

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
BELLMAWR, NJ, Employer**

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**Docket No. 13-717
Issued: July 24, 2013**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 31, 2013 appellant, through her attorney, filed a timely appeal from a September 26, 2012 merit decision of the Office of Workers' Compensation Programs' (OWCP) hearing representative, which denied her recurrence claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant established a recurrence of disability commencing January 26, 2012 causally related to her accepted October 25, 2010 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the September 26, 2012 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

FACTUAL HISTORY

OWCP accepted that on October 25, 2010 appellant, then a 42-year-old rural mail carrier, sustained a right thumb sprain when she jammed her thumb while putting a mail tray in a postal truck. She stopped work and returned to full duty on November 12, 2010. In another claim, OWCP accepted that on June 7, 2011 appellant sustained right thumb tenosynovitis when she shifted mail trays in the performance of duty. Appellant stopped work and returned to full duty on June 29, 2011.

On January 26, 2012 appellant filed a notice of recurrence claim alleging that she continued to feel pain in her thumb since the original October 25, 2010 employment injury. She stopped work. Appellant submitted a claim for disability compensation beginning January 26, 2012.

In a January 26, 2012 attending physician's report, Dr. Nikhil Parikh, a Board-certified internist, noted appellant's complaints of right arm pain and numbness. He reported a history of right thumb strain and noted that x-rays did not show a fracture. Dr. Parikh diagnosed carpal tunnel syndrome and right lateral epicondylitis. He checked "yes" that appellant's condition was caused or aggravated by an employment activity. Dr. Parikh stated that she was partially disabled from January 26 to February 9, 2012. He authorized appellant to return to light duty with no lifting of the upper extremities.

In a January 31, 2012 urgent care record, a physician with an illegible signature diagnosed thumb injury. He checked a box indicating that appellant was unable to work and needed a follow-up appointment within one day.

In a February 3, 2012 magnetic resonance imaging scan report, Dr. Michael Dutka, a Board-certified diagnostic radiologist, found no evidence of ligament tear and significant joint effusion. He reported that flexor and extensor tendons and pulleys appeared intact and that alignment in appellant's right hand appeared satisfactory. Dr. Dutka observed minimal spurring of the first metacarpal head at the metacarpophalangeal joint. He concluded that there was no evidence of ligament or tendon tear, fracture or suspicious bony lesion.

In a February 18, 2012 return to work slip, Dr. Parikh stated that he treated appellant for carpal tunnel syndrome. He authorized her to return to work on March 2, 2012.

In a February 28, 2012 form, Dr. Manish K. Singh, a Board-certified neurologist, indicated that appellant underwent electromyography and nerve conduction velocity tests. He circled many diagnoses including insomnia, headache, cervicobrachial syndrome, cervical spondylosis, brachial plexopathy and carpal tunnel syndrome.

By letter dated March 15, 2012, OWCP advised appellant that the evidence was insufficient to establish that she sustained a recurrence of disability beginning January 26, 2012 and requested additional evidence to establish her claim.

In a January 31, 2012 report, Dr. Salvatore Pepe, Board-certified in emergency medicine, related appellant's complaints of right hand and thumb pain since January 25, 2012. Appellant denied any recent injury or trauma but stated that it was a recurrence of an original October 2010 right thumb injury at work. Dr. Pepe reviewed her history and conducted an examination. He

observed tenderness over the thenar eminence of the right thumb with no ecchymosis or erythema. Dr. Pepe reported nontender front range of motion of the right forearm and shoulder. He diagnosed sprain and strain of carpometacarpal joint of the hand.

In a March 6, 2012 report, Dr. Singh related appellant's complaints of pain and burning in her right arm and elbow pain. He reviewed her records and conducted an examination. Dr. Singh stated that appellant should be excused from work for the period March 6 to 13, 2012. He indicated that she may return to light duty on March 14, 2012 and restricted her to avoid heavy lifting.

