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

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| **J.L., Appellant** | ) | |
| **and** | ) | |
| **DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Long Beach, CA, Employer** | ) | **Docket No. 17-0323**<br>**Issued: July 7, 2017** |

*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 November 29, 2016 appellant filed a timely appeal from two September 16, 2016 merit decisions 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.

### ***ISSUES***

The issues are: (1) whether appellant met her burden of proof to establish a dental condition caused by an accepted April 20, 2016 employment injury; and (2) whether she established entitlement to disability compensation for periods June 10 to July 27, 2016 causally related to the April 20, 2016 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

On appeal appellant asserts that the record establishes that her dental condition was caused by the April 20, 2016 employment injury and that she is entitled to disability compensation for the hours claimed.

## ***FACTUAL HISTORY***

On April 20, 2016 appellant, then a 57-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that she was injured in a motor vehicle accident when the employing establishment vehicle, in which she was a passenger, was hit by another car while she was in the performance of duty. She reported abrasions to the left breast and right abdomen, difficulty breathing, and pain in the neck, back, and hip. Appellant stopped work that day.

An April 20, 2016 City of Long Beach collision report indicated that appellant, a front-seat passenger, complained of neck and chest pain, but refused to be transported for treatment and told the investigating officers that she would seek her own treatment. A federal motor vehicle accident report dated April 22, 2016, signed by appellant, indicated that she had difficulty breathing and neck pain following the accident, was evaluated by paramedics, and was encouraged to go to employee health or her own physician.

In April 22, 2016 reports, Dr. Ramin Alizadeh, a Board-certified internist, noted the history of injury and appellant's complaint of neck and back pain. He indicated that at the time of the motor vehicle accident, appellant was wearing a seatbelt and that the airbag did not deploy. Appellant's past history included degenerative disc disease of the cervical, thoracic, and lumbar spines. Examination of the head and neck demonstrated mild cervical spine and paraspinal muscle tenderness. Dr. Alizadeh diagnosed neck and low back pain. He prescribed medication and physical therapy, and advised that appellant could return to work with a 10-pound lifting restriction. Appellant began physical therapy on April 27, 2016.

A May 4, 2016 report from Dr. Joyce Kahng, a dentist, noted appellant's history that she had been in a motor vehicle accident and would need to have a retainer rebonded. Appellant explained that after the accident she had intense pain in her upper shoulder and neck area, and as that subsided, she started to notice pain in her jaw. She related that she had seen her periodontist who told her that a splint was broken. Dr. Kahng advised that appellant's periodontal splint was broken in several places and this caused several teeth to displace. She removed the broken splint and rebonded the teeth in place. Dr. Kahng indicated that she could not say for sure, but it was a possibility that the splint broke from impact during the motor vehicle accident. Appellant had an additional dental appointment with Dr. Kahng on May 24, 2016. On June 7, 2016 Dr. Kahng indicated that appellant had problems biting her lip and was concerned that the retainer had debonded. On examination the retainer appeared within normal limits. Dr. Kahng advised that, if appellant continued to have problems with occlusion, an adjustment could be recommended.

On June 7, 2016 OWCP accepted strain of muscle at neck and strain of muscle of lower back.

On May 20, 2016 appellant was seen at an urgent care facility by Heidi Wang, a physician assistant, and Dr. Thomas Ryu, an osteopath. The report noted the history of injury and that appellant denied head trauma, but continued to have neck stiffness, lower back

tenderness, and occasional paresthesia radiating down the left leg. Examination demonstrated pain in the cervical and lumbar regions. Neck and lower back strains were diagnosed. Appellant was advised that she could perform modified duty.

Appellant accepted a modified job offer on May 26, 2016 of "counseling, case management," with restrictions of no pushing, pulling, lifting, squatting, or bending.

Appellant filed a claim for compensation (Form CA-7) for intermittent wage-loss compensation for the period June 10 to July 13, 2016. She requested 8 hours compensation on June 10 and 13, 2016 for a doctor visit and off duty; 3.5 hours for physical therapy on June 16, 2016; 3 hours for physical therapy on June 20, 2016; 2.5 hours compensation for a magnetic resonance imaging (MRI) scan on June 22, 2016; 2.5 hours compensation for physical therapy on June 23, 2016; 5.5 hours compensation for a doctor visit on June 24, 2016; 40 hours compensation for the period June 27 to July 1, 2016 for doctor visits, physical therapy and off duty; 40 hours' compensation for the period July 4 to 8, 2016 for physical therapy, and off duty; and 24 hours' compensation for July 11 to 13, 2016 for doctor visits. Appellant filed a second claim for compensation for total disability from July 14 to 27, 2016.

