

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY L. LAMBERT and U.S. POSTAL SERVICE,
PENDLETON POST OFFICE, Pendleton, OR

*Docket No. 03-467; Submitted on the Record;
Issued May 27, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's November 29, 2001 request for a review of the written record on the grounds that it was untimely filed; (2) whether appellant sustained a right trapezius strain and right shoulder bursitis in the performance of duty on April 11, 2001; (3) whether the July 17, 2001 surgical amputation of the distal phalanx of appellant's right fourth finger was causally related to accepted carpal tunnel syndrome and five related surgeries; (4) whether appellant sustained a recurrence of disability from September 7 to 19, 2001 causally related to work factors; and (5) whether the Office properly denied appellant's November 13, 2002 request for a merit review of an October 7, 2002 decision.

The Office accepted that, on or before July 22, 1998, appellant, then a 46-year-old distribution clerk, sustained bilateral carpal tunnel syndrome.¹ Appellant underwent a right median nerve decompression on November 13, 1998, and a left median nerve decompression on

¹ The Office assigned Claim No. 14-0335638 to the bilateral carpal tunnel syndrome claim, including the November 13, 1998 right median nerve decompression, the December 4, 1998 left median nerve decompression, June 9, 2000 opponens plasty, and July 13, 2000 tendon transfer. On October 15, 2002 the Office doubled the following subsequent claims under Claim No. 14-0335638 as the master claim number: Claim No. 14-2000659 regarding an April 11, 2001 right trapezius strain and right shoulder bursitis and Claim No. 14-2007639 regarding the July 17, 2001 surgical amputation of the right fourth finger. The Office also accepted Claim No. 14-0358034 for a February 5, 2001 laceration of the left index finger. The Office assigned Claim No. 14-340606 to a 1999 hand contusion. Appellant also had other claims before the Office that are not before the Board on the present appeal: Claim No. 14-333662 for a 1998 lumbar strain; Claim No. 14-332607 for a 1996 left knee injury; and Claim No. 14-34621 for a right knee injury. The record indicates that appellant also had nonoccupational bilateral wrist trauma prior to his federal employment. Dr. Kenneth H.Z. Isaacs, an attending Board-certified neurologist, noted in a September 14, 1998 report that, at age five or six, appellant sustained a bilateral wrist injury due to a broken window, with trauma to the base of the thenar eminence on the right hand, without any weakness noted until August 1998.

December 4, 1998.² Due to continuing right median neuropathy and thenar atrophy, appellant underwent a repeat right carpal tunnel release on October 15, 1999, performed by Dr. Douglas J. MacKenzie, a Board-certified plastic and reconstructive surgeon of professorial rank.³

Dr. MacKenzie submitted periodic reports through May 2000 noting continued absence of thumb abductor and apposition function, impairment of the abductor pollicis brevis and swan neck contracture deformities of the middle and ring fingers causing degeneration of the distal interphalangeal joints. From January to May 2000, appellant worked intermittently as a modified clerk casing mail.

As appellant's right thumb function remained severely impaired, on June 9, 2000, Dr. MacKenzie performed a right extensor indicis proprius tendon transfer to treat the thenar atrophy, authorized by the Office. In early July 2000, the transferred tendon ruptured, necessitating July 13, 2000 surgical repair and grafting of the palmaris longus tendon to the right thumb.⁴ As of August 2000, Dr. MacKenzie opined that appellant's right hand was permanently impaired.

In an October 27, 2000 letter, Dr. Kent R. Walker, an attending osteopath and family practitioner, diagnosed bilateral carpal tunnel syndrome with permanent nerve damage to the right hand, and permanent work restrictions.⁵ Dr. Walker submitted progress notes from February through April 2001, diagnosing late effect median entrapment neuropathy due to carpal tunnel syndrome and subsequent surgeries.

In a November 29, 2000 report, Dr. Alan Seyfer, an attending Board-certified plastic and reconstructive surgeon, stated that appellant was unable to abduct his right thumb due to thenar atrophy as the median nerve was compressed by postoperative scar tissue. Dr. Seyfer diagnosed "motor median nerve palsy."⁶

² The November 13 and December 4, 1998 procedures were performed by Dr. Ronald R. Bowman, an attending Board-certified orthopedic surgeon. Appellant returned to full duty in January 1999.

³ In a July 19, 1999 report, Dr. Isaacs noted obtaining nerve conduction velocity (NCV) studies showing severe right median neuropathy unimproved by surgery, mild left median neuropathy improved by surgery and moderate right ulnar neuropathy. Dr. Isaacs found marked thenar atrophy on the right, with severe loss of strength. September 15, 1999 electromyography (EMG) and NCV studies showed mild left and severe right median neuropathy at the wrist, and bilateral ulnar neuropathies.

