United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 11-416**
	)	**Issued: October 11, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Westbrook, ME, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 17, 2010 appellant filed a timely appeal from a June 24, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for disability compensation. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant was disabled from employment beginning June 22, 2005 due to her accepted employment injury.

FACTUAL HISTORY

On December 23, 1999 appellant, then a 44-year-old distribution and window clerk, filed an occupational disease claim alleging that she sustained a strained tendon in her right thumb due to factors of her federal employment. OWCP accepted the claim, assigned file number

[1] 5 U.S.C. § 8101 *et seq.*

xxxxxx372, for right thumb tendinitis. It also accepted that appellant sustained left thumb strain under file number xxxxxx400. OWCP authorized a January 22, 2002 carpalmetacarpal (CMC) arthroscopy on the right thumb and a July 24, 2002 CMC arthroplasty on the left thumb.

On September 4, 2002 appellant returned to part-time limited-duty employment. The position required working as a window clerk with limited lifting and no repetitive motion beginning four hours per day. Appellant began working full-time modified employment on November 12, 2002. A nurse noted that appellant was "essentially working her full[-]duty job since her restrictions do not exceed her [date-of-injury] position duties."

In a state workers' compensation form dated June 22, 2005, Ann Hurd, a physician's assistant, diagnosed an acute stress response, bilateral hand pain, osteoarthritis and depression. She advised that appellant could return to work using fine motor or pinching and grasping for no more than 30 minutes without a break. Ms. Hurd found that appellant could not perform window or customer service work but could answer telephones.

On August 5, 2005 the employing establishment informed OWCP that appellant had stopped on August 3, 2004 "due to an alleged stress[-]related injury which was denied by OWCP. Now she is claiming that after being out of work since August 4, 2004 she can return to work but has more stringent restrictions to her wrist condition."

In a report dated August 15, 2005, Dr. John Chance, a Board-certified orthopedic surgeon, found that appellant could work no more than 40 hours per week taking a break every 30 minutes.

On August 29, 2005 appellant underwent a functional capacity evaluation (FCE). An occupational therapist found that she could work with her hands 6 hours per day for 45 minutes at a time and use her hands for minimal grasping.

On September 7, 2005 appellant filed a claim for wage-loss compensation beginning June 22, 2005. By letter dated September 13, 2005, OWCP requested additional factual and medical evidence supporting that she was disabled from work due to her accepted work injury.

By letter dated October 4, 2005, appellant related that she was not allowed to take breaks or work without her restrictions when she returned to work after her employment injury. Her coworkers harassed her and her hand condition deteriorated. Appellant stopped work from August 2, 2004 through June 22, 2005 and filed for compensation benefits under another file number. She was released to return to work on June 22, 2005 but the employing establishment did not accommodate her restrictions.

On October 5, 2005 Ms. Hurd related that appellant stopped work on August 2, 2004 due to an acute stress response. She noted that her "job was increasingly demanding on her hands" and that her hands worsened due to her duties. Ms. Hurd noted that the FCE supported the provided work restrictions.

By decision dated July 29, 2008, OWCP denied appellant's claim for compensation beginning June 22, 2005. It found that she did not submit sufficient evidence showing that she

was disabled commencing that date or that her limited-duty position changed such that she was unable to perform the duties due to her accepted left thumb injury.

On August 14, 2008 appellant requested an oral hearing. At the hearing, held on February 26, 2009, her representative noted that she was claiming compensation for both her right and left thumb injuries. When appellant left work before her stress condition, she was working in a position at the window that was not suitable. When she could return to work after her stress-related condition, the employing establishment informed her that there was no work available after reviewing the FCE and August 29, 2005 fitness-for-duty examination. The hearing representative reviewed the case record for the right thumb condition and noted that there were no recently submitted documents. Kathy Dyer, a nurse with the employing establishment, related that an FCE showed that appellant could not perform her employment duties. She noted that work within appellant's limitations was not available for window clerks due to the need for pinching force. The hearing representative advised appellant's representative to submit a physician's opinion addressing why she needed greater work restrictions after a year of not working.

In a report dated October 1, 2007, received by OWCP on March 13, 2009, Dr. C.T. Bartlett, Board-certified in family medicine, noted that appellant's "hand surgeon advises indefinite 40 hours per week, minimal pinching or writing, no pulling bags, and no lifting greater than 25 [pounds]. Since the hand surgeon described these restrictions as indefinite, and [she] feels that her restrictions are still the same, I have to concur." In an addendum dated May 29, 2008, Dr. Bartlett indicated that he had reviewed the FCE and agreed with the findings.

By letter dated June 17, 2008, appellant asserted that a district court judge accepted that she could not work due to her thumb injuries. She submitted depositions which she maintained established that she was not permitted to work due to her employment injuries. Appellant submitted depositions from employees from the employing establishment obtained as part of a civil action.

On March 10, 2009 appellant's representative submitted a letter indicating that the FCE was administered under the direction of a physician.

By decision dated May 14, 2009, an OWCP hearing representative affirmed the July 29, 2008 decision. She found that the record contained no rationalized evidence supporting that appellant was disabled beginning June 2005 due to either thumb injury.

In a report dated April 21, 2010, Dr. Bartlett discussed appellant's belief that the employing establishment did not provide her with a modified position when she returned to work in 2004. She stopped work in August 2004 due to stress caused by the employing establishment's failure to adhere to her work restrictions. When appellant wanted to resume work in June 2005, Ms. Hurd provided "more complete restrictions (*i.e.*, no window work) to improve compliance with your previously determined work restrictions." Dr. Bartlett noted that an FCE showed that appellant could perform minimal, occasional grasping. He stated, "After review of the work site evaluation and the FCE, I agree with their stated restrictions and limitations. Assuming these are honored in the workplace, it appears that you do have the functional capacity to work."