In a June 10, 2016 form report, Dr. Ryu noted that he released appellant from work because she was not improving as expected. He recommended further studies. On June 13, 2016 Ms. Wang advised that appellant could return to modified duty that day with restrictions on her physical activity of no lifting, pushing, pulling, bending, stooping, squatting, kneeling, or climbing. Chelsea Sobiech, a director at Weststar Physical Therapy advised that appellant attended physical therapy there on June 20, 2016.

A June 22, 2016 MRI scan of the lumbar spine showed straightening of lumbar lordosis, disc protrusions at L2-3, L4-5, and L5-S1 with foraminal narrowing and disc desiccation.

On June 24, 2016 Dr. Ryu reported that appellant's neck and back pain were worse despite physical therapy and that she thought she had post-traumatic stress disorder. He described lumbar spine tenderness on examination and indicated that appellant appeared anxious. Dr. Ryu noted the MRI scan findings and diagnosed sprain of the neck and lumbar spine. He advised that appellant needed a psychology referral and should remain off work. On July 1, 2016 Dr. Ryu repeated his findings and conclusions. He recommended that appellant remain off work until seen by an orthopedic surgeon. On July 13, 2016 Dr. Ryu advised that appellant should remain off work until July 27, 2016.

On July 25, 2016 Dr. A. Michael Moheimani, an orthopedic surgeon, advised that appellant could return to work with no forceful pushing or pulling, no lifting over 10 pounds, no repetitive bending or stooping, and that she should sit or stand as needed to alleviate pain. He indicated that she would require a lightweight laptop.

By letter dated July 28, 2016, OWCP informed appellant of the evidence needed to support her claim for a dental condition. This included her dentist's opinion, supported by a medical explanation, as to how the motor vehicle accident on April 20, 2016 caused or aggravated a dental condition.

On July 27, 2016 the employing establishment informed OWCP that appellant received continuation of pay from April 21 to May 27, 2016,[2] was off work from May 28 to June 9, 2016, stopped work on June 10, 2016, and had not returned.

By letter dated July 27, 2016, OWCP informed appellant that she would be paid compensation for 14.5 hours of the claimed 137 hours for the period June 10 through July 13, 2016 and continuing disability compensation for July 14 through 27, 2016. It informed her of the evidence needed to support the additional compensation she claimed.

On July 28, 2016 OWCP paid appellant compensation for 14.5 hours including 4 hours each for June 10, 13, and 24, 2016 and 2.5 hours for June 22, 2016. It noted that claims for additional compensation remained under development. Appellant accepted a modified job offer on July 29, 2016.

In an August 3, 2016 statement, appellant indicated that she began work at the employing establishment on February 22, 2016. She provided a timeline beginning with the April 20, 2016 motor vehicle accident, stating that a staff member drove her back to the employing establishment and she was seen in the clinic that afternoon. Appellant had x-rays and was prescribed medication. She returned to work the next day despite pain and continued to work. Appellant advised that she did not initially note jaw pain due to severe neck pain and because her eyeglasses had to be adjusted after the car accident. She indicated that she worked until June 10, 2016, returned on June 14, 2016, and continued working until July 1, 2016. Appellant described her medical and dental care.

On August 4, 2016 appellant forwarded progress notes from Dr. Kahng including the appointments on May 4 and 24, 2016, described above. On July 20, 2016 Dr. Kahng recommended a guard to help with grinding or clinching at night. A statement for the May 4, 2016 appointment was included. In an August 3, 2016 report, Dr. Todd Miller, a periodontist, reported that he examined appellant on May 3, 2016 and noticed that the bonding material that splinted her lower anterior teeth together was fractured and broken. He noted that appellant reported that she had recently been in a car accident and her bite had not felt the same since. Dr. Miller advised her to see her general dentist to have the bonding replaced.