⁴ In June 2000, the employing establishment asserted that appellant's bilateral wrist condition was due in part to nonoccupational bilateral wrist traumas with scarring, observed by Dr. Isaacs in 1998. Dr. MacKenzie responded in a July 13, 2000 report that if nonoccupational "old wrist trauma injured median nerve motor branch it would have caused or contributed to problems. I do not have those old records." Arguendo, the Board notes that appellant is not required to prove that work factors are the sole cause of his claimed condition. *Beth P. Chaput*, 37 ECAB 158 (1985).

⁵ A January 9, 2001 functional capacity evaluation indicated that appellant could perform medium-duty work, with lifting up to 70 pounds. Dr. Walker approved this evaluation on January 22, 2001.

⁶ On November 30, 2000 appellant claimed a schedule award for bilateral impairment of the upper extremities. The record indicates that the Office did not undertake development of the schedule award claim; *see* note 12, *infra*.

The Office accepted that, on February 5, 2001, appellant sustained a two-centimeter laceration of the left index finger while opening a water bottle with a knife.

On March 28, 2001 appellant declined a March 22, 2001 light-duty job offer. In April 9 and 10, 2001 reports, Dr. Walker stated that the offered position exceeded appellant's permanent restrictions due to permanent median entrapment neuropathy, which prevented him from repeated pinching or opposition with his right thumb.

On April 12, 2001 appellant claimed that he sustained a traumatic right trapezius strain and right shoulder bursitis, which he attributed to writing with his nondominant left hand on the overnight shift from April 11 to 12, 2001, also causing pain in his right wrist and thumb. Appellant was right hand dominant.⁷ Appellant submitted copies of forms he wrote with his left hand on April 11, 2001: three example registers; 21 Form 3830 lists; tracking sheets with 60 entries per form; and register tracking sheets.

In an April 12, 2001 emergency room report, Dr. Kathleen Stein diagnosed an acute right trapezius strain due to writing with the left hand. In an April 12, 2001 report, Dr. Walker diagnosed a left wrist strain, right shoulder strain and right shoulder bursitis, with onset while writing with the left hand. He held appellant off work through April 16, 2001, with light-duty restrictions after that time.

The employing establishment submitted two statements corroborating appellant's assignments. In an April 23, 2001 letter, Kelli J. McKague, an employing establishment supervisor, confirmed that, on April 10, 2001, appellant worked registers using his right hand for two hours, then his left hand exclusively. Appellant informed her on April 12, 2001 that he injured his right shoulder due to writing extensively with his left hand and sought emergency room treatment from Dr. Stein, who stated that appellant was to use a sling on his right arm while writing with his left hand.⁸ In a May 8, 2001 letter, Corey Richards, an employing establishment official, noted that, on April 11, 2001, appellant cut seals on 26 register bags, processed 64 registers and other forms, and processed 58 registers on April 12, 2001.

Beginning April 17, 2001, appellant worked two hours per day doing light office work, then read books for the remainder of the tour. On May 5, 2001 appellant accepted a light-duty job offer entailing "occasional use of [the] right hand."⁹

⁷ In a May 17, 2001 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim for a right shoulder injury.

⁸ The record contains May 10 and September 6, 2001 correspondence regarding an Equal Employment Opportunity (EEO) complaint. There are no final administrative decisions of record regarding an EEO claim.

⁹ In a May 22, 2001 worksite evaluation, Paul Dressler, an occupational therapist consulting to the employing establishment, stated that appellant's duties were "appropriate on paper as long as he is not spending too much time doing the same activity." He explained that, as express and registered mail had similar physical demands, appellant's duties should be split into five sections of no more than 90 minutes.

In a June 11, 2001 duty status report, Dr. Walker limited appellant to sitting, standing and walking for two hours out of four, with pushing/pulling, simple grasping, fine manipulation and reaching above shoulder limited to two hours per day.

In June 12 and 19, 2001 reports, Dr. Walker noted appellant's account of feeling a tendon "slip" at the wrist at work on June 11, 2001, with subsequent numbness and swelling of the fingers of his right hand. The "distal ring finger remained dusky colored and swollen." On examination Dr. Walker found delayed capillary refill and cool temperature in the right fourth finger. Dr. Walker diagnosed "[c]arpal tunnel syndrome with late effective tendon transfer/tendon transplantation surgery ... suspect vascular compromise secondary to above surgery versus nonspecific vasculitis."