On May 3, 2010 appellant requested reconsideration. She argued that the FCE should not have been scheduled if OWCP would not accept its results. Appellant asserted that the employing establishment erroneously refused to provide her with employment and altered her claim forms.

By decision dated June 24, 2010, OWCP denied modification of its May 14, 2009 decision.

On appeal appellant contends that the employing establishment would not provide her with work based on the FCE and OWCP did not consider the FCE probative medical evidence. She also argued that the employing establishment did not provide her with work within her restrictions before she stopped on August 2, 2004. Appellant reiterates that an employing establishment employee altered the numbers on her claims and had an obligation to accommodate her work injury or pay her compensation.

LEGAL PRECEDENT

The term disability as used in FECA[2] means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.[3] Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[4] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[5] The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.[6]

ANALYSIS

OWCP accepted that appellant sustained right thumb tendinitis under file number xxxxxx372 and left thumb tendinitis under file number xxxxxx400 due to factors of her federal employment. Appellant underwent a CMC surgery on the right thumb on January 22, 2002 and on the left thumb on July 24, 2002.

On November 12, 2002 appellant returned to full-time modified employment. She stopped work on August 3, 2004 due to stress. On September 7, 2005 appellant filed a claim for

[2] 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

[3] *Paul E. Thams*, 56 ECAB 503 (2005).

[4] *Id*.

[5] *Id*.

[6] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

disability compensation beginning June 22, 2005 due to her accepted employment injury. She related that when she returned to work after her injury in 2002 the employing establishment did not provide her with work within her restrictions. Appellant asserted that her physician released her to return to work on June 22, 2005 but the employing establishment did not provide her with a position suitable for her increased physical limitations. She submitted reports dated June 22 and October 5, 2005 from Ms. Hurd, a physician's assistant. The reports of a physician's assistant, however, are entitled to no weight as a physician's assistant is not a "physician" as defined by FECA.[7]

On August 15, 2005 Dr. Chance found that appellant could work full time with a break every 30 minutes. As he did not find that she was disabled from her modified position, his report is insufficient to meet her burden of proof.

In a report dated October 1, 2007, Dr. Bartlett indicated that appellant's hand surgeon found that she could work with indefinite restrictions of minimal pinching, no pulling and no lifting over 25 pounds. He stated, "Since the hand surgeon described these restrictions as indefinite, and [she] feels that her restrictions are still the same, I have to concur." Dr. Bartlett, however, did not address the cause of appellant's limitations or explain how these limitations prevented her from performing her limited-duty employment.[8] Further it appears that he relied on the opinion of another physician and on appellant's own belief instead of reaching an independent determination regarding disability. A physician's report is of diminished probative value when it is based on a claimant's belief rather than the doctor's independent judgment.[9]

An FCE, performed on August 29, 2005 by an occupational therapist, revealed that appellant could work using her hands six hours per day with minimal grasping. On May 29, 2008 Dr. Bartlett reviewed the FCE and agreed with the findings. While he agreed with the physical limitations provided by the FCE, he did not address the relevant issue of causation. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[10] Dr. Bartlett's opinion is of reduced probative value to the relevant issue of whether appellant had increased disability beginning June 2005 due to her accepted employment injury.

In a report dated April 21, 2010, Dr. Bartlett noted that appellant related that the employing establishment did not provide her with work within her restrictions in 2004 and that she subsequently stopped work due to stress. Appellant then attempted to return to work with increased restrictions in June 2005. Dr. Bartlett asserted that she could only perform minimal grasping. He found that appellant could work within the restrictions set forth in the FCE. Dr. Bartlett did not address the cause of her work restrictions or explain how the nature and

[7] *See* 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

[8] *See Michael E. Smith*, 50 ECAB 313 (1999) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] *Earl David Seale*, 49 ECAB 152 (1997) (a physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment).

[10] *See A.D.*, 58 ECAB 149 (2006); *Conrad Hightower*, 54 ECAB 796 (2003).

extent of appellant's employment-related condition had changed at the time she was released for work in June 2005. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[11] As there is no probative, rationalized medical evidence addressing how appellant's increased work restrictions resulted from her accepted thumb injuries, she has not met her burden of proof.

On appeal appellant questions why OWCP did not rely upon the FCE. The FCE was performed by an occupational therapist and an occupational therapist is not considered a physician under FECA.[12] As discussed, Dr. Bartlett concurred with the findings set forth in the FCE but did not address the relevant issue of causation; thus, his opinion is of little probative value.

Appellant also argues that the employing establishment did not provide her with work within her restrictions before she stopped on August 2, 2004. She indicated, however, that she stopped work due to stress rather than an inability to perform her employment duties. Although appellant alleged that she sustained increased disability beginning June 2005, she has not submitted medical evidence establishing that the increased restrictions were due to her accepted bilateral thumb tendinitis. Consequently, she has not met her burden of proof.

Appellant maintains that the employing establishment altered the numbers on her claims and has an obligation to accommodate her due to her work injury or pay her compensation. The Board's jurisdiction, however, extends only to reviewing final adverse decisions of OWCP issued pursuant to FECA.[13]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she was disabled from employment beginning June 22, 2005 due to her accepted employment injury.

[11] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[12] 5 U.S.C. § 8101(2).

[13] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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