United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 18-1634**
	)	**Issued: May 13, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Mill Valley, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 August 28, 2018 appellant, through counsel, filed a timely appeal from a July 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the July 20, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met his burden of proof to establish intermittent disability for the period May 4 to December 5, 2017 causally related to his accepted November 14, 2003 employment injury.

FACTUAL HISTORY

On December 8, 2003 appellant, then a 35-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 14, 2003 he sustained head and upper body injuries during a motor vehicle accident (MVA) when his postal vehicle was rear ended by another vehicle while in the performance of duty. He stopped work on November 15, 2003. By decision dated February 6, 2004, OWCP accepted the claim for cervical sprain. It paid appellant for intermittent periods of disability on the supplemental rolls commencing December 30, 2003 and for temporary partial disability compensation through June 1, 2004 when he returned to full-time modified-duty work.

Appellant continued to treat with his attending physician Dr. Michael Hebrard, Board-certified in physical medicine and rehabilitation. In a May 2, 2017 medical report, Dr. Hebrard diagnosed sprain of joints and ligaments of the neck and bicipital bilateral shoulder tendinitis. He opined that appellant's employment-related condition was still present and that appellant developed an emotional condition which was a consequential injury of his accepted neck condition. Dr. Hebrard advised that appellant's modified work restrictions were still necessary and remained unchanged. He reported that appellant would be referred to a psychiatrist to determine the extent of his emotional condition and causal relationship to factors of his physical impairment in relationship to his occupational injury.

In a May 4, 2017 prescription note, Dr. George Karalis, a treating psychiatrist, reported that appellant presented for therapy on that date. In a September 14, 2017 note, Dr. Karalis reported that appellant had an appointment on that date.

On October 27, 2017 appellant filed a claim for compensation (Form CA-7) for leave without pay for intermittent dates from February 22 to October 10, 2017 claiming 25.5 hours of leave.

In a development letter dated November 2, 2017, OWCP requested that appellant submit additional evidence to establish his claim for compensation for disability for certain claimed intermittent dates. It noted dates for which compensation for disability would be paid, but explained that he failed to establish that he was disabled for 2.5 hours on May 4, 2017 and 2 hours on September 14, 2017 as the appointment slips provided indicated that he attended a psychiatric appointment. OWCP advised appellant that compensation would only be paid for medical appointments related to his accepted condition of neck sprain. It afforded him 30 days to submit additional evidence.

In a December 5, 2017 medical report, Dr. Hebrard reported that he evaluated appellant on that date due to discomfort and pain in the neck. He diagnosed bilateral bicipital shoulder tendinitis, brachial plexus disorders, post-traumatic stress disorder, pain disorder with related

psychological factors, cervical spinal stenosis, cervical radiculopathy, and connective tissue and disc stenosis of intervertebral foramina of cervical region. Given the complexity of appellant's condition, Dr. Hebrard opined that on a more probable than not basis, that the relationship between the conditions found on clinical examination and the factors of appellant's federal employment of twisting and bending of the head and neck on a repetitive basis caused an increased amount of stress along the intervertebral disc of the cervical spine, particularly at C4 through C6 intervertebral region. Dr. Hebrard reported that appellant developed a chronic pain condition as a result of his work-related cervical spine condition. He noted that appellant continued to work and also developed an emotional condition due to frequent pain of his diagnosed condition, contributing to his depression. Dr. Hebrard noted that appellant's nonwork-related issues in terms of family problems may be causing his clinical concern due to the stress of not being able to work at the capacity he is accustomed to. He continued to opine that appellant's emotional condition of depression arose as a consequential injury from appellant's accepted employment injury. Dr. Hebrard referred appellant to Dr. Karalis, a treating psychiatrist, for evaluation and an opinion on the causal relationship pertaining to appellant's emotional condition. His modified work restrictions remained unchanged.

By decision dated December 14, 2017, OWCP denied appellant's claim for compensation for 2.5 hours on May 4, 2017 and 2 hours on September 14, 2017 finding that the medical evidence of record failed to establish that he lost time from work to obtain medical care due to an accepted work-related condition.

On December 21, 2017 appellant filed a claim for compensation (Form CA-7) for leave without pay for the intermittent period November 7 through December 7, 2017, amounting to 18.75 hours.

In a December 5, 2017 appointment verification note, Dr. Hebrard reported that appellant was evaluated on that date in relation to his November 14, 2003 employment injury.

In a December 7, 2017 prescription note, Dr. Karalis reported that appellant presented for medical therapy on that date.

In a development letter dated December 26, 2017, OWCP requested that appellant submit additional evidence to establish his claim for compensation for disability for the period November 7 through December 7, 2017. It advised him that on November 7, 2017 he attended a second opinion appointment under a different OWCP File No. xxxxxx288 and, therefore, no further action would be taken on that medical appointment because it did not pertain to time loss for the accepted work-related injury in this claim. With regard to the five hours claimed for November 15, 2017, OWCP noted that it had not received evidence establishing a medical appointment on that date. It informed appellant that, for December 5, 2017, it had not received medical evidence verifying he took off of work due to his accepted work-related conditions, nor did he provide evidence establishing why he was claiming more than four hours to obtain medical care. OWCP further noted that appellant's December 7, 2017 medical appointment was for therapy with a psychiatrist, but that a psychiatric condition had not been accepted. I afforded him 30 days to submit additional evidence in support of his claim for compensation.