Appellant was hospitalized on July 15, 2001 by Dr. Ronald W. Fleck, an attending Board-certified specialist in emergency medicine. In July 15, 2001 reports, Dr. Fleck diagnosed "distal ulnar artery obstruction, acute, right wrist, possibly secondary to scar tissue from previous tendon transfer surgery [times two] and carpal tunnel surgery [times two]," and acute ischemia of the right ring finger.¹⁰

On July 17, 2001 Dr. Gregory J. Landry, an attending Board-certified vascular surgeon of professorial rank, performed a right fourth finger distal phalangectomy to remove a gangrenous, necrotic right fourth distal phalanx. Appellant developed a postoperative abscess, treated with antibiotics beginning August 9, 2001.

On July 18, 2001 appellant filed a notice alleging a recurrence of disability commencing June 11, 2001. Appellant alleged that the two carpal tunnel procedures and two related tendon surgeries caused an occlusion in the blood vessels of his right hand, causing gangrene in the fourth finger, necessitating its partial amputation. Appellant was off work from July 16 to September 1, 2001. On July 18, 2001 appellant claimed compensation for wage loss for the period July 15 to 27, 2001.

In a July 19, 2001 report, Dr. Lance Marr, an attending Board-certified orthopedic surgeon, diagnosed ischemia of the right fourth finger, requiring partial amputation. Dr. Marr explained that "ulnar occlusion which lead to ischemia is caused by repetitive pounding work, which may apply to [appellant]." Dr. Marr found appellant totally disabled through August 19, 2001, and partially disabled through September 19, 2001.

In a July 25, 2001 report, Dr. Walker noted that appellant had postoperative scar tissue which caused an embolus occluding the right ring finger, resulting in necrosis, gangrene and subsequent amputation of "distal half finger." He submitted reports through September 2001 holding appellant off work.

¹⁰ July 17, 2001 x-rays showed degenerative joint disease in the right hand, and "[p]ossible ligamentous laxity to the ulnar collaterals of the [right] thumb." July 16, 2001 vascular testing showed abnormal peripheral arterial findings in the right upper extremity, "consistent with ulnar artery stenosis or occlusion involving the right hand," clinically correlated by right hand ischemia. Additional testing showed "significant occlusive disease in the right first through fourth fingers with the fourth finger being the most severely affected."

In a July 31, 2001 letter, the Office advised appellant that Dr. Marr's July 19, 2001 report indicated that the right ring finger amputation was due to an ulnar artery occlusion produced by repetitive pounding with the right hand. The Office noted that the employing establishment denied that appellant's work involved "pounding movements," and therefore the causal relationship to work was unclear. The Office therefore stated that it was unable to pay compensation for the period July 15 to 21, 2001, pending receipt of medical evidence establishing causal relationship.

In an August 14, 2001 letter, Dr. Landry attributed the gangrene leading to the right fourth finger amputation to a significant occlusion of the digital artery, affecting the fourth finger most severely. Regarding causal relationship, Dr. Landry opined that the "pattern of disease ... is consistent with ... hypothenar hammer syndrome," an ulnar artery occlusion resulting from "persistent trauma to the hand, frequently seen in patients who use their hands as a hammer as part of their occupation. In the absence of this history, the source of the ulnar artery occlusion in [appellant] cannot be determined with certainty."¹¹

In August 2001, the employing establishment prepared a full-time light-duty job description with the following duties: signing for registry packets on trucks; completing registries and expresses for tours one and three using a handheld scanner and signature stamp; loading letters into a barcode machine; clerical duties including writing; hanging or pulling sacks from pouch racks; performing break and lunch relief in cancellation "on Mark and Belt" and pouch racks; timekeeping and clock ring inputs; securing the lobby at 10:00 p.m.; nixies; relief mail casing. The duties required sitting, standing and walking for two hours each out of every four hours, forward reaching up to 66 percent of the shift, occasional lifting up to 50 pounds, frequent lifting up to 20 pounds, and constant lifting up to 10 pounds. Pushing, pulling, simple grasping, fine manipulation and keyboarding were limited to two hours per day, with simple grasping and fine manipulation limited to two hours combined. Dr. Walker approved the offer on August 16, 2001 "with modifications."

In an August 16, 2001 chart note, Dr. Walker noted that appellant reported "job-related pounding ... on RAPS [postal containers] or cages to open doors, otherwise has no pounding activities."

On August 21, 2001 the employing establishment offered appellant a position as a full-time modified distribution clerk, based on the description that Dr. Walker approved, and the June 11, 2001 restrictions. Appellant accepted the position on August 31, 2001.¹²

¹¹ In an August 15, 2001 form report, Dr. Landry reiterated that the fourth finger gangrene "may be related to prior trauma but this cannot be stated with certainty."

¹² On August 15 and 23, 2001 appellant claimed a schedule award for permanent impairment of the upper extremities. In a December 10, 2001 letter, the Office acknowledged appellant's schedule award claim and explained the type of additional evidence needed, in particular a report from his attending physician delineating the percentage of permanent impairment according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. There is no final decision of record regarding appellant's schedule award claim.

