

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

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E.C., Appellant )

and )

DEPARTMENT OF THE NAVY, NAVAL )  
FACILITIES ENGINE COMMAND, )  
Philadelphia, PA, Employer )

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**Docket No. 11-2089  
Issued: May 21, 2012**

*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 September 23, 2011 appellant filed a timely appeal from the August 18, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant established intermittent periods of disability from January 2, 2000 through September 26, 2001.

**FACTUAL HISTORY**

On September 8, 1999 appellant, then a 51-year-old high-voltage electrician, filed an occupational disease claim alleging that he developed non-Hodgkin's lymphoma as a result of

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

exposure to polychlorinated biphenyls (PCBs) and trichloroethylene (TCE) in the workplace. He retired from the employing establishment in September 2001. In an August 6, 2004 decision, OWCP accepted the claim for Grade I to II B-cell follicular lymphoma but found, based on an April 28, 2004 second opinion evaluation of Dr. Mark G. Graham, Board-certified in occupational medicine, that the effects of this condition had ceased no later than December 31, 2000.<sup>2</sup> Compensation benefits were paid, including compensation for the period April 12 to December 31, 1999.

On June 27, 2005 appellant filed a claim for intermittent disability for the period January 2, 2000 through September 26, 2001. He claimed a total of 949.5 hours leave without pay. In a May 16, 2006 letter, OWCP advised appellant that medical evidence addressing total disability for work for the period claimed was needed, including a well-rationalized statement documenting why the work-related condition prevented him from working during that period, based on an accurate statement of facts and the medical record. It paid compensation for nine hours lost time on September 13, 2000 and May 21, 2001 as the medical evidence on file documented work-related treatment on those dates.

In a January 28, 2008 letter, Dr. David O. Carpenter, an environmental health specialist, stated that appellant should receive compensation for the years 2000 and 2001 as it takes an average of 10 years to rid the body of half of the PCBs to which one has been exposed, even if there is no subsequent additional exposure. He stated that appellant went back to work in 2000 and 2001, even though he was ill, because he had to support himself. Dr. Carpenter used a large amount of leave that should be repaid and had to retire after that time because of his illness.

In an August 11, 2009 letter, OWCP indicated that the medical evidence in file was insufficient to support his claim for disability for the period January 2, 2000 through September 26, 2001 as there was insufficient medical evidence to support his claim. It noted that medical documentation was sufficient to support nine total hours of leave on September 13, 2000 and May 2, 2001, for which appellant received compensation. Appellant was accorded 30 days to submit additional evidence. No new evidence was received.

By decision dated October 8, 2009, OWCP denied the claim for the remaining 940.5 intermittent hours claim on the basis no medical documentation had been submitted supporting disability or medical care for the dates claimed.

On October 20, 2009 appellant requested an oral hearing before an OWCP hearing representative, which was held on March 12, 2010 by video conference. He testified that during the period of disability he was undergoing chemotherapy and radiation treatment with Dr. Ronald I. Cantor, a Board-certified oncologist. Appellant testified that from 1999 to 2001 he was tired and weak due to treatment and only averaged working about 15 hours per week. He indicated that he did not know he could file claims for compensation at the time and that he resigned from his position as he was not able to work full time in 2001. Appellant stated that he

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<sup>2</sup> In his April 28, 2004 report, Dr. Graham diagnosed Grade I to II B-cell follicular lymphoma in complete remission. He stated that appellant's functional status was impaired during treatment periods in 1999 and 2000. Current functional capacity was normal and appellant admitted that he could work as a high-voltage electrician, although this work is no longer available to him.

started working part time for the Pennsylvania Liquor Control Board in 2004. He also testified regarding his second opinion examination in 2004 with Dr. Graham.

In an October 27, 2009 report, Dr. Carpenter reiterated the contents of his January 28, 2009 report.

By decision dated June 1, 2010, an OWCP hearing representative affirmed the October 8, 2009 decision finding that the medical evidence of record was insufficient to support the claimed intermittent period of disability for the period January 2, 2000 to September 26, 2001.

