

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

L.R., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, SOUTHWEST FLORIDA)
INTERNATIONAL AIRPORT, Fort Myers, FL,)
Employer)

**Docket No. 20-1488
Issued: October 24, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 5, 2020 appellant filed a timely appeal from a June 18, 2020 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to wage-loss compensation beginning October 30, 2019, causally related to her accepted left shoulder condition.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 25, 2019 appellant, then a 54-year-old explosive detention canine handler transportation security specialist, filed an occupational disease claim (Form CA-2) alleging that she developed severe left shoulder pain radiating to her elbow, wrist, and neck as a result of factors of her federal employment, including handling and training a 70-pound dog with a leash that pulled and jerked a lot. She first became aware of her condition and realized that it resulted from her employment on September 30, 2019. Appellant began to work modified duty. OWCP accepted her claim for left shoulder strain.

In a December 31, 2019 letter, J.G., a supervisory transportation security specialist of the employing establishment, indicated that appellant was seeking reimbursement for one hour of daily overtime for care of an assigned Explosive Detection Canine (EDC). He explained that, after her injury, she was placed on limited duty and her assigned canine was boarded in a commercial kennel facility from October 30 through November 18, 2019. J.G. pointed out that, during this time, the canine was not in appellant's care. He reported that she was currently performing administrative duties and assisting with other canine teams.

On December 27, 2019 appellant filed a claim for compensation (Form CA-7) requesting "other wage loss" for the period October 30 through December 27, 2019. She noted that the type of loss was "loss of K9 care differential." Appellant subsequently filed additional CA-7 forms claiming "other wage loss" for administratively uncontrollable overtime (AUO) pay for the period December 27, 2019 through January 11, 2020 and January 22 through February 4, 2020.

In a January 6, 2020 development letter, OWCP advised appellant of the type of evidence needed to establish her wage-loss compensation claim beginning October 30, 2019. It afforded her 30 days to submit the necessary evidence.

Appellant submitted several statements of earnings and leave for the periods covering July 7 through August 3, 2019 and September 1 through 28, 2019. The statements included a code for "Overtime-Premium Rate," which showed that she received \$14.00 per pay period for the period covering July 7 through August 3, 2019 and September 1 through 14, 2019; \$17.00 per pay period from September 15 through 28, 2019; \$21.00 per pay period from October 13 through 26, 2019; and \$4.00 per pay period for the period October 27 through November 9, 2019.

In a January 12, 2020 statement, appellant explained that she received AUO premium pay due to the nature of her position. She reported that she must be on duty at least 14 hours beyond her shift to care for the working K9 that she had at home. Appellant noted that this pay was considered AUO and explained that the time was not controlled by the administration. She explained that the handler determined when the overtime for kennel care was needed each day based on the needs of the K9. Appellant indicated that her K9 was sent back to Texas due to her injury, so she has claimed lost wages for AUO pay.

By decision dated February 11, 2020, OWCP denied appellant's wage-loss compensation claim for "other wage-loss" beginning October 30, 2019. It found that the evidence of record was insufficient to establish that she was entitled to AUO pay.

On March 6, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a March 6, 2020 statement, appellant described her employment duties working with and training canines on a daily basis. She explained that a particular canine that she trained for approximately two months was a 70-pound German short hair pointer dog with very high energy. Appellant indicated that she was seeking reimbursement for insurance copays and one hour of premium overtime pay per day for canine care. She contended that she had earned one hour of premium overtime pay as part of her wages consistently for the past five years and was claiming lost overtime wages since her work injury.

Appellant submitted a March 6, 2020 narrative report by Dr. Santokh S. Walha, who specializes in internal medicine. Dr. Walha recounted that appellant had been his patient since May 2017 and was diagnosed with cervical radiculopathy, degenerative joint disease of the cervical spine without myelopathy, and left shoulder supraspinatus tendinopathy and bursitis. He indicated that he had read appellant's description of her employment and opined that her disability was causally related to her training the K9 at work.

OWCP also received a March 5, 2020 witness statement from R.R., who confirmed that he saw appellant training a German short hair pointer canine and that the canine was constantly pulling and jerking.

Following a preliminary review, by decision dated June 1, 2020, an OWCP hearing representative vacated the February 11, 2020 decision and remanded the case for additional development of the factual evidence. On remand, OWCP was instructed to request additional information from the employing establishment regarding whether appellant received AUO or other premium pay for canine care.

In a June 8, 2020 letter, OWCP requested additional evidence from the employing establishment regarding appellant's wage-loss compensation claim. It requested that the employing establishment verify whether the information that she provided in her January 12, 2020 statement was correct and whether she was paid AUO or premium pay for canine care.