Appellant worked from September 1 to 7, 2001, then stopped, alleging that his duties exceeded his restrictions. He explained that he worked two hours with his right hand during the first three hours of his shift, and was thus unable to complete any other tasks.

In a September 10, 2001 letter, the employing establishment confirmed that appellant “was sent home from work on Friday, September 7, 2001 after indicating [that] he could not do the work assigned.” The employing establishment contended that appellant refused “to continue with the accepted job,” although it had been approved by Dr. Walker.

In a September 11, 2001 progress note, Dr. Walker stated that appellant’s upper extremity condition was unchanged.

On September 13, 2001 appellant claimed a recurrence of disability commencing September 7, 2001 regarding his right hand, asserting that he could not perform his assigned duties.¹³ He claimed wage loss from September 7 to October 19, 2001.¹⁴

In a September 19, 2001 letter, the Office noted that appellant had returned to light-duty work on August 31, 2001, then left the position on September 7, 2001. The Office advised appellant of the penalty provisions under section 8106(c)(2) for refusing or neglecting suitable work. The Office noted that the evidence established that he had “been shown alternative ways to accomplish the various tasks in the modified job....” The Office noted that it was appellant’s responsibility to show either a change in the nature and extent of his accepted condition, or a change in his light-duty job requirements, such that he could no longer perform the position.

In a September 24, 2001 letter, appellant asserted that he did not voluntarily stop working on September 7, 2001, but was sent home as the employing establishment could not accommodate his restrictions, and refused to retrain him so that he could complete tasks with his left hand only.

In a September 28, 2001 letter, Mr. Richards stated that, at the time of the alleged recurrence of disability on September 7, 2001, appellant was assigned to mark up “postage due” letters, which involved weighing the item on a scale, looking up the correct amount of postage on a chart, stamping the letter “postage due” and writing in the correct postage amount. Mr. Richards asserted that appellant took two hours to complete a 15-minute task, then refused additional work during that shift due to the two-hour limitation.

By decision dated October 12, 2001, the Office denied appellant’s claim for the right fourth finger amputation. The Office found that Dr. Landry’s August 14, 2001 report was insufficient to establish that the arterial occlusion was work related, as he attributed it to thenar hammer syndrome, but appellant had not established that he used his right hand as a hammer at work.

¹³ Appellant also alleged a recurrence due to bilateral knee pain, under claims 14-332607 for the left knee, and 14-34621 for the right knee. However, these claims are not before the Board on the present appeal.

¹⁴ In a September 17, 2001 letter, the Office advised appellant of the deficiencies in the medical evidence, and the need to submit additional rationalized reports establishing a causal relationship between the “loss of circulation and ... resultant amputation” of the right ring finger and the accepted carpal tunnel syndrome.

By decision dated October 15, 2001, the Office denied appellant's claim for an April 11, 2001 right shoulder injury, as the medical record did not explain how a right trapezius strain or right shoulder bursitis would be "caused by writing with the left hand."

In an October 18, 2001 functional capacity evaluation, Mary Bennett, an occupational therapist consulting to Dr. Walker, recommended that appellant use his right hand only as an assist due to decreased sensation, circulation and atrophy. In October 25 and December 12, 2001 reports, Ms. Bennett opined that appellant could perform canceller belt loading if "all rubber band bundled letters were set aside." Regarding registry work, Ms. Bennett stated that appellant had difficulty using scissors or tin snips with the left hand to unseal pouches and could not keyboard with one hand. She noted that appellant required retraining to safely perform fine motor registry tasks using his left hand. Ms. Bennett stated that appellant did not have adequate thumb opposition to hold or sort letters with his right hand and suggested an adaptive device. Dr. Walker reviewed and approved this report, adding that even after retraining, appellant would not be able to use his right hand for more than 15 minutes at a time, totaling no more than two hours out of an eight-hour shift and would require frequent breaks.

In an October 24, 2001 statement, Janet Lambert, a coworker and wife of appellant, stated that, during her 21½ years in postal employment, she had to "'beat' on cages, wraps and OTRs many times ... a night ... in order to make the clasp or lock loosen up so it can be opened." Similar maneuvers were required to close the containers.

By decision dated October 30, 2001, the Office denied appellant's claim for a September 7, 2001 recurrence of disability on the grounds that he had not established that his condition recurred spontaneously without an intervening cause. The Office found Dr. Landry's August 14, 2001 report was insufficient to establish his claim, as he opined that appellant's right fourth finger amputation could have been connected to repeated trauma to the hand from using it as a hammer, and this had not been factually established.

Appellant submitted November 9, 2001 statements from eight of his coworkers, four of whom admitted using their hands as hammers to open stuck container doors, two who saw others using their hands as hammers, and one who witnessed appellant doing so. Six of the coworkers noted that many of the postal containers were broken or bent, and therefore hard to open.