On January 2, 2018 appellant, through counsel, appealed the December 14, 2017 decision and requested an oral hearing before an OWCP hearing representative.

In support of his claim, appellant submitted a January 11, 2018 medical report from Dr. Hebrard. Dr. Hebrard opined that appellant's employment injury led to an emotional condition. He reported that appellant was referred to Dr. Karalis for treatment of the emotional and psychological issues which he opined were a consequence of appellant's occupational injury.

By decision dated February 28, 2018, OWCP denied appellant's claim for compensation for the period November 7 to December 7, 2017. It noted that 4.75 hours on November 7 and 4 hours on December 7, 2017 were not payable because medical appointments on those dates were unrelated to this claim. OWCP further noted that it had approved four hours of compensation for attending a medical appointment on December 5, 2017, but appellant failed to establish payment for the additional one hour requested.

On March 13, 2018 appellant, through counsel, appealed the February 28, 2018 decision and requested an oral hearing before an OWCP hearing representative.

A hearing was held on May 30, 2018 addressing the denial of appellant's claim for compensation for intermittent dates from February 22 through December 7, 2017. At the hearing, counsel argued that appellant's appointments for a psychiatric condition with Dr. Karalis were causally related to his original 2003 work-related MVA. Appellant was advised by OWCP's hearing representative of the evidence needed to establish his claim and the record was held open for 30 days.

The record reflects numerous medical reports submitted dated January 5, 2011 through July 9, 2018, unrelated to the dates of disability in question.

By decision dated July 20, 2018, OWCP's hearing representative affirmed the December 14, 2017 and February 28, 2018 decisions finding that the evidence of record did not establish that appellant obtained medical treatment on intermittent dates from May 4 to December 7, 2017 as a result of the accepted November 14, 2003 employment injury.

LEGAL PRECEDENT

Under FECA,[4] the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[5] Disability is not synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.[6]

[4] *Supra* note 2.

[5] 20 C.F.R. § 10.5(f); *G.T.*, Docket No. 18-1369 (issued March 13, 2019).

[6] *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[7] The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.[8]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, *The Law of Workers' Compensation* notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[9]

OWCP's procedures provides 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 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.[11] As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. 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.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish entitlement to intermittent disability for the period May 4 to December 5, 2017 causally related to his accepted November 14, 2003 employment injury.

Medical notes dated May 4, September 14, and December 7, 2017 were provided from Dr. Karalis, a treating psychiatrist, indicating treatment on those dates. The Board finds, however, that these appointment verification notes fail to establish treatment or disability as a result of the November 14, 2003 employment injury. The notes failed to discuss appellant's accepted condition of cervical strain or provide an opinion regarding the cause of his current condition. As set forth

[7] *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

[8] *See S.J., id; Kathryn Haggerty*, 45 ECAB 383 (1994).

[9] Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014); *see also A.M.*, Docket No. 18-0685 (issued October 265, 2018); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

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

[11] *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

[12] *Id.*

above, to establish a consequential injury the medical evidence must establish that the consequentially claimed condition was a direct and natural result of a compensable primary injury.[13] Dr. Karalis did not provide sufficient rationale explaining how and why the accepted injury would cause the claimed psychiatric condition. As he did not discuss evaluation findings on May 4, September 14, and December 7, 2017 to establish that, treatment was related to the November 14, 2003 employment injury, his notes are insufficient to establish wage-loss compensation for medical appointments on those dates.[14]

The reports of Dr. Hebrard also fail to establish entitlement to wage-loss compensation on May 4, September 14, November 7 and 15, and December 7, 2017. The record does not establish that appellant was treated by Dr. Hebrard on those dates causally related to this accepted employment injury.[15] The Board also notes that OWCP paid appellant for four hours of wage-loss compensation on December 5, 2017, secondary to his medical appointment with Dr. Hebrard on that date for evaluation of his cervical injury. As previously noted, four hours of compensation are allowed for routine medical appointments, unless the evidence of record substantiates that the nature of the medical procedure or the need to travel a substantial distance necessitated that a longer period of time be authorized.[16] There is no evidence of record that appellant required more than four hours for this routine medical appointment.[17] Therefore, OWCP properly denied his request for an additional one hour of wage-loss compensation on December 5, 2017.[18]

With respect to 4.75 hours claimed for a medical appointment on November 7, 2017, the record reflects that appellant was evaluated by Dr. Sciaroni for a second opinion examination under a different claim of OWCP File No. xxxxxx288. Accordingly, appellant is not entitled to compensation for the November 7, 2017 medical appointment as it is unrelated to this claim.[19]

The Board finds that appellant failed to submit probative evidence establishing that he received medical care on May 4, September 14, November 7 and 15, and December 7, 2017 due to his accepted employment injury.[20] Nor has appellant established that he required one additional hour in order to attend his December 5, 2017 medical appointment. Absent such evidence, he is not entitled to compensation for medical treatment on the claimed dates.[21]

[13] *See A.M., supra* note 9.

[14] *D.E.*, Docket No. 16-1604 (issued February 1, 2017).

[15] *S.M.*, Docket No. 17-1557 (issued September 4, 2018).

[16] *See supra* note 10 at Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

[17] *A.L.*, Docket No. 17-1975 (issued August 21, 2018).

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

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 his burden of proof to establish intermittent disability for the period May 4 to December 5, 2017 causally related to his accepted November 14, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 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