Appellant also forwarded a physical therapy billing statement from Weststar Physical Therapy. This statement noted the accepted conditions and showed that she had physical therapy on June 16, 20, 23, and 27, and July 1 and 5, 2016. Appellant also forwarded copies of e-mails with employing establishment personnel and an ergonomic assessment of her workstation. She thereafter submitted treatment notes from Dr. Ryu dated June 10 to July 13, 2016. Dr. Ryu noted that appellant reported that the April 20, 2016 motor vehicle accident caused dental damage and

[2] This is contradicted by appellant's August 3, 2016 statement, discussed *infra*. She did not claim wage-loss compensation until June 10, 2016.

continuing neck and back pain. He described tenderness on examination of the neck and lumbar spine, diagnosed neck and lower back strains, and prescribed medication.[3]

In a July 25, 2016 report, Dr. Moheimani noted the history of injury and appellant's report that she was wearing her seatbelt and that airbags did not deploy. He advised that she did not recall striking any body parts, but developed neck and back pain. On Dr. Moheimani's examination appellant complained of neck pain radiating into the shoulders, back pain radiating into the left lower extremity, numbness and weakness of the left upper and left lower extremity, and grinding her teeth. He provided detailed examination findings, noting decreased cervical and thoracolumbar range of motion. No tenderness was found and sensory and motor testing was normal throughout. Straight leg raising, sitting, and supine was negative. Dr. Moheimani reviewed x-rays and the lumbosacral MRI scan dated June 22, 2016. He diagnosed cervical and lumbosacral sprains with radicular symptoms, disc herniations at L4-5 and L5-S1, a left foot sprain with history of prior bunion surgery, and preexisting midfoot arthritis. Dr. Moheimani opined that these conditions were the result of the April 20, 2016 motor vehicle accident. He advised that appellant could return to modified duty on July 28, 2016. Dr. Moheimani recommended physical therapy, a cervical spine MRI scan, and a psychiatry consultation if appellant's anxiety persisted.

On August 15, 2016 Dr. David Webb, chief of occupational health at the employing establishment and a Board-certified internist, noted that after review of appellant's medical records no further evaluation was warranted.

Dr. Kahng reported that appellant had dental appointments on August 17 and 23, 2016.

On September 14, 2016 the employing establishment advised that appellant had been terminated during her probationary period due to failure to demonstrate satisfactory work performance.

By decision dated September 16, 2016, OWCP denied appellant's claim for a dental condition caused by the April 20, 2016 motor vehicle accident. It found that the evidence she submitted from her dentists did not contain sufficient explanation as to how or why the April 20, 2016 accident caused her claimed dental condition.

In a second September 16, 2016 decision, OWCP denied appellant's claim for compensation for 122.50 hours from June 10 to July 13, 2016 and total disability compensation from July 14 to 27, 2016 resulting from the accepted conditions of neck and low back strains. It listed all the evidence received, including a billing statement from "Choloca Sobioch Physical Therapy." OWCP found there was either no medical evidence and/or insufficient medical evidence to pay compensation for the additional hours claimed and that the medical evidence did not establish continued disability from work.

[3] Appellant also filed a claim for intermittent compensation for the period July 29 to August 9, 2016 and August 11 to 24, 2016, and August 26, 2016, not at issue in the present appeal. She also submitted information regarding claims for reimbursement of medical expenses, her request for accommodation and ergonomic assessment, and medical evidence that postdated the dates at issue in this appeal. Appellant also requested that OWCP approve counseling.

## ***LEGAL PRECEDENT -- ISSUE 1***

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[4] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[5] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[6]

## ***ANALYSIS -- ISSUE 1***

The Board finds that appellant has not established that a dental condition or need for dental treatment was caused by the April 20, 2016 employment-related motor vehicle accident.

In his August 3, 2016 report, Dr. Miller, appellant's periodontist, indicated that he examined appellant on May 3, 2016 and noticed that the bonding material that splinted her lower anterior teeth together was fractured and broken. While he noted that appellant reported that she had recently been in a car accident and that her bite had not felt the same since, he merely advised her to see her general dentist to have the bonding replaced. Dr. Miller did not provide an opinion on the cause of any dental condition. The Board has long held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[7]

Dr. Kahng, appellant's general dentist, noted on May 4, 2016 that appellant reported that she had been in a motor vehicle accident and could need to have a retainer rebonded, noting that after the accident she had intense pain in her upper shoulder and neck area, and as that subsided, she started to notice jaw pain. She advised that appellant's periodontal splint was broken in several places causing several teeth to displace. Dr. Kahng removed the broken splint and rebonded the teeth in place. She indicated that she could not say for sure, but it was possible that the splint broke from impact during the motor vehicle accident. On May 24, 2016 Dr. Kahng indicated that, although appellant was concerned that the retainer had debonded, on examination the retainer appeared within normal limits. Her opinion that there was a "possibility" that the splint broke from impact during the motor vehicle accident is insufficient to establish causal relationship. Medical opinions, such as this, which are speculative or equivocal in character, have little probative value.[8]

[4] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[5] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[6] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[7] *Willie M. Miller*, 53 ECAB 697 (2002).