In a November 19, 2001 report, Dr. Walker noted that appellant's right shoulder bursitis and trapezius strain were permanent and stationary, with a permanent, chronic "mild tenderness due to the changes in mechanics of his left hand." Dr. Walker recommended occupational

therapy to enable appellant to become left handed and “avoid overuse injuries to his other extremities.”¹⁵

In a November 25, 2001 letter, postmarked November 29, 2001, appellant requested “a review” of the Office’s denial of a right shoulder injury.¹⁶ Appellant reiterated his allegations that his light-duty assignment on April 11, 2001 was beyond his medical restrictions. Appellant also mentioned the claimed September 7, 2001 recurrence of disability, noting that he remained off work through November 6, 2001.

In a November 27, 2001 report, Dr. Walker noted visiting appellant’s worksite, and that appellant was “back to previous work activities which caused toothache-type pain to wrist, hand.” On examination, Dr. Walker observed “continued marked weakness of thumb, rolling, pincer and gripping, easy fatigability with repetitive motions.” Dr. Walker diagnosed “late effect carpal tunnel syndrome with median nerve permanent neuropathy and axonal loss” of the right hand. He recommended job modifications and retraining to attain left hand dominance.

In a December 26, 2001 report, Dr. Walker noted decreased grip and pincer strength, and diagnosed “late effect ulnar neuropathy” due to carpal tunnel syndrome. In a December 31, 2001 report, Dr. Walker opined that the worsening of appellant’s right wrist condition on June 12, 2001 was caused by the four previous right hand surgeries. Dr. Walker noted visiting the employing establishment “to observe the opening and filling of the portable post office boxes.” Dr. Walker observed that employees were “required to bang their hand against the opening door to loosen it and to move the mail back so that it does n[o]t fall forward. It is well within the realm of medical probability that the events occurred as described by [appellant] and the causal effect of his embolus to right ring finger was directly related to that work.” Dr. Walker opined that the “[a]mputation of the right ring finger status post embolus and gangrene formation [was] secondary to the late effect and occupational exposure” to the carpal tunnel syndrome and surgeries.

In a January 18, 2002 letter, the Office advised appellant that his claim was “ready for acceptance of a right hand condition.” The Office noted that Dr. Walker’s December 31, 2001 report established causal relationship.

¹⁵ In a November 20, 2001 letter, the Office noted that, as a recurrence was a spontaneous return of a condition with no intervening cause, if appellant asserted that “job factors caused the ulnar artery occlusion which led to [the] right ring finger amputation,” he could file an occupational disease claim. On November 24, 2001 appellant filed a notice of occupational disease alleging that he sustained hypothenar hammer syndrome in the performance of duty on or before June 11, 2001. Appellant asserted that the four surgeries caused wasting of his right hand muscles, making the thenar eminence vulnerable to injury. Appellant also asserted that he used his hands as hammers to open container doors since November 1994. He recalled that, until July 15, 2001, he opened 50 cages or wraps per day. He alleged that he was made to work outside of his restrictions in September 2001. In a November 19, 2001 letter, Mr. Farnard observed that, while some employees occasionally used their hands forcefully to open and close container equipment, they did not use their hands as hammers. As there is no final decision of record specifically adjudicating appellant’s occupational disease claim for hypothenar hammer syndrome, the November 24, 2001 claim is not before the Board on the present appeal.

¹⁶ The Office treated appellant’s request as a request for a review of the written record.

By decision dated January 22, 2002, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed. The Office found that appellant's request was postmarked November 29, 2001, more than 30 days after the October 15, 2001 decision. The Office conducted an additional review of appellant's request, and denied it also on the grounds that the issues involved could be advanced equally well by submitting new, relevant evidence accompanying a valid request for reconsideration.

In a February 5, 2002 report, Dr. Walker opined that the "embolic ischemic arterial occlusion R[ight] ring finger," resulting in amputation, was caused by "tapping/pounding of R[ight] hand on (GMPC) cages"

Appellant disagreed with the October 15, 2001 decision denying his claim for a right shoulder injury and, in March 26, 2002 letter, requested reconsideration.

In a May 2, 2002 report, Dr. Walker opined that the "amputated finger [was a] late effect from surgery."

On May 8, 2002 appellant resigned from the employing establishment due to "medical reasons."¹⁷

By decision dated May 6, 2002, the Office denied modification of the October 15, 2001 decision denying the right shoulder injury, on the grounds that the evidence submitted was insufficient to warrant such modification. The Office found that Dr. Walker did not provide medical rationale explaining how appellant's working with his left arm would cause a right shoulder injury. The Office noted that appellant's allegation that he was made to work outside of his restrictions was also insufficient to establish a new right shoulder injury.

