

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

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**P.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Naples, FL, Employer**

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**Docket No. 08-786  
Issued: November 24, 2008**

*Appearances:*

*Capp P. Taylor, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 22, 2008 appellant, through counsel, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' dated September 14, 2007, denying modification of March 15 and April 23, 2007 decisions, denying her claim for compensation for disability and a nonmerit decision dated December 11, 2007, denying her request for reconsideration of the merits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUES**

The issues are: (1) whether appellant established entitlement for intermittent wage-loss compensation for the period July 21, 2006 through January 30, 2007; and (2) whether the Office properly denied further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On October 9, 2003 appellant, then a 54-year-old modified carrier, filed a recurrence claim alleging that on July 8, 2003 she first realized that her modified position had aggravated

her hand and wrist condition.<sup>1</sup> The Office developed the claim as a new occupational disease claim as appellant had alleged new factors of employment and accepted the claim for aggravation of left wrist arthritis and bilateral thumb base arthritis on March 24, 2005.<sup>2</sup> On February 22, 2006 it authorized left hand bones fusion with graft and repair left wrist joint surgery.

On July 27, 2006 Dr. Sandra B. Collins, a treating Board-certified orthopedic surgeon, diagnosed worsening hand arthritis and bilateral basal joint, worsening left hand traumatic arthropathy/capito-lunate joint and worsening bilateral hand pain. A physical examination of the left wrist revealed decreased grip strength due to pain. Range of motion for the left wrist was 45 degrees flexion, 55 degrees extension 10 degrees radial deviation and 20 degrees ulnar deviation. An x-ray interpretation of the left hand revealed joint space narrowing. Appellant was released to work with restrictions, which included no lifting more than 10 pounds; occasional carrying of small tools, dockets and ledgers; and “[m]ay work to tolerance only.” Dr. Collins stated that if appellant “continues to use the hand, she will almost certainly worsen. At the present time, she is often unable to work a full [eight-]hour day due to pain.”

Appellant filed claims for compensation (Form CA-7) for partial disability claiming intermittent periods of wage-loss compensation for the period July 21 to September 13, 2006 and September 14 to 29, 2006. In attached time analysis forms, she noted that she used 22.48 hours of leave without pay for the period July 21 to August 31, 2006<sup>3</sup> and 10.69 hours of leave without pay for the period August 30 to September 13, 2006<sup>4</sup> for a total of 33.17 hours.

On October 13, 2006 the Office received a July 27, 2006 duty status report completed by Dr. Collins, who diagnosed aggravation of arthritis in the left wrist and base of both thumbs. Dr. Collins indicated that appellant was capable of working an eight-hour day to tolerance with restrictions. The restrictions included intermittent lifting up to 10 pounds for one hour per day; up to eight hours per day of sitting, standing and walking; no climbing or kneeling; up to 10 pounds of pulling/pushing; four hours of intermittent simple grasping and fine manipulation; and five hours of intermittent reaching above the shoulder.

In a November 10, 2006 report, Dr. Collins diagnosed significant left wrist midcarpal arthritis and bilateral basal joint arthritis. She noted that appellant was capable of working with restrictions in a sedentary position. Restrictions included no lifting and carrying more than 10 pounds, avoid repetitive work such as writing and “avoid any firm twisting, gripping, pushing or pulling motions.” In concluding, Dr. Collins stated that appellant “is only able to work to tolerance.”

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<sup>1</sup> Appellant noted file number xxxxxx645 for the original injury which had occurred on October 26, 1992.

<sup>2</sup> This was assigned file number xxxxxx238.

<sup>3</sup> Appellant did not include leave used on August 30, 2006 on this form.

<sup>4</sup> Appellant did not include leave used on August 31, 2006 on this form.

By decisions dated November 30, 2006, the Office denied appellant's claim for 106.9<sup>5</sup> hours of intermittent wage loss for the period July 21 to September 13, 2006 and 22 hours of wage-loss compensation for the period September 14 to 29, 2006.

In a letter dated January 11, 2007, appellant requested reconsideration. She noted that the intermittent periods of disability for the period January 21 to September 29, 2006 were due to her physician's restriction that she "could only work to tolerance." In support of her claim, she submitted the last page of a July 27, 2006 report and January 3, 2007 report by Dr. Collins.

On January 3, 2007 Dr. Collins diagnosed significant left wrist midcarpal arthritis and bilateral basal joint arthritis. She stated that appellant had been placed in a sedentary job, but did not intend to restrict her walking. Dr. Collins indicated that appellant's restrictions included no lifting and carrying more than 10 pounds, avoid repetitive work such as writing and "avoid any firm twisting, gripping, pushing or pulling motions." In an addendum, she opined that "at this time due to deteriorating condition of her hands [appellant] can only work a maximum of six hours per day."