On June 18, 2020 OWCP received the employing establishment's response. In a June 17, 2020 letter, S.S., a human resource specialist and workers' compensation coordinator for the employing establishment, indicated that according to the TSA Handbook to Management Directive No. 1100.55-8, the payment of AUO was not authorized. He explained that canine handlers were permitted one hour of regularly scheduled overtime pay per day, including regular days off, for the care of the canine. S.S. noted that it was coded on the time keeping system as Overtime 40 or Over 8 if there were less than 40 hours of overtime in pay per week. He also reported that pursuant to 5 U.S.C. § 8114(e), overtime pay was not included in computing pay for purposes of wage-loss compensation.

By decision dated June 18, 2020, OWCP denied appellant's wage-loss compensation claim. It found that the evidence of record established that she was not paid AUO and that the pay that she received for canine care was considered overtime pay.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.³ 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.⁴ 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.⁵

Under FECA, 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.⁶ 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 his or her federal employment, but who nonetheless has the capacity to earn wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity. When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁷

Section 8114(e) of FECA and OWCP's procedures provide that, in addition to annual base pay, certain items will be included in the computation of pay, such as the value of subsistence and quarters, premium pay, and any form of remuneration in kind for services. Consequently, when the job held at the time of injury includes elements of pay such as night or shift differential, extra compensation for work performed on Sundays and holidays, or pay for administratively uncontrollable overtime, OWCP must include the additional pay in the base pay.⁸ Overtime pay shall not be included in computing pay for the purposes of continuation of pay or compensation as such extra pay is earned only if the actual hours are worked and is considered to be overtime pay for the purposes of 5 U.S.C. § 8114(e).⁹

² *Id.*

³ *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁴ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

⁵ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁶ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁷ *See B.A.*, Docket No. 17-1471 (issued July 27, 2018).

⁸ 5 U.S.C. § 8114(e); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.6(b)(7) (March 2011).

⁹ *Id.* at Chapter 2.900.7(a) (March 2011).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation beginning October 30, 2019, causally related to her accepted left shoulder condition.

Appellant filed CA-7 forms claiming one hour of wage-loss compensation per day beginning October 30, 2019. She has alleged that the one hour per day of overtime pay was for canine care and was considered AUO pay. The Board finds, however, that the evidence of record has not established appellant's entitlement to AUO pay. Appellant has not provided any evidence to support her contention that she received AUO pay.¹⁰ Furthermore, in response to OWCP's request for additional information, a human resource specialist for the employing establishment, cited to the employing establishment handbook, which noted that AUO pay was not authorized within the employing establishment. Accordingly, the Board finds that the one hour of pay provided for appellant per day for canine care was not considered AUO pay.

The Board further finds that the one hour of extra pay provided for appellant was considered overtime pay. In a June 18, 2020 letter, a human resource specialist for the employing establishment explained that canine handlers were permitted one hour of regularly scheduled overtime pay per day, including regular days off, for the care of the canine. In addition, in a December 31, 2019 letter, a supervisory transportation security specialist, indicated that canine handlers were reimbursed for "1 hour daily overtime for the care of their assigned canine." Earnings and Leave statements for the period July 7 through October 26, 2019, also showed that appellant received "overtime-premium rate." As noted above, appellant is not entitled to additional compensation for overtime worked in excess of the standard 40 hours in accordance with FECA as such extra pay is earned only if the actual hours are worked.¹¹ Since the extra one hour of pay for canine care per day was considered overtime pay, the Board finds that OWCP properly denied her wage-loss compensation claim as she is not entitled to wage-loss compensation for loss of overtime pay.¹²

On appeal, appellant contests that OWCP has ignored her request for reimbursement of co-pays and other medical expenses. The Board, however, only has jurisdiction to review the June 18, 2020 decision regarding OWCP's denial of appellant's wage-loss compensations claims. As such, it has no jurisdiction to review appellant's request for reimbursement for medical expenses.¹³

¹⁰ See *K.J.*, Docket No. 16-0089 (issued July 1, 2016) (the Board found that the evidence of record failed to establish that appellant had received AUO for purposes of determining his pay rate).

¹¹ *Supra* note 9.

¹² *S.C.*, Docket No. 17-1856 (issued March 7, 2018); *T.G.*, Docket No. 11-1641 (issued March 15, 2012); *Dempsey Jackson*, 40 ECAB 942 (1989).

¹³ See 20 C.F.R. § 501.2(c).

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 entitlement to wage-loss compensation beginning October 30, 2019, causally related to her accepted left shoulder condition.

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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