In May 7 and August 1, 2002 reports, Dr. Walker noted that appellant's thumb tendon transfer was slipping, producing an unstable grip. He diagnosed "amputated finger late effect from surgery."

In a May 8, 2002 report, Dr. Walker stated that appellant sustained "work-related carpal tunnel syndrome (mononeuritis multiplex of the upper limb at wrist;" "late effect of third corrective surgical procedure with accidental work-related injury of the right hand/wrist and ring finger;" "work-related ('water hammer effect') embolism to the upper extremity (right ring finger) as a late effect from surgical revision, leading to amputation of the right ring finger."¹⁸

By decision dated October 7, 2002, the Office denied appellant's claim for the fourth finger amputation on the grounds that causal relationship was not established. The Office found

¹⁷ In a May 2, 2002 Merit Systems Protection Board (MSPB) settlement agreement, appellant agreed to resign from the employing establishment for health reasons, in exchange for the employing establishment withdrawing its January 28, 2002 removal for unacceptable conduct.

¹⁸ On February 14, 2002 appellant claimed a schedule award for permanent impairment of the upper extremities due to carpal tunnel syndrome. On July 19, 2002 appellant claimed a schedule award pursuant to his right fourth finger amputation. There is no final decision of record regarding these schedule award claims; *see* notes 6 and 12, *supra*.

that appellant submitted insufficient factual evidence to establish that he used his hands as hammers, and insufficient medical evidence to establish causal relationship between an ulnar artery occlusion and the accepted employment factors. The Office also found that Dr. Landry's and Dr. Walker's opinions were of diminished probative value as they mentioned that appellant used his right hand as a hammer, when this was not factually established.

By decision dated October 28, 2002, the Office denied appellant's claim for compensation for the period September 7 to October 19, 2001, as he had not established a recurrence of disability for that period. The Office found that appellant submitted insufficient medical evidence establishing that he could not perform his assigned light-duty position during that time. The Office noted that there was no evidence of record indicating a change either in appellant's condition or his job requirements.

In a November 12, 2002 report, Dr. Walker opined that appellant had increased muscle fatigability with repetitive motion and loss of grip and pincer strength. Dr. Walker opined that appellant had reached maximum medical improvement.

Appellant disagreed with the October 7, 2002 decision denying the amputation claim, and in a November 13, 2002 letter, requested reconsideration. Appellant reiterated his allegations of being made to work outside of his restrictions, including using his right hand as a hammer when retrieving pouches from postal containers (GPMCs). Appellant also asserted that his condition deteriorated further due to the Office's denial of occupational therapy to become left hand dominant.

By decision dated November 21, 2002, the Office denied appellant's November 13, 2002 request for reconsideration on the grounds that appellant did not submit new evidence or legal argument warranting a merit review.

Appellant filed his appeal with the Board on December 11, 2002.

The Board finds that the Office properly denied appellant's November 29, 2001 request for a review of the written record on the grounds that it was untimely filed.

The Federal Employees' Compensation Act¹⁹ is unequivocal that a claimant not satisfied with a decision of the Office has a right, upon timely request, to an oral hearing or written review of the record before a representative of the Office.²⁰ Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative states, in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."²¹ The Office's procedures require it to exercise its discretionary authority to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a).

¹⁹ 5 U.S.C. §§ 8101-8193.

²⁰ 5 U.S.C. § 8124(b); *Joe Brewer*, 48 ECAB 411 (1997); *Coral Falcon*, 43 ECAB 915, 917 (1992).

²¹ 5 U.S.C. § 8124(b)(1).

The Board has held that the Office's exercise of this discretion is a proper interpretation of the Act and Board precedent.²²

Office regulations have expanded section 8124 to provide the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing."²³

In this case, the Office issued an October 15, 2001 decision finding that appellant did not submit sufficient medical evidence to establish that he sustained a right shoulder injury during one April 11 to 12, 2001 work shift. Appellant disagreed with this decision and in a November 25, 2001 letter, postmarked November 29, 2001, requested a review of the written record. As appellant's letter was postmarked November 29, 2001, more than 30 days after the October 15, 2001 decision, it was therefore untimely.

The Board further finds that, in its January 22, 2002 decision, the Office properly exercised its discretion in denying appellant's request for a review of the written record on the grounds that the issues presented could be addressed equally well through the submission of new, relevant evidence accompanying a valid request for reconsideration. As the October 15, 2001 decision was predicated on a lack of medical evidence, the Office properly found that appellant could pursue the issues involved through the submission of new, relevant medical evidence. Therefore, the Office's January 22, 2002 decision is proper under the law and the facts of this case.