On March 8, 2007 appellant filed claims for compensation claiming intermittent wage loss of 22 hours of leave without pay for the period September 30 to October 26, 2006, 20 hours of leave without pay for the period November 6 to 30, 2006, 18 hours of leave without pay for the period December 2 to 15, 2006 and 24 hours of leave without pay for the period January 4 to 30, 2007.

By decision dated March 15, 2007, the Office denied appellant's request for modification of the denial of her claim for intermittent wage loss for the period July 21 to September 29, 2006.

On April 19, 2007 Dr. Collins diagnosed worsening hand arthritis and bilateral basal joint, worsening left hand traumatic arthropathy/capito-lunate joint and worsening bilateral hand pain. She reported limited and painful range of motion, stiffness and weakness, decreased left hand strength and "moderate tenderness in the basal joint and midcarpal joint." Dr. Collins noted that appellant's condition was "aggravated by grip, use of hand and significantly aggravated by pulling." Range of motion for the left wrist was 30 degrees hyperextension. Appellant was released to work with restrictions, which included no lifting more than 10 pounds and occasional carrying of small tools, dockets and ledgers for six hours per day.

In an April 19, 2007 duty status report, Dr. Collins diagnosed aggravation of arthritis in the left wrist and base of both thumbs due to repetitive motion. She indicated that appellant was capable of working six hours a day with restrictions. The restrictions included intermittent lifting up to 10 pounds for six hours per day; up one hour of intermittent standing, up to six hours of continuous standing; up to six to eight hours of intermittent walking; no climbing; up to one half hour of kneeling, bending and stooping; up to four hours of twisting; one half to one hour writing; up to four hours of casing mail; up to two hours of intermittent reaching above the shoulder; up to eight hours of intermittent simple grasping; and up to four hours of fine manipulation.

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<sup>5</sup> This appears to be a typographical error as appellant did not claim this amount of leave on her time analysis forms.

By decision dated April 23, 2007, the Office denied appellant's claim for intermittent periods of wage loss during the period September 30, 2006 to January 30, 2007, totaling 84 hours.

In a May 18, 2007 report, Dr. Collins diagnosed worsening hand arthritis and bilateral basal joint, worsening left hand traumatic arthropathy/capito-lunate joint and worsening bilateral hand pain. Appellant was released to work with restrictions which included no lifting more than 10 pounds and occasional carrying of small tools, dockets and ledgers for six hours per day.

In a letter dated May 21, 2007, appellant requested reconsideration and submitted a May 10, 2007 report by Dr. Collins. In a May 10, 2007 report, Dr. Collins diagnosed bilateral basal joint arthritis and traumatic arthropathy of the capitoluminate joint in both hands. She noted "that [appellant's] duties as a postal worker have caused significant aggravation during the period of time that I have been seeing her." In support of this statement, Dr. Collins related appellant's "work activities involve both lifting to a significant degree as well as repetitive motion to a significant degrees, both of which are extremely aggravating to arthritic conditions." She reported that, as a result of appellant's worsening pain and arthritic condition, she limited appellant to not lifting more than 10 pounds or working more than six hours of work per day.

By decision dated September 14, 2007, the Office denied appellant's request for modification of the November 30, 2006 and March 15 and April 23, 2007 denials of her claim for intermittent wage loss for the period July 21, 2006 through January 30, 2007. In a letter dated October 24, 2007, appellant's counsel requested reconsideration and submitted a May 10, 2007 report by Dr. Collins in support of her request.

By decision dated December 11, 2007, the Office denied appellant's request for reconsideration.<sup>6</sup>

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>7</sup> has the burden of proof to establish the essential elements of her claim by the weight of the evidence.<sup>8</sup> For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.<sup>9</sup> Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical

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<sup>6</sup> The Board notes that subsequent to this decision appellant filed additional claims for intermittent wage-loss compensation for the period February 2 to July 31, 2007. As there is no final Office decision on appellant's claim for intermittent wage loss for this period, the Board does not have jurisdiction over this issue. 20 C.F.R. § 501.2(c). See *Jennifer A. Guillary*, 57 ECAB 485 (2005); *Karen L. Yaeger*, 54 ECAB 323 (2003) (Board's jurisdiction is limited to reviewing final decisions of the Office).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>9</sup> See *Amelia S. Jefferson*, *supra* note 8; see also *David H. Goss*, 32 ECAB 24 (1980).

issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>10</sup>

Under the Act the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>11</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>12</sup> An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>13</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factor(s).<sup>14</sup> The opinion of the physician must be based on a complete factual and medical background, 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 claimant.<sup>15</sup>

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>16</sup>

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

The Office accepted that appellant sustained aggravation of left wrist arthritis and bilateral thumb base arthritis. At the time appellant had been working eight hours per day in a modified position due to a prior accepted injury. She filed claims for wage-loss compensation alleging partial disability from work for intermittent periods from June 21, 2006 to January 30, 2007.