[8] *Frank Luis Rembisz*, 52 ECAB 147 (2000).

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[9] Appellant submitted no such evidence in this case, and has thus failed to meet her burden of proof.[10]

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.

## ***LEGAL PRECEDENT -- ISSUE 2***

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus 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 a federal employment injury, but who nevertheless 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 in FECA.[11] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.[12]

OWCP procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.[13] 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.[14] 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.[15] 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.[16] For a routine medical appointment, a maximum of four hours of

[9] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[10] *See K.T.*, Docket No. 14-218 (issued June 11, 2015).

[11] *See* 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[12] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

[14] *Id*. at Chapter 2.901.19.a.

[15] *Id*. at Chapter 2.901.19.a(2).

[16] *Id*. at Chapter 2.901.19.a(3).

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.[17]

## ***ANALYSIS -- ISSUE 2***

Regarding appellant's claim for intermittent wage loss for the medical treatments for the period June 10 to 24, 2016, for a total of 33 hours, she requested 8 hours compensation on June 10 and 13, 2016 for doctor visit and off duty; 3.5 hours for physical therapy on June 16, 2016; 3 hours for physical therapy on June 20, 2016; 2.5 hours compensation for her MRI scan on June 22, 2016; 2.5 hours compensation for physical therapy on June 23, 2016; and 5.5 hours compensation for a doctor visit on June 24, 2016. OWCP paid compensation for 14.5 hours: 4 hours each for doctor visits on June 10, 13, and 24 2016, and 2.5 hours on June 22, 2016 for a lumbar MRI scan. It did not pay the additional 4 hours claimed on June 13 and 20, 2016, and only paid 4 hours, not the claimed 5.5 hours on June 24, 2016. Appellant also claimed 3.5 hours compensation on June 16, 2016 for physical therapy, and 3 hours compensation of June 20, 2016 for physical therapy. OWCP, therefore, denied 4 hours compensation claimed for June 10 and 13, 2016, 1.5 hours compensation on June 24, 2016, and 6.5 hours claimed for physical therapy on June 16 and 20, 2016.

As noted, wages lost for compensable medical examinations or treatment may be reimbursed. 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, and for a routine medical appointment, a maximum of four hours of compensation may be allowed.[18] However, 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.[19]

The Board finds that the record does not contain sufficient information regarding exactly when and what hours appellant worked beginning June 10, 2016. The employing establishment reported on July 27, 2016 that appellant stopped work on June 10, 2016 and had not returned. Appellant, however, reported that she returned to work on June 14, 2016 and continued working until July 1, 2016. The case must therefore be remanded to OWCP regarding appellant's disability claims prior to July 14, 2016. As noted, 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.[20]

Upon remand, OWCP should request that the employing establishment furnish documentation regarding appellant's work status beginning June 10, 2016 with specific

[17] *Id*. at Chapter 2.901.19.c.

[18] *Id*. at Chapter 2.901.19.a, c.

[19] *Id*. at Chapter 2.901.19.a(2).

[20] *Id*. at Chapter 2.901.19.a(2).

information regarding the days and hours worked, to be followed by an appropriate decision on the disability claimed for this period.

## ***CONCLUSION***

The Board finds that appellant did not meet her burden of proof to establish a dental condition causally related to the April 20, 2016 employment injury or that she was totally disabled for the period July 14 to 27, 2016 due to accepted conditions. The Board further finds the case is not in posture for decision regarding claimed disability for the period June 10 to July 13, 2016.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the September 16, 2016 decision of the Office of Workers' Compensation Programs denying an employment-related dental condition is affirmed. The September 16, 2016 decision regarding claimed disability compensation is affirmed in part and set aside in part, and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: July 7, 2017
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