Regarding the second issue, the Board finds that appellant has not established that he sustained a traumatic right trapezius strain and right shoulder bursitis in the performance of duty on April 11, 2001.

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.²⁴ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.²⁵

The question of whether work factors caused a personal injury, also referred to as "causal relationship," generally can be established only by the submission of rationalized medical opinion evidence explaining how and why the identified work factors would cause or aggravate the claimed medical condition.²⁶

In this case, appellant filed an April 12, 2001 traumatic injury claim alleging that he sustained a right trapezius strain and right shoulder bursitis during an April 11 to 12, 2001

²² *Henry Moreno*, 39 ECAB 475 (1988).

²³ 20 C.F.R. § 10.615 (1999).

²⁴ *See John J. Carlone*, 41 ECAB 354 (1989).

²⁵ *Id.*

²⁶ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

overnight work shift. Appellant attributed these injuries to writing with his nondominant left hand. In support of this claim, appellant submitted factual evidence establishing that he wrote extensively with his left hand, including copies of several forms and registers. Also, in a May 8, 2001 letter, Mr. Richards, appellant's supervisor, confirmed that, on April 11, 2001, appellant processed 64 registers, as well as 58 registers on April 12, 2001. Thus, appellant has established that he did write many forms using his left hand during the April 11 to 12, 2002 work shift.

Appellant also submitted medical evidence in support of his claim. In an April 12, 2001 report, Dr. Kathleen Stein, an emergency room physician, provided a history of right shoulder pain while writing with the left hand, and diagnosed an acute trapezius strain. Dr. Walker, an attending osteopath, diagnosed a right shoulder strain with bursitis due to writing with the left hand. In a November 19, 2001 report, Dr. Walker noted that appellant had a permanent, chronic "mild tenderness" in the right shoulder due to the changes in mechanics of his left hand." Dr. Walker opined that this was an overuse injury. However, neither Dr. Stein nor Dr. Walker explained how and why writing with the left hand would have any objective, pathophysiologic effect on the right shoulder or cause an overuse injury. These physicians did not set forth a pathophysiologic basis for finding that activity with the left upper extremity would cause a muscular strain and bursitis in the right upper extremity. Without such rationale, the opinions of Dr. Walker and Dr. Stein are insufficient to establish causal relationship in this case.²⁷

Therefore, the Office's May 6, 2002 decision denying appellant's claim for a right shoulder injury was proper under the law and the facts of this case, as appellant submitted insufficient rationalized medical evidence to establish causal relationship.

Regarding the third issue, the Board finds that the case is not in posture for a decision regarding whether the July 17, 2001 surgical amputation of the distal phalanx of the right fourth finger was causally related to the accepted carpal tunnel syndrome and three related surgeries

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment.²⁸ The Board has held 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.²⁹

In this case, appellant filed a July 18, 2001 claim alleging that the two carpal tunnel and two tendon surgeries on his right hand caused an occlusion in the blood vessels of the hand, resulting in a gangrenous fourth finger requiring partial amputation on July 17, 2001. Appellant also attributed the occlusion to having to pound on postal containers with his right hand to open and close them. Appellant submitted numerous medical reports supporting both assertions.

In a June 12, 2001 report, Dr. Walker related appellant's account of a tendon "slipping" in the right wrist while he was at work, causing the fingers of the right hand to go numb and

²⁷ *Id.*

²⁸ *Samuel Senkow*, 50 ECAB 370 (1999).

²⁹ *Melissa M. Fredrickson*, 50 ECAB 170 (1998).

dusky. Dr. Walker attributed these findings to a vascular compromise caused by a “late effect” of the four work-related surgeries on the right hand.” Dr. Walker reiterated his opinion that the ulnar artery occlusion was related to prior surgeries in a July 25, 2001 report. When the right fourth finger worsened, appellant sought emergency treatment from Dr. Fleck, a Board-certified specialist in emergency medicine, who submitted July 15, 2001 reports, diagnosing an obstruction of the distal ulnar artery causing ischemia of the right fourth finger, possibly related to the four right hand surgeries.

As gangrene had set in, on July 17, 2001 Dr. Landry, an attending Board-certified vascular surgeon of professorial rank, amputated the distal phalanx of the right fourth finger. In a July 19, 2001 report, Dr. Marr, an attending Board-certified orthopedic surgeon, also attributed appellant’s ischemia of the right fourth finger to an ulnar occlusion precipitated by “repetitive pounding at work.”

The Office noted in a July 31, 2001 letter that Dr. Marr had introduced a theory on causal relationship not supported by the record, as there was no evidence that appellant used his right hand for repetitive pounding at work.

