the same body parts and/or extremities. Appellant's claims under both file numbers were accepted for bilateral Achilles conditions and, thus, OWCP cannot pay compensation for wage-loss compensation resulting from appellant's February 28, 2017 employment injury concurrently with the schedule award compensation for her July 18, 2016 employment injury.<sup>15</sup>

On appeal counsel contends that OWCP improperly denied appellant's claim for wage-loss benefits under its procedures as the claim at issue in this case involved a lumbar herniated disc while the claim for which appellant received schedule award compensation involved an Achilles tendinitis injury. As both claims were accepted for bilateral lower extremity conditions and the accepted lumbar radiculopathy affected these bilateral lower extremity conditions, the Board finds that appellant was not entitled to receive wage-loss compensation under OWCP File No. xxxxxx841 concurrently with schedule award compensation being paid under OWCP File No. xxxxxx117.<sup>16</sup>

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 disability from work for the period March 13, 2018 through April 20, 2019, causally related to her accepted February 28, 2017 employment injury.

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<sup>15</sup> See *supra* note 14.

<sup>16</sup> *Supra* note 14.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2022  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board