

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

F.J., Appellant

and

**SMALL BUSINESS ADMINISTRATION,
GOVERNMENT CONTRACTING & BUSINESS
DEVELOPMENT, Washington, DC, Employer**

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) **Docket No. 10-1303**
) **Issued: April 22, 2011**
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 17, 2010 appellant filed a timely appeal from a September 28, 2009 Office of Workers' Compensation Programs' decision which affirmed an Office decision denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she had a total of five hours of disability on October 21 and November 20, 2008 causally related to her accepted employment condition.

FACTUAL HISTORY

On April 18, 2007 appellant, then a 53-year-old program analyst filed an occupational disease claim for neck and shoulder pain as a result of performing repetitive work duties. She

¹ 5 U.S.C. §§ 8101-8193.

became aware of her illness on December 14, 1998 when she was on travel for work and luggage fell on her neck and arm. The Office accepted appellant's claim for right shoulder, upper right arm and neck sprain. Appellant did not stop work.

Appellant was treated by Dr. Leonid Selya, a Board-certified orthopedist, from June 6, 2007 to December 17, 2008 for neck and low back pain which appellant attributed to repetitive work duties. Dr. Selya noted appellant's history was significant for bilateral carpal tunnel syndrome and diagnosed cervical myelopathy and cervical myomalacia due to degenerative disc disease at C3-4, C4-5, C5-6 and C6-7 and discogenic back pain due to degenerative disc disease at L4-5. He returned appellant to work.

Appellant came under the treatment of Dr. Baljeet S. Sethi, a Board-certified neurologist, on June 11 to November 20, 2008 for recurrent neck and back pain which started in 1998 after a work injury. On September 17, 2008 Dr. Sethi treated appellant for right shoulder and lower back pain and diagnosed cervical radiculopathy, myelopathy, recurrent chronic headache, lumbosacral spondylosis and severe lumbosacral strain. In an October 21, 2008 report, he noted treating appellant on that date for intermittent headaches, neck and shoulder pain and muscle spasm. Dr. Sethi noted findings of mild weakness of the handgrip bilaterally, mildly positive Tinel's sign on the right, diminished reflexes, normal sensory examination, normal lower extremities strength bilaterally with spasm and tenderness of the cervical and lumbosacral spine. In a November 20, 2008 treatment report, he treated appellant on that date. Appellant reported feeling better with infrequent headaches but she continued to experience neck, back and right wrist pain and was using a splint. Dr. Sethi noted that the physical examination revealed weakness of the handgrip, more prominent on the right, positive Tinel's sign bilaterally, normal reflexes and no gross incoordination with mild spasm and tenderness of the cervical spine. He advised that appellant's condition was stable and she would be seen in one month.

On January 8, 2008 appellant submitted CA-7 forms, claiming compensation for total disability for the period October 12 to 25, 2008 and November 9 to 22, 2008. In attached CA-7a time analysis forms, however, she had only reimbursement for 2.5 hours of leave each for doctor's appointments on October 21 and November 20, 2008.

In a letter dated January 12, 2009, the Office requested that appellant submit additional information with regard to her claim for compensation beginning October 12, 2008. It requested that she submit medical evidence establishing that she was totally disabled due to the accepted condition for the period claimed.

Appellant submitted a January 15, 2009 report from Dr. Sethi who treated appellant for insomnia, neck, left shoulder and lower back pain and numbness in the extremities. Dr. Sethi opined that appellant was improving with conservative treatment. Also submitted were physical therapy reports dated December 18 and 31, 2008.

In a decision dated February 12, 2009, the Office denied appellant's claim for compensation for total disability for the period October 12 to 25, 2008 and November 9 to 22, 2008 on the grounds that the evidence did not establish that appellant's total disability was due to her accepted work injury.

On March 6, 2009 appellant requested a review of the written record. She submitted a February 2, 2009 report from Dr. Steven C. Scherping, a Board-certified neurologist, who noted appellant's history and diagnosed multilevel degenerative cervical disc disease with mild cervical spinal stenosis, left shoulder bursitis/impingement, lumbar degenerative spondylolisthesis and bilateral carpal tunnel syndrome. Appellant was treated by Dr. Selya on February 25 and July 8, 2009. Dr. Selya noted appellant's diagnosis and status. Other reports from Dr. Sethi dated April 15 to August 24, 2009, noted appellant's treatment for headaches and neck and back pain with gradual improvement. Appellant was treated by Dr. Ryan M. Jander, a Board-certified orthopedist, from July 6 to August 17, 2009, for recurrent right shoulder pain stemming from a 1998 injury. Dr. Jander diagnosed right shoulder impingement and right shoulder acromioclavicular joint arthritis and noted that appellant could work with restrictions.

In a decision dated September 28, 2009, the hearing representative affirmed the Office decision dated February 12, 2009.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.² Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.³ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁴ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁵

The Board will not require the Office 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. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁶

The Office's procedure manual provides that wages lost for compensable medical examination or treatment may be reimbursed.⁷ It notes that a claimant who has returned to work

² See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

³ *Id.*

⁴ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

⁶ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (December 1995).

following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.⁸

ANALYSIS

The Office accepted appellant's claim for right shoulder, upper right arm and neck sprain. Appellant filed claims for wage-loss compensation for 2.5 hours of leave without pay on October 21, 2008 and 2.5 hours of leave without pay on November 20, 2008 to attend doctor's appointments. The Office found that she did not support her claim of disability, noting that the evidence did not establish that her disability was due to her accepted work injury.

On October 21, 2008 appellant claimed 2.5 hours of leave without pay. The record reflects that she was examined by Dr. Sethi on that date in follow-up for complaints of headaches, neck and shoulder pain and muscle spasm. Dr. Sethi noted findings upon physical examination of the neck and right arm and noted that appellant would be seen in one month. On November 20, 2008 appellant claimed 2.5 hours of leave without pay. She was treated on that date by Dr. Sethi in follow-up. He found that appellant showed some improvement but continued to experience constant neck, back and right wrist pain and has been using a splint. Dr. Sethi noted the examination findings for the right arm and neck. He advised that appellant's condition was stable. The Board finds that the record confirms that appellant was treated by Dr. Sethi on October 21 and November 20, 2008 for complaints generally consistent with her accepted right shoulder, upper right arm and neck sprain.

The leave records reflect that appellant used 2.5 hours of leave without pay on October 21 and on November 20, 2008, the dates that she was treated by Dr. Sethi. As noted under Office procedures, appellant is entitled to compensation for wage loss related to a reasonable time spent traveling to and being examined for her accepted conditions. Contrary to the Office's decision, the Board finds the medical evidence from Dr. Sethi is sufficient to establish that he treated her for her accepted conditions on the claimed dates and there is no evidence supporting that the 2.5 hours on each date was unreasonable. The Board finds that appellant is entitled to 2.5 hours of compensation for wage loss incidental to medical treatment for her accepted conditions on both October 21 and November 20, 2008.⁹

CONCLUSION

The Board finds that appellant is entitled to reimbursement for wages lost for medical treatment for 2.5 hours each on October 21 and November 20, 2008.

⁸ See also *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2009 is reversed.

Issued: April 22, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board