In a May 16, 2011 letter, appellant requested reconsideration and submitted additional evidence. Evidence received included papers filed in the district court for the Eastern District of Pennsylvania. In a November 16, 2010 report, Dr. Cantor noted treating appellant for B-cell lymphoma in 2000 and 2001. Appellant received both chemotherapy and radiation treatment at that time. Dr. Cantor indicated that appellant “tolerated the treatment poorly and suffered significant toxicity and modest disability as a consequence.”

By decision dated August 18, 2011, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>3</sup> 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.<sup>4</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>5</sup> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>6</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any 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>7</sup>

Appellant’s burden of proving he was disabled on particular dates requires that he furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.<sup>8</sup> Where no such rationale is present,

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<sup>3</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>4</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</sup> *D.I.*, 59 ECAB 158 (2007).

<sup>7</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>8</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

the medical evidence is of diminished probative value.<sup>9</sup> Generally, findings on examination are needed to justify a physician's opinion that a claimant is disabled for work.<sup>10</sup>

An injured employee may be entitled to compensation for lost wages incurred while obtaining authorized medical services.<sup>11</sup> This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location.<sup>12</sup> As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments.<sup>13</sup> However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.<sup>14</sup>

### ANALYSIS

OWCP accepted that appellant's Grade I to II B-cell follicular lymphoma was work related and that appellant established disability for the period March 1 to December 31, 1999. Appellant subsequently requested intermittent periods of compensation for the period January 2, 2000 through September 26, 2001. OWCP paid compensation for nine hours of time lost on September 13, 2000 and May 21, 2001. However, it denied compensation for the remaining 940.5 hours leave without pay appellant used during the period January 2, 2000 through September 26, 2001.

For the period January 2, 2000 through September 26, 2001, appellant claimed 949.5 total hours of leave without pay. The medical evidence fails to support additional temporary total disability or medical appointments beyond the nine hours deemed payable on September 13, 2000 and May 21, 2001. Dr. Carpenter, in his reports of January 28, 2008 and October 27, 2009, stated that appellant should receive compensation for the years 2000 and 2001 as it takes an average of 10 years for one to rid the body of half of the PCBs to which one has been exposed, even if there is no subsequent exposure. While he stated that appellant went back to work in 2000 and 2001, even though he was ill and used large amounts of leave, he failed to identify any specific dates of total disability or provide a medical explanation as to how appellant's PCB exposure caused disability during that time period. Dr. Cantor, in his November 16, 2010 report, stated that appellant received both chemotherapy and radiation treatment during 2000 and 2001 from which he "tolerated the treatment poorly and suffered significant toxicity and modest disability as a consequence." However, he failed to identify any particular period of disability or the dates of when appellant underwent such treatment. Furthermore, Dr. Cantor failed to provide

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<sup>9</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>10</sup> *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

<sup>11</sup> *See* 5 U.S.C. § 8103(a) (2006); *Gayle L. Jackson*, 57 ECAB 546, 547-48 (2006).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16a (October 2009).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

<sup>14</sup> *Id.*

a medical explanation as to how such treatment disabled appellant. There is no other medical evidence to support temporary total disability for the periods claimed. Thus, appellant has not established entitlement to compensation for total disability or wage-loss compensation during the claimed period.

Appellant has not submitted a well-reasoned medical opinion explaining how his claimed temporary disability for 940.5 hours for the period January 2, 2000 through September 26, 2001 was either due to medical treatment for his accepted employment injury or causally related to his employment injury. Nowhere does a physician explain how appellant's condition is causally related to the accepted conditions or the medical evidence support compensation for medical appointments for the periods of disability and dates claimed which were not awarded by OWCP. The Board finds that appellant has not met his burden of proof to establish that his claimed disability is causally related to his accepted conditions.

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 did not establish entitlement to wage-loss compensation for temporary total disability for 940.5 hours during the period January 2, 2000 through September 26, 2001.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated August 18, 2011 is affirmed.

Issued: May 21, 2012  
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