United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 18-0371**
	)	**Issued: June 11, 2019**
DEPARTMENT OF DEFENSE, EDUCATION ACTIVITY, Alexandria, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 12, 2017 appellant filed a timely appeal from a June 21, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to wage-loss compensation for the period March 20 to 22, 2017 causally related to her accepted November 18, 2016 employment injury.

FACTUAL HISTORY

On December 14, 2016 appellant, then a 61-year-old teacher, filed a traumatic injury claim (Form CA-1) alleging that on November 18, 2016 she was knocked unconscious when a student

[1] 5 U.S.C. § 8101 *et seq.*

ran into her while in the performance of duty.[2] She reported having injured her head, neck, shoulder, back, buttocks, right arm, and leg. Appellant stopped working on November 18, 2016, and resumed work on November 21, 2016.

Emergency department treatment records dated November 18, 2016 indicated that appellant was unintentionally hit by a student running through the hallway. Appellant was discharged without restrictions. She subsequently participated in physical therapy from December 19, 2016 through February 21, 2017.

On May 4, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for March 20, 21, and 22, 2017. She claimed eight hours of lost wages each day for doctor visits. In support of her claim, appellant submitted a March 20, 2017 work excuse note for Dr. Jason Palmer, a Board-certified family practitioner, who requested that she be provided a three-day period off work to attend medical appointments and coordinate care.[3] Dr. Palmer advised that she could return to work on March 23, 2017.

Appellant also submitted a March 21, 2017 note from Dr. Carlo Falanga, a neurologist, from Naples, Italy. Dr. Falanga's letterhead and note is handwritten in Italian.

On May 8, 2017 OWCP advised appellant that her claim was accepted for closed-head injury with loss of consciousness. It further explained that the current record was insufficient to accept an aggravation of her preexisting lumbar condition.

In a development letter dated May 8, 2017, OWCP advised appellant of the deficiencies of her wage-loss compensation claim. It also explained that generally it affords four hours of leave without pay (LWOP) for medical appointments, and it was incumbent upon appellant to provide justification for why she required more than four hours LWOP for a basic medical appointment on the days claimed. OWCP afforded appellant 30 days to provide the necessary evidence to establish her claim.

In a May 19, 2017 response, appellant requested a 30-day extension to submit the requested information. She noted that she was currently working in Italy, and the doctors there did not write or speak English, apart from those physicians affiliated with the U.S. Naval Hospital.

In a May 23, 2017 report, Dr. Palmer noted that appellant had been under his care for a work-related muscle injury. He explained that appellant's initial therapy was based at the U.S. Naval Hospital in Naples, Italy and was unsuccessful at managing her condition. Dr. Palmer reported that appellant researched medical care in the local Italian community, during which time she physically visited each site to assess compatibility for her care. Language barriers, coordination difficulties, and the physically disparate nature of the facilities apparently resulted in a great deal of time spent by appellant in establishing care. Dr. Palmer explained that it "may require a significant amount of time for a private individual to coordinate specialty physical therapy care in the local economy." By comparison, he indicated that active duty individuals had

[2] At the time of her injury, appellant worked at a school in Naples, Italy.

[3] Dr. Palmer is a Lieutenant Commander (LCDR) stationed at the U.S. Naval Hospital in Naples, Italy.

case managers and patient liaison offices staffed by several individuals whose sole responsibility was to arrange just what appellant accomplished for herself.

In a medical absence form, Dr. Palmer provided a chronology of appellant's activities from March 20 to 22, 2017 as she sought to arrange medical treatment from various healthcare providers in Naples, Italy. He indicated that appellant's medical appointments and care was for an employment injury which resulted in non-preexisting chronic nerve and muscle pain from an accident that occurred on November 18, 2016; and persistent pain from blunt trauma to the head and spine from being knocked down at work.

By decision dated June 21, 2017, OWCP denied wage-loss compensation for the period claimed. It found that the evidence of record did not support that appellant lost time from work to obtain medical care for her accepted, work-related medical condition. OWCP noted that appellant's treatment in question were for chronic persistent pain in the shoulder/neck, lower back, and leg. It explained that if appellant's physician deemed that she suffered additional injuries as a result of the November 18, 2016 traumatic injury, the acceptance of the claim could be expanded to include additional conditions. However, the physician would have to submit a complete and comprehensive narrative report "in English." OWCP also noted that Dr. Palmer referenced that appellant required three 8-hour days to coordinate her medical care and treatment and this response was insufficient to support eligibility for 8 hours of LWOP for a medical appointment over a three-day period. It concluded that a clear and definitive discussion regarding treatment and services rendered that would encompass an entire eight-hour day over three days would be required from the treating provider.

LEGAL PRECEDENT

Section 8102(a) of FECA[4] sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general the term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."[5] This meaning, for brevity, is expressed as disability for work.[6] For each period of disability claimed, an employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.[7] Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues, which must be proved by the preponderance of the reliable probative and substantial medical evidence.[8]

[4] 5 U.S.C. § 8102(a).

[5] 20 C.F.R. § 10.5(f); *see also William H. Kong*, 53 ECAB 394 (2002).

[6] *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[7] *See William A. Archer*, 55 ECAB 674 (2004).

[8] *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used under FECA, and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[9]

OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.[10] It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination, testing, or treatment and such employee may be paid compensation for wage loss while obtaining medical services or treatment, including a reasonable time spent traveling to and from the medical provider's location.[11] For a routine medical appointment, a maximum of four hours may be allowed.[12] 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 medical care.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation for the period March 20 to 22, 2017 causally related to her employment injury.

In his reports, Dr. Palmer noted that appellant required a three-day period off work to attend medical appointments and coordinate care. On May 23, 2017 he also noted that appellant had been under his care for a work-related muscle injury. Dr. Palmer explained that appellant's initial therapy was based at the U.S. Naval Hospital in Naples, Italy and was unsuccessful at managing her condition. He reported that appellant researched medical care in the local community, during which time she physically visited each site to assess compatibility for her care, which resulted in a great deal of time spent in establishing care.

OWCP has only accepted a closed-head injury due to the November 18, 2016 employment incident. Although Dr. Palmer indicated that appellant suffered a work-related "muscle injury" which required treatment during the claimed period, he failed to explain in detail how the November 18, 2016 employment injury either caused or contributed to appellant's "muscle injury." He provided a chronology of appellant's activities in seeking medical treatment during

[9] *Id*.

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

[11] *Id.* at Chapter 2.901.19a; *see Amelia S. Jefferson*, 57 ECAB 183, 188 (2005).

[12] *See supra* note 11 at Chapter 2.901.19c.

[13] *Id.*

the claimed three-day period, but the treatment was not for appellant's accepted head injury. Therefore, the Board finds that Dr. Palmer's reports are insufficient to establish appellant's claim for wage-loss compensation for the period March 20 to 22, 2017, causally related to her accepted employment injury.

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 not met her burden of proof to establish entitlement to wage-loss compensation for the period March 20 to 22, 2017 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board