

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUNICE M. PERRYMAN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, OH

*Docket No. 03-834; Submitted on the Record;
Issued May 7, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she was disabled for work on August 28 and October 10, 2000 and January 6 and 7, 2001, due to her accepted knee injury.

On September 5, 2000 appellant, then a 59-year-old registered nurse, filed a traumatic injury claim alleging that she injured her right knee when she tripped and fell in the performance of duty on August 27, 2000. Appellant stopped work on the day of her injury and she did not report for duty on August 28, 2000. She returned to work on her next scheduled workday, August 31, 2000. The Office of Workers' Compensation Programs initially denied the claim; however, in a decision dated June 20, 2001, the Office hearing representative accepted appellant's claim for internal derangement of the right knee.

On September 6, 2001 appellant filed a claim requesting compensation for 35 hours of leave during the period August 27, 2000 through January 7, 2001. Appellant claimed three hours of lost wages on August 27, 2000, and eight hours each on August 28 and October 10, 2000 and January 6 and 7, 2001.

By letter dated October 3, 2001, the Office acknowledged receipt of appellant's claim and informed her that there was insufficient medical evidence in the file to support either total or partial disability for August 28 and October 10, 2000 and January 6 or 7, 2001. The Office informed appellant that medical evidence substantiating that the hours claimed were related to, and necessitated by, her accepted condition was required before her claim for these four dates could be approved.

In a decision dated February 22, 2002, the Office denied appellant's claim for wage-loss compensation for August 28 and October 10, 2000 and January 6 and 7, 2001. The Office found that there was no medical evidence to establish that appellant was either partially or totally disabled for work on these dates due to her accepted condition. Following an oral hearing held at

appellant's request, an Office hearing representative affirmed the denial of wage-loss compensation, in a decision dated December 5, 2002.

The Board finds that appellant met her burden of proof to establish that she was disabled for work on August 28, 2000, due to her accepted right knee injury.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including the fact that any disability or specific condition for which compensation is claimed are causally related to the employment injury.²

Appellant's regular shift is from 12:00 midnight until 8:00 a.m. and appellant's injury occurred at 2:50 a.m. on August 27, 2000, approximately three hours into her shift. At the hearing, appellant asserted that the emergency room physician who treated her on August 27, 2000 had excused her from working on August 28, 2000. The record contains a report of employee's emergency treatment signed by Dr. U. Gordon on August 27, 2000, which indicates only that appellant "may be off duty till am." Admittedly, the meaning of this notation is somewhat unclear, as it was in the early morning when appellant was injured. In addition, the record contains an accompanying treatment note from Dr. Gordon, which contains a preprinted notation stating that the treating physician "may authorize off-duty status only until 8:00 a.m. of the next administrative workday." While open to interpretation, as appellant's injury occurred on August 27, 2000, it appears from this preprinted notation that appellant could have been authorized to be off work until 8:00 a.m. on August 28, 2000, which was the next administrative workday. Thus, viewing all available evidence in the light most favorable to appellant, her testimony that she was excused from work on August 28, 2000 by the emergency room physician, taken together with the notations on the treatment notes, is sufficient to establish that appellant was medically excused from work for the remainder of her shift on August 27, 2000 and her shift which began at midnight on August 28, 2000 and ran to 8:00 a.m. on August 28, 2000.

The Board further finds that appellant has not met her burden of proof to establish disability for work on October 10, 2000, January 6 and 7, 2001.

With respect to appellant's October 10, 2000 work absence, while the record contains a partially illegible employee health record completed on October 10, 2000, there is no discernible indication in this note, or elsewhere in the record, that appellant actually received treatment on this date, or was totally disabled for work on this date. In addition, the record contains an October 16, 2000 treatment note from Dr. Audley M. Mackel, III, appellant's treating Board-certified orthopedic surgeon, stating that appellant could continue working "which she has been able to since the time of her injury on August 27, 2000."

Concerning appellant's absence from work on January 6 and 7, 2001, while the record contains numerous additional treatment notes from Dr. Mackel, including a note dated January 4,

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

2001, in which the physician recommended diagnostic testing and follow-up in one month, the record contains absolutely no evidence that appellant either received treatment, or was totally disabled, on either January 6 or 7, 2001. While time missed from work due to medical treatment for an employment-related injury would be compensable,³ appellant has not presented evidence that she missed time from work to attend medical appointments. In addition, at the hearing, appellant did not assert that she received medical treatment on January 6 or 7, 2001, but testified that she stayed home from work these days because she had difficulty walking. Consequently, as appellant has not submitted sufficient evidence to establish that she received medical treatment for her accepted condition or otherwise sustained any periods of employment-related disability on October 10, 2000 and January 6 or 7, 2001, she failed to meet her burden of proof and the Office properly denied wage-loss compensation for these three dates.

The December 5, 2002 decision of the Office of Workers' Compensation Programs is affirmed in part and modified in part.

Dated, Washington, DC
May 7, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Charles E. Robinson*, 47 ECAB 536 (1996); *Vincent E. Washington*, 40 ECAB 1242, 1248 (1989).