

<sup>2</sup> The Board notes that, following the June 14, 2021 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 disability from work for the period April 9 through 10, 2021 causally related to her accepted July 7, 2020 employment injury.

## **FACTUAL HISTORY**

On February 17, 2021 appellant filed a traumatic injury claim (Form CA-1) alleging that on July 7, 2020 she sustained a right elbow and tendon strain as a result of lifting numerous sandbags weighting over 35 pounds while in the performance of duty. OWCP accepted appellant's claim for sprain of the right elbow, strain of the muscle, fascia, and tendon at the right shoulder and upper arm level, and right elbow lateral epicondylitis.

In a work status note dated March 10, 2021, Dr. Ian Pulliam, a Board-certified family practitioner, related that appellant should continue modified-duty work with a restriction of limiting repetitive or forceful gripping or grasping with the right hand. He reiterated this recommendation on March 22 and April 6, 2021.

On April 12, 2021 appellant filed a claim for wage-loss compensation (Form CA-7) for leave without pay from April 9 through 10, 2021.

In a work status note dated April 9, 2021, Dr. Pulliam related that appellant was seen that day from 9:06 a.m. to 9:40 a.m. He indicated that appellant was unable to return to work from that day through April 10, 2021. Beginning April 11, 2021, appellant was to return to work with the restriction of very limited use of the right arm.

In development letter dated April 20, 2021, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of additional medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

In a progress report dated April 9, 2021, Dr. Pulliam noted subjective complaints of skyrocketing pain of the elbow. Physical findings of the right elbow included no swelling, full range of motion, tenderness to palpation at the lateral epicondyle, and pain with resisted wrist extension and grip. Dr. Pulliam diagnosed lateral epicondylitis of the right elbow and stated that as appellant had increasing pain, he would afford her two days off work and would await further evaluation by a specialist.

By decision dated June 14, 2021, OWCP denied appellant's wage-loss compensation claim for disability from work during the period April 9 through 10, 2021, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the preponderance of the evidence.<sup>3</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>4</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>5</sup>

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> 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 a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>7</sup>

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 their disability and entitlement to compensation.<sup>8</sup>

### **ANALYSIS**

The Board finds that appellant has established entitlement for up to four hours of wage-loss compensation on April 9, 2021.

The record contains a medical report dated April 9, 2021 from Dr. Pulliam, indicating that appellant attended a medical appointment that morning related to treatment of her accepted right upper extremity conditions. The Board has long recognized that, under section 8103 of FECA, payment of expenses incidental to the securing of medical services encompasses payment for loss of wages incurred while obtaining medical treatment.<sup>9</sup> An employee is entitled to disability compensation for loss of wages incidental to treatment for an employment injury, for any time missed from work due to a medical appointment for an accepted injury.<sup>10</sup> OWCP’s procedures

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<sup>3</sup> See *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 3; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>6</sup> *Id.* at § 10.5(f); see *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>7</sup> *Id.*

<sup>8</sup> *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

<sup>9</sup> See *B.W.*, Docket No. 19-0049 (issued April 25, 2019).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013); see also *B.O.*, *supra* note 3.

provide that, in general, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments.<sup>11</sup> As appellant sought medical treatment on April 9, 2021, a scheduled day of work and during her regular work hours, for her accepted right elbow condition, the Board finds that appellant is entitled to up to four hours of compensation on April 9, 2021 due to her accepted employment injury.

On return of the case record OWCP shall authorize wage-loss compensation consistent with this decision of the Board.

The Board further finds that appellant has not met her burden of proof to establish disability from work for the remaining claimed disability from April 9 through 10, 2021.

In a work status note dated April 9, 2021, Dr. Pulliam stated that appellant was unable to return to work from that date through April 10, 2021. In a progress report dated April 9, 2021, he diagnosed lateral epicondylitis of the right elbow and stated that as appellant had too much pain, and that he would afford her two days off work. However, Dr. Pulliam did not provide an opinion on causal relationship.<sup>12</sup> These reports are therefore insufficient to meet appellant's burden of proof.<sup>13</sup>

As the medical evidence is insufficient to establish disability from work for the remainder of the period April 9 through 10, 2021 causally related to the accepted employment injury, the Board finds that appellant 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.

### **CONCLUSION**

The Board finds that appellant has met her burden of proof to establish entitlement to up to four hours of wage-loss compensation for time lost due to a medical appointment on April 9, 2021 for treatment of her accepted conditions. The Board further finds, however, that appellant has not met her burden of proof to establish disability from work for the remaining claimed disability from April 9 through 10, 2021 causally related to the accepted employment injury.

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<sup>11</sup> *Id.*

<sup>12</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 201).

<sup>13</sup> See *S.M.*, Docket No. 19-0658 (issued March 17, 2020); *S.K.*, Docket No. 18-1537 (issued June 20, 2019); *B.R.*, Docket No. 18-0339 (issued January 24, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 14, 2021 decision of the Office of Workers' Compensation Programs is reversed in part, and affirmed in part.

Issued: February 15, 2023  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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