

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

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**W.I., Appellant**

**and**

**DEPARTMENT OF COMMERCE,  
INTERNATIONAL TRADE  
ADMINISTRATION, Tokyo, Japan, Employer**

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**Docket No. 10-1848  
Issued: July 25, 2011**

*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 June 25, 2010 appellant filed a timely appeal from a December 29, 2009 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation.<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. See 20 C.F.R. § 501.3(f)(2). As OWCP's decision was issued December 29, 2009, the 180-day computation begins December 30, 2009. Since using July 7, 2010, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the postmark is June 25, 2010, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has established that she is entitled to compensation for time attending medical appointments from January 1, 1996 through December 31, 2006.

## FACTUAL HISTORY

On May 28, 1992 appellant, then a 36-year-old computer assistant and Japanese citizen, filed a claim alleging that on May 21, 1992 she sustained an injury to her head, neck and shoulders when she was hit on the head by a chair thrown from a second floor. At the time of her injury, she was on travel status in Washington, DC. OWCP accepted the claim for a head contusion, concussion and postconcussion syndrome. The employing establishment involuntarily terminated appellant's employment on December 18, 1992 during her probationary period.

Appellant requested compensation for disability beginning May 28, 1992. By decision dated April 8, 1996, OWCP determined that she had established that she was disabled from employment for 547 hours from May 22 through December 27, 1993. Because appellant was a Japanese citizen, OWCP compared the amount that she was entitled to under FECA and the amount to which she would have been entitled under the Workmen's Accident Compensation Insurance Law (WACIL) applicable in Japan. OWCP noted that she was not a citizen of the United States and as such she received the lesser of the amount owed under either FECA or the comparable law of Japan. It determined that appellant was entitled to the lesser amount of \$9,534.21 under WACIL and paid her this amount as compensation for her work injury.<sup>3</sup>

Appellant requested an oral hearing, which was held on December 22, 1997. In a decision dated December 30, 1998, a hearing representative determined that she was entitled to \$14,527.50 under FECA and \$12,717.75 under WACIL as compensation for disability from May 28, 1992 through November 13, 1995. He found, however, that appellant might be entitled to an additional award for a permanent impairment and remanded the case for OWCP to refer her for a second opinion examination.

By decision dated May 11, 1999, OWCP found that appellant was entitled to an additional award under WACIL of \$83,896.40 for a permanent impairment of the ninth grade and \$3,872.97 for a physical handicap allowance, for a total of \$100,486.52. It determined that under FECA she was entitled to \$14,527.50 for wage-loss compensation. OWCP found that appellant was not entitled to a schedule award under FECA as she did not have an impairment of a scheduled member or function. It awarded her that lesser amount of compensation owed under FECA, \$14,527.50 or an additional \$4,993.29.

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<sup>3</sup> Section 8137 of FECA provides compensation to an employee or dependent who is neither a citizen nor a resident of the United States or Canada. Subsection (a) provides that, when OWCP finds that the amount of compensation payable to such an employee or dependent under FECA is substantially disproportionate to compensation for disability or death payable in similar cases under local law, it may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases. Benefits paid, however, may not exceed those payable under FECA. Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Foreign National Claims*, Chapter 4.801.9 (September 1994).

Appellant, through her attorney, requested an oral hearing which was held on September 27, 2004. In a decision dated December 13, 2004, the hearing representative affirmed the May 11, 1999 decision. By decision dated June 15, 2006, OWCP denied modification of its December 13, 2004 decision.

On June 8, 2007 appellant again requested reconsideration. She argued that OWCP should reconsider the extent of her disability from the time she stopped work until she entered a vocation as a Buddhist nun on May 5, 1996. In an accompanying May 13, 2007 statement, appellant noted that she had a difficult time getting a job at the same level as her date-of-injury position due to her “diminished power and health.” After becoming a nun she “did not have to worry about household expenses” such as food, health insurance and utilities.

By decision dated August 31, 2007, OWCP modified its June 15, 2006 decision. It found that it had incorrectly calculated the number of hours of disability as 750 rather than 725.50. OWCP further found that it failed to include cost-of-living increases. It calculated the amount that appellant was entitled to under FECA as \$14,189.02 rather than \$14,527.50 and thus found an overpayment of compensation.<sup>4</sup> OWCP determined that the medical evidence was insufficient to show that she sustained a permanent impairment under FECA or any employment-related disability from 1996 to 2006.

On June 12, 2008 appellant requested reconsideration. On July 1, 2008 she submitted a claim for wage loss from January 1, 1996 through December 1, 2007. On the form appellant related that she did not work for profit because as a Buddhist nun she received income only as mendicant. She submitted a request for travel expenses. Appellant also submitted a medical report showing a list of appointments from January 23 to October 30, 2007.

In a decision dated September 29, 2008, OWCP modified its August 31, 2007 decision after finding that the medical evidence supported that appellant sustained wage loss for an additional 41 hours from January 23 to October 30, 2007. It noted that she was not entitled to a schedule award as the accepted condition was not to a scheduled member. OWCP found that benefits remained payable under FECA rather than WACIL and found that appellant was entitled to an additional \$1,093.68, for total entitlement of \$15,285.70.