Dr. Landry then submitted an August 14, 2001 letter concurring with Dr. Marr’s opinion, asserting that appellant’s disease pattern was “consistent with the patients with hypothenar hammer syndrome which is ulnar artery occlusion as a result of persistent trauma to the hand,” in particular using the hand as a hammer. Dr. Landry noted, however, that this causal relationship could not be established with certainty.

Dr. Walker then altered his previous opinion to include Drs. Landry and Marr’s theory on hypothenar hammer syndrome. In an August 16, 2001 note, Dr. Walker related appellant’s account of having to pound on postal “cages” and container doors.

Appellant then submitted factual evidence to support that he sustained hypothenar hammer syndrome. Appellant obtained October and November 2001 statements from nine coworkers, one of them his wife, five of whom admitted using their hands as hammers to open and close stuck container doors, three who saw others using their hands as hammers, and two who witnessed appellant doing so. Cary Farnard, an employing establishment official, acknowledged in November 19, 2001 letter that “some employees use their hands in a forceful way occasionally with opening and closing container equipment”

During a visit to the employing establishment described in a December 31, 2001 report, Dr. Walker personally observed appellant’s coworkers bang their hands against GPMC doors to loosen the doors and prevent mail from falling out. However, he again opined that the right fourth finger amputation was “secondary to the late effect and occupational exposure” to the four right hand surgeries. Dr. Walker repeated this opinion in a May 2 and 7 and August 1, 2002 reports, stating that the “amputated finger [was] a late effect from surgery.”

Dr. Walker presented both opinions in a May 8, 2002 report, attributing the amputation both to a “work-related (‘water hammer effect’) embolism to the upper extremity (right ring finger),” and “a late effect from surgical revision leading to amputation of the right ring finger.”

Due to the inconsistent explanations on causal relationship offered by appellant's physicians, the Office issued an October 12, 2001 decision denying appellant's claim for the fourth finger amputation, affirmed by October 7, 2002 decision.

The Board finds, however, that appellant has submitted sufficient factual evidence, including coworker witness statements, to establish that appellant used his right hand to bang or pound on mail container doors to open them. While Dr. Walker observed this behavior in other employees, this is not as relevant to appellant's claim as the witness statements corroborating that appellant used his hands as hammers.

As the Office predicated its October 12, 2001 denial of the fourth finger amputation on a lack of factual evidence regarding using the right hand as a hammer, the case must be remanded for further development. The Office should prepare a statement of accepted facts setting forth that appellant did use his dominant right hand as a hammer in opening and closing postal containers. The Office shall then refer this statement, appellant and the medical record to an appropriate Board-certified specialist or specialists, to obtain a rationalized medical opinion regarding the causal relationship of the arterial occlusion and subsequent amputation to work factors. Following this and other such development as the Office deems necessary, the Office shall issue an appropriate decision in the case.

Regarding the fourth issue, the Board finds that appellant has not established that he sustained a recurrence of disability from September 7 to 19, 2001 causally related to work factors.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³⁰

Appellant submitted no evidence indicating a change in his condition on September 7, 2001. Rather, in a September 11, 2001 progress note, Dr. Walker noted that appellant's condition remained unchanged. Appellant thus predicated his claim for recurrence of disability on a change in the nature and extent of his light-duty job requirements.

The job appellant performed from September 1 to 7, 2001 was based on an August 2001 job description approved by Dr. Walker on August 16, 2001. The physical requirements were within the work restrictions prescribed by Dr. Walker on June 11, 2001. Mr. Richards, an employing establishment supervisor, stated that, as of September 7, 2001, appellant was assigned to weigh "postage due" letters on a scale, determine the correct postage, and write that amount on the letter. Occupational therapy assessments of appellant's assigned duties in October 2001, approved by Dr. Walker, indicate that appellant was capable of performing his assigned duties,

³⁰ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 864 (1989); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

except for the use of tin snips or scissors, keyboarding and letter sorting. However, there is no indication of record that appellant was using tin snips or scissors, sorting letters or keyboarding from September 1 to 7, 2001 while working in the postage due area. Thus, there is no indication of record that appellant's assigned duties were changed to exceed his medical restrictions.

Consequently, appellant has not established his claim for recurrence of disability, as he submitted insufficient evidence establishing either a change in his condition, or a change in the nature of his light-duty job requirements such that he could no longer perform the position.

The Board finds that the fifth issue, regarding the Office's November 21, 2002 denial of appellant's November 13, 2002 request for reconsideration of the October 7, 2002 decision, is moot, as the October 7, 2002 decision affirming the October 12, 2001 decision denying the amputation claim is being set aside and remanded for further development.

The decisions of the Office of Workers' Compensation Programs dated October 28, May 6 and January 22, 2002 are hereby affirmed. The decision of the Office dated October 7, 2002 is hereby set aside, and the case remanded for further development consistent with this decision and order.

Dated, Washington, DC
May 27, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member