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<sup>10</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>11</sup> *S.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-536, issued November 24, 2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

<sup>12</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>13</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>14</sup> *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006).

<sup>15</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>16</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

The question to be resolved is whether appellant's intermittent disability for the period June 21, 2006 to January 30, 2007 was a result of residuals of her accepted employment injury. The medical evidence relevant to this issue includes the reports of Dr. Collins, an attending physician.

In support of her claim appellant submitted multiple reports by Dr. Collins, who released her to work with restrictions on July 27, 2006. Dr. Collins noted that appellant's condition will worsen if she continues using her hand and that she was "often unable to work a full [eight]-hour day due to pain." In reports dated July 27 and November 10, 2006, she reported that appellant may "work to tolerance only" as she experienced wrist pain. None of these reports by her specifically address whether appellant had any employment-related disability during the claimed period. Dr. Collins merely noted that appellant was capable of working with restrictions and that often appellant was unable to work a full day due to pain. The reports also alluded to a future injury if appellant continued using her hand. However, as the Board has held, the fear of future injury is not compensable.<sup>17</sup>

Appellant also submitted reports dated January 23, April 19 and May 18, 2007 and an April 19, 2007 duty status report. In a January 3, 2007 report, Dr. Collins reported that appellant's "deteriorating condition of her hands" permitted her to work only six hours. She noted that appellant's condition had worsened and opined that appellant was capable of working six hours per day with restrictions in her April 19, 2007 reports. Dr. Collins, however, provides no reasoning as to how appellant's reduced work hours was causally related to her accepted left wrist arthritis and bilateral thumb base arthritis. In her May 18, 2007 report, she reiterated that appellant was restricted to working six hours per day with limitations. None of the reports by Dr. Collins are sufficient to meet appellant's burden of proof as they do not offer medical rationale explaining how or why her accepted employment injury prevented her from performing her light duty or why she was unable to work an eight-hour day on the particular dates listed. The Board has held that medical reports which do not containing rationale on causal relationship are entitled to little probative value and are of diminished probative value.<sup>18</sup> Dr. Collins failed to provide any rationale explaining how appellant's intermittent periods of disability were causally related to her accepted employment conditions of left wrist arthritis and bilateral thumb base arthritis in any of her reports. Without reasoned medical evidence supporting that appellant had employment-related disability during the period in question, she has not met her burden of proof to establish her claim for intermittent wage-loss compensation during the period July 21, 2006 to January 30, 2007.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her

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<sup>17</sup> See *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Calvin E. King*, 51 ECAB 394 (2000).

<sup>18</sup> Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet appellant's burden of proof. *S.S.*, 59 ECAB \_\_\_\_ (Docket No. 07-579, issued January 14, 2008); *Lourdes Davila*, 45 ECAB 139 (1993).

employment.<sup>19</sup> The Board finds that appellant failed to submit sufficient medical evidence in this case and, therefore, has failed to discharge her burden of proof.

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

To require the Office to reopen a case for merit review under section 8128 of the Act,<sup>20</sup> the Office's regulation provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>21</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>22</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.<sup>23</sup>

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

Appellant requested reconsideration on September 14, 2007. She has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not presented pertinent new and relevant evidence not previously considered by the Office. Appellant submitted a May 10, 2007 report by Dr. Collins. This report had been previously submitted by her and considered by the Office. The Board has long held that the submission of evidence which repeats or duplicates evidence already in the record does not constitute a basis for reopening a case.<sup>24</sup>

Appellant has not established that the Office improperly denied her request for further review of the merits of its December 11, 2007 decision under section 8128(a) of the Act, because the evidence and argument she submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office.

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<sup>19</sup> *D.I.*, 59 ECAB \_\_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>20</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>21</sup> 20 C.F.R. § 10.606(b)(1)-(2). *See Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>22</sup> *Id.* at § 10.607(a).

<sup>23</sup> *Id.* at § 10.608(b). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006) (when an application for review of the merits of a claim does not meet at least one of the three regulatory requirements the Office will deny the application for review without reviewing the merits of the claim).

<sup>24</sup> *D.K.*, 59 ECAB \_\_\_\_ (Docket No. 07-1441, issued October 22, 2007).

### **CONCLUSION**

The Board finds that appellant has not established wage-loss compensation for intermittent periods of disability during the period July 21, 2006 through January 30, 2007. The Board further finds that the Office properly denied appellant's request for a merit review.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 11, September 14, April 23 and March 15, 2007 are affirmed.

Issued: November 24, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board