

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

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L.S., Appellant)	
)	
and)	Docket No. 20-1239
)	Issued: November 18, 2021
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Grand Rapids, MI, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 3, 2020 appellant, through counsel, filed a timely appeal from an April 1, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish compensation for time lost from work to attend medical appointments on intermittent dates during the period October 11, 2018 through March 11, 2019 causally related to her accepted September 22, 2017 employment injury.

FACTUAL HISTORY

On September 28, 2017 appellant, then a 45-year-old revenue agent, filed a traumatic injury claim (Form CA-1) alleging that on September 22, 2017 she twisted her knee as she moved out of the way of an unleashed therapy dog running down an office hallway while in the performance of duty. She did not stop work. On February 28, 2018 OWCP accepted the claim for contusion of the left knee, subsequent encounter.

OWCP subsequently received medical evidence. In an October 11, 2018 progress note, Dr. Kendall D. Hamilton, a Board-certified orthopedic surgeon, noted appellant's complaint of bilateral knee pain and left knee swelling. He discussed findings on physical and x-ray examination and reviewed the results of a November 2017 left knee magnetic resonance imaging (MRI) scan. Dr. Hamilton provided assessments of patellofemoral and medial joint osteoarthritis. He noted that appellant had a history of an acute event to the left knee that caused patellofemoral syndrome and medial compartment overload. Dr. Hamilton advised that her history was consistent with his examination findings.

On April 22, 2019 appellant filed claims for wage-loss compensation (Form CA-7) for intermittent disability from work on October 11, 2018 through March 11, 2019. On an attached time analysis form (Form CA-7a) dated April 22, 2019, appellant claimed: 3.5 hours of leave without pay (LWOP) used to attend a medical appointment on October 11, 2018; 2.5 hours of LWOP used on January 29, 2019; 2 hours of LWOP used on February 5, 8, 15, 19, and 25, and March 1, 4, and 8, 2019; and 2.5 hours of LWOP used on March 11, 2019 to attend physical therapy, totaling 24.50 hours of claimed wage loss.

In support of her claims, appellant submitted a March 28, 2019 letter in which Dr. Hamilton noted that appellant attended appointments in his office on October 11, 2018.

In a document dated May 9, 2019, Emily Rawlings, a patient service representative, indicated that appellant attended physical therapy on January 29, February 5, 8, 15, 19, and 25, and March 1, 4, 8, and 11, 2019.

OWCP, in a development letter dated May 10, 2019, informed appellant that the evidence of record failed to establish that her time lost from work on intermittent dates during the period October 11, 2018 through March 11, 2019 was due to her attending medical appointments for her accepted condition. It advised her of the type of medical evidence required to establish her claims. OWCP afforded appellant 30 days to provide the requested information. No response was received.

By decision dated June 14, 2019, OWCP denied appellant's claim for wage-loss compensation.

On June 25, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on October 16, 2019.

By decision dated December 20, 2019, an OWCP hearing representative affirmed the June 14, 2019 decision.

Thereafter, OWCP received additional progress notes from physical therapists who noted appellant's history of injury on September 22, 2017 and indicated that she attended physical therapy on January 29, February 5, 8, 15, 19, and 25, and March 1, 4, 8, and 11, 2019 for the treatment of her left knee. The March 11, 2019 progress note was cosigned by Dr. Hamilton.

On February 6, 2020 appellant, through counsel, requested reconsideration of the December 20, 2019 decision.

OWCP, by decision dated April 1, 2020, denied modification of the December 20, 2019 decision.

LEGAL PRECEDENT

OWCP's procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.³ 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.⁴ Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.⁵ The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable.⁶ For a routine medical appointment, a maximum of four hours of compensation may be allowed. 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. The claims for wage loss should be considered on a case-by-case basis.⁷

ANALYSIS

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19 (February 2013).

⁴ *Id.* at Chapter 2.901.19.a.

⁵ *Id.* at Chapter 2.901.19.a(2).

⁶ *Id.* at Chapter 2.901.19.a(3).

⁷ *Id.* at Chapter 2.901.19.c.

The Board finds that appellant has met her burden of proof to establish entitlement to wage-loss compensation for up to four hours of time lost for medical treatment on intermittent dates during the period October 11, 2018 through March 11, 2019 causally related to her accepted September 22, 2017 employment injury.

The record establishes that on October 11, 2018 appellant received medical treatment from Dr. Hamilton for the work-related left knee injury that occurred on September 22, 2017. Additionally, the record includes progress notes from physical therapists who noted appellant's history of injury on September 22, 2017 and indicated that she attended physical therapy on January 29, February 5, 8, 15, 19, and 25, and March 1, 4, 8, and 11, 2019 for the treatment of her left knee. The March 11, 2019 progress note was cosigned by Dr. Hamilton. OWCP's procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed for a routine medical appointment and up to four hours of compensation may be allowed.⁸ In this case, appellant underwent treatment for her accepted left knee contusion on October 11, 2018, and January 29, February 5, 8, 15, 19, and 25, and March 1, 4, 8, and 11, 2019. The Board, thus, finds that this medical evidence is sufficient to establish that she is entitled to up to four hours of wage-loss compensation for disability on these intermittent dates.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish entitlement to wage-loss compensation for up to four hours of time lost for medical appointments on intermittent dates during the period October 11, 2018 through March 11, 2019 causally related to her accepted September 22, 2017 employment injury.

⁸ *Id.*; *E.P.*, Docket No. 20-0026 (issued August 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2020 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for payment of wage-loss compensation consistent with this decision of the Board.

Issued: November 18, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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