

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

R.S., Appellant)	
)	
and)	Docket No. 23-1081
)	Issued: April 3, 2024
U.S. POSTAL SERVICE, WASHINGTON GMF)	
POST OFFICE, Washington, DC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 2, 2023 appellant filed a timely appeal from April 28 and June 13, 2023 merit decisions 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.²

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability from work during the periods October 22 through November 18, 2022, and December 14, 2022 through February 10, 2023, causally related to her accepted January 8, 2021 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 13, 2023 decision, appellant submitted additional evidence to OWCP and with her appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the caserecord 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.*

FACTUAL HISTORY

On January 11, 2021 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2021 her right knee buckled and twisted when she stepped in a crack while in the performance of duty.³ She stopped work on January 8, 2021 and was released to light-duty work on March 15, 2021. OWCP accepted appellant's claim for right knee sprain. It paid her wage-loss compensation on the supplemental rolls for intermittent periods of disability, effective June 2, 2021.

Appellant continued to receive medical treatment. In a report dated October 28, 2022, Dr. John P. Byrne, a Board-certified orthopedic surgeon, indicated that she was treated for right knee issues. On physical examination, he observed tenderness along the lateral and medial aspects of the right knee and no instability. Dr. Byrne diagnosed arthrosis of the knee and strain of the knee. He recommended that appellant continue light-duty work.

Appellant submitted physical therapy treatment notes dated October 31, November 11 and 14, December 14, 20, and 30, 2022, and January 12, 27, and 30, 2023. The treatment notes included diagnosed conditions of right knee primary osteoarthritis, right knee pain, and right knee stiffness.

On February 27, 2023 appellant filed claims for wage-loss compensation (Form CA-7) for intermittent disability from work during the periods October 22 through November 18, 2022, and December 14, 2022 through February 10, 2023. In time analysis forms (Form CA-7a), she indicated that she used 2 hours of leave without pay (LWOP) on November 14, 2022; 5.91 hours of LWOP on November 18, 2022; 4.16 hours of LWOP on December 14, 2022; 2.48 hours of LWOP on December 23, 2022; and 8 hours of LWOP on December 30, 2022; 2.5 hours of LWOP on January 7, 2023; 4 hours of LWOP on January 11, 2023; 3.5 hours of LWOP on January 18, 2023; 2 hours of LWOP on January 23, 2023; 4 hours of LWOP on January 25, 2023; and 4 hours of LWOP on January 27, 2023 for a total of 42.55 hours. Appellant noted that her reason for leave use was "Therapy" or "Dr. Appt/Therapy."

On March 21, 2023 OWCP paid appellant wage-loss compensation for 4 hours on December 30, 2022, 2 hours on November 14, 2022, and 4 hours on January 27, 2023 due to time loss from work for a medical appointment.

In a March 22, 2023 development letter, OWCP informed appellant that there was insufficient evidence to establish time loss from work for the remaining dates of November 18, December 14 and 23, 2022, and January 7, 11, 18 and 23, 2023. It advised her of the evidence needed and afforded her 30 days to respond.

Appellant submitted weekly timesheets for dates November 17 and 18, and December 12 through 16, 2022; December 23 through 30, 2022; January 7 through 18, 2023; and January 23 through 27, 2023.

³ OWCP assigned OWCP File No. xxxxxx595. Appellant subsequently filed another Form CA-1 on March 6, 2023, alleging that on February 24, 2023 she sprained her right knee while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx189 and accepted it for right knee sprain. It has administratively combined OWCP File Nos. xxxxxx595 and xxxxxx189, with the latter claim serving as the master file.

Appellant also submitted a printout from her healthcare provider, which listed her upcoming appointments for January 9, 11, 18, 23, and 25, 2023. Additionally, she submitted a printout of her previous appointments, which noted appointments on October 31, November 11, 14, 22, and 28, and December 7, 12, 14, 20, 22, 28, and 30, 2022.

By decisions dated April 28, 2023, OWCP denied appellant's claim for compensation for intermittent periods of disability for the period October 22 through November 18, 2022, finding that the medical evidence of record was insufficient to establish disability from work for the claimed period due to the accepted employment-related conditions.

By decision dated June 13, 2023, OWCP denied appellant's claim for 14.48 hours of compensation covering intermittent disability from work on December 14, 2022, and January 7, 11, 18, and 23, 2023.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ 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 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.⁷

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.⁸

The Board has interpreted section 8103, which requires payment of expenses incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services.⁹ 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. The rationale for this entitlement is that, during such

⁴ *Supra* note 1.

⁵ *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).

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

⁷ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁸ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁹ *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *Y.H.*, Docket No. 17-1303 (issued March 13, 2018).

required examinations and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay. For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed.¹⁰

ANALYSIS

The Board finds that appellant has met her burden of proof to establish entitlement for up to four hours of wage-loss compensation on December 14, 2022.

Appellant has submitted notes from a physical therapy appointment on December 14, 2022 for her accepted right knee condition. As noted above, an employee is entitled to disability compensation for up to four hours of lost wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment.¹¹ As appellant has submitted a physical therapy treatment note dated December 14, 2022 for her accepted employment-related right knee injury, the Board finds that this medical evidence is sufficient to establish that she is entitled to up to four hours of wage-loss compensation on this date.¹²

The Board further finds that appellant has not met her burden of proof to establish disability from work for the remaining dates of disability on November 18, December 23, and 30, 2022, and January 7, 11, 18, 23, and 25, 2023.

Appellant submitted a printout from her healthcare provider, which listed upcoming appointments on January 11, 18, 23, and 25, 2023. She also submitted a printout of her previous appointments, which noted her appointment on December 30, 2022. The evidence of record, however, does not contain medical notes or therapy slips verifying treatment on those dates causally related to the January 8, 2021 employment injury. Accordingly, the Board finds that appellant has not submitted sufficient medical evidence to establish that she received medical care on these dates causally related to the accepted January 8, 2021 employment injury. OWCP, therefore, properly denied appellant's claim for compensation for time lost from work for medical treatment on these claimed dates.¹³

As the medical evidence of record is insufficient to establish disability for the remaining dates on November 18, December 23, and 30, 2022, and January 7, 11, 18, 23, and 25, 2023 causally related to the accepted January 8, 2021 employment injury, the Board finds that appellant has not met her burden of proof.

¹⁰ For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *J.E., id., see also K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer, supra* note 8.

¹¹ *Id.*

¹² *W.J.*, Docket No. 21-0846 (issued July 17, 2023); *see also D.N.*, Docket No. 19-1344 (issued November 6, 2020).

¹³ *See S.M.*, Docket No. 17-1557 (issued September 4, 2018); *J.B.*, Docket No. 17-0655 (issued May 7, 2018).

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 for up to four hours of wage-loss compensation for time lost due to a medical appointment on December 14, 2022. The Board further finds, however, that she has not met her burden of proof to establish disability from work for the remaining dates of disability for November 18 and December 23 and 30, 2022, and January 7, 11, 18, 23, and 25, 2023 causally related to the accepted January 8, 2021 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2023 decisions of the Office of Workers' Compensation Programs are affirmed, and the June 13, 2023 decision is reversed in part, and affirmed in part.

Issued: April 3, 2024
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