By decision dated January 9, 2009, OWCP notified appellant that it was paying medical and pharmacy bills submitted and also paying travel expenses. It advised her in the future that it required the bills to show treatment for an accepted condition. OWCP denied payment for pharmacy bills from 2005 and 2006 as the bills did not provide the medication obtained. It further denied payment for bills from orthopedic and massage clinics as there were no medical reports indicating that the treatment was for an accepted condition.

On June 30, 2009 appellant requested reconsideration. She argued that she was entitled to 948.5 hours of wage-loss compensation for earnings lost due to medical treatment from January 1, 1996 through December 31, 2006 under FECA. Appellant noted that OWCP had paid wage loss for 41 hours of time lost from January 1 to December 31, 2007.

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<sup>4</sup> OWCP also found that appellant was entitled to \$106,374.40 under WACIL but noted that FECA benefits remained the lesser of the two systems.

In a medical report dated June 23, 2009, Dr. Akira Kinebuchi opined that appellant required 948.5 hours for time going to clinics and obtaining medical treatment from January 1, 1996 through December 31, 2006. Appellant submitted a list of medical appointments from January 1996 through December 31, 2006. She requested compensation for hours spent receiving treatment. Appellant described the time she spent commuting to medical appointments and waiting at clinics.<sup>5</sup>

By decision dated December 29, 2009, OWCP denied modification of its September 29, 2008 decision.<sup>6</sup> It found that appellant was not entitled to compensation for lost wage from January 1, 1995 to December 31, 2006 as she had not shown that she had any earnings during this period of time. OWCP noted that she became a Buddhist nun and thus no longer had income from employment.

On appeal, appellant related that she became a Zen Buddhist nun in May 1996. She supported herself through mendicant or begging and providing missionary services. Appellant related that she worked hard and received donations rather than wages. She noted that the time she spent obtaining medical treatment decreased the time she could perform religious services.

### **LEGAL PRECEDENT**

Section 8103 of FECA<sup>7</sup> provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.<sup>8</sup> The Board has previously interpreted this provision of FECA, which requires payment of expenses incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services. Case law makes clear that 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.<sup>9</sup> The rationale for this entitlement is that during such required examination and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.<sup>10</sup>

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<sup>5</sup> OWCP paid appellant compensation for transportation expenses to medical appointments.

<sup>6</sup> By letter dated August 12, 2009, OWCP explained that it had reimbursed her request for compensation for medical appointments, including the bills from 2005 and 2006 that it had earlier denied and had paid her medical, pharmacy and transportation expenses for 2007. It indicated that it was not authorized to pay postage expenses or bank fees for cashing checks.

<sup>7</sup> 5 U.S.C. § 8101 *et seq.*

<sup>8</sup> 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>9</sup> *See Antonio Mestries*, 48 ECAB 139 (1996); *Henry Hunt Searles, III*, 46 ECAB 192 (1994).

<sup>10</sup> *Id.*

## ANALYSIS

OWCP accepted that appellant sustained a head contusion, concussion and postconcussion syndrome due to a May 21, 1992 employment injury. The employing establishment terminated her from employment on December 18, 1992. Appellant received compensation under FECA for intermittent hours of disability and reimbursement for medical expenses and transportation to medical appointments.<sup>11</sup> She became a Buddhist nun in May 1996.

On appeal, appellant requested wage-loss compensation for 948.5 hours spent obtaining medical treatment from January 1, 1996 through December 31, 2006. She submitted medical evidence in support of her claim. As noted, 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.<sup>12</sup> The rationale for this entitlement is that during such required examination and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.<sup>13</sup>

Appellant has not submitted any evidence showing that, while undergoing medical treatment and during the time incidental to treatment, she lost earnings from employment. In *Antonio Mestres*,<sup>14</sup> a claimant requested compensation for 11 hours of time that he spent undergoing examinations required by OWCP and traveling to and from the examinations. OWCP denied his claim as the examinations occurred during hours that he was not scheduled to work. The Board affirmed, finding that he had not lost any wages incidental to the examinations and thus was not entitled to compensation.

Appellant has not submitted evidence showing that she was employed from January through May 1996, prior to becoming a nun or after becoming a nun beginning May 1996. She related that she did not receive earnings from employment but instead donations through mendicant or begging. As appellant has not show that she sustained any loss of wages during evaluations, she is not entitled to any monetary compensation for wage loss.

On appeal, appellant argues that she lost time to beg and to perform religious services for others. She notes that she received donations rather than wages. As appellant has not established, however, that she lost earnings due to attending medical appointments, she has not met her burden of proof.

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<sup>11</sup> *Supra* note 1.

<sup>12</sup> *See supra* note 8.

<sup>13</sup> *Id.*

<sup>14</sup> *See Antonio Mestres, supra* note 8.

**CONCLUSION**

The Board finds that appellant has not established that she is entitled to compensation for lost wages for attending medical appointments from January 1, 1996 through December 31, 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 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