In an April 16, 2012 statement, appellant reported that she was unable to work beginning January 26, 2012 because the pain in her right thumb increased and recently moved up her arm. She explained that she continuously felt pain in the same thumb and that the swelling in her thumb had not gone down since the original October 25, 2010 injury. Appellant noted that she did the same work from June 2011 to January 2012 and that she did not sustain any new injuries at work or elsewhere.

In a decision dated April 27, 2012, OWCP denied appellant's claim for recurrence of disability finding that the medical evidence failed to establish that she was unable to work beginning January 26, 2012 as a result of the October 25, 2010 employment injury.

On May 14, 2012 appellant, through counsel, requested an oral hearing, which was held on August 13, 2012. She described her duties as a rural carrier and the October 25 and November 27, 2010 injuries. Appellant stated that she returned to full duty but she still experienced pain and swelling in her right hand. She noted that she requested light duty but the employing establishment was unable to accommodate her request. Appellant explained that in the week leading up to January 26, 2012 the pain in the right hand and elbow increased. She described the medical treatment she received and stated that a hand specialist prescribed a brace for her to wear because a ligament in her right thumb had moved. Appellant's counsel alleged that appellant's right thumb injury continued to worsen until she was not able to work. He stated that going back to full duty did not help to improve her condition. Appellant's counsel contended that appellant sustained a recurrence because she was still trying to get diagnosed regarding her thumb. He noted that if a physician clearly stated that it was from her prior work injury and that the overall condition worsened then it would likely be a recurrence of the thumb but there was also a possibility that there were new symptoms and new employment factors that aggravated old symptoms.

In an April 17, 2012 disability slip, Dr. Singh diagnosed brachial plexus and carpal tunnel syndrome. He excused appellant from work for the period February 28 to April 30, 2012 and authorized her to return to work on May 1, 2012.

In a June 5, 2012 work capacity evaluation form, Dr. Singh reported that appellant was not capable of performing her usual job due to right upper extremity pain. He indicated that she was authorized to return to modified duty with restrictions of no heavy lifting. Dr. Singh also limited repetitive movements of the wrists and elbows for 2 to 4 hours, pushing and pulling up to 25 pounds and lifting up to 10 pounds.

In a July 10, 2012 report, Dr. Singh related appellant's October 25 and November 27, 2010 right hand and thumb injuries. He noted that she worked full duty as a rural mail carrier

from November 19, 2010 to January 26, 2012 and described her duties as casing and pulling mail and carrying parcels weighing up to 70 pounds. Dr. Singh first examined appellant on February 28, 2012 and noted that she had been out of work since January 26, 2012. He related that she reported an exacerbation of symptoms since January 2012. Upon examination, Dr. Singh observed tenderness to occipital region and tenderness over the right trapezius region. Ross maneuver was positive on the right side. Dr. Singh also noted tenderness over supraclavicular and infraclavicular region on the right side. Appellant's deep tendon reflexes were 3+ symmetric bilaterally and no objective sensory deficits were noticed. Dr. Singh diagnosed cervicobrachial plexus traction injury on the right side, mechanical neck pain, bilateral cervical pain and headache and insomnia. He stated that appellant was unable to tolerate more than two hours of work because she still had significant difficulty performing her assigned work as a rural carrier. Dr. Singh reported that the repetitive activity of pulling, pushing and reaching overhead and heavy lifting would aggravate her right upper extremity symptoms. He opined that appellant's right upper extremity symptoms were more likely due to brachial plexus traction injury and that her symptoms appeared to be from lateral cord. Dr. Singh concluded that her right upper extremity symptoms were more likely than not causally related to her October 25, 2010 injury and that her symptoms were more likely to get exacerbated by her work situation.

By decision dated September 26, 2012, an OWCP hearing representative affirmed the April 27, 2012 decision denying appellant's recurrence of disability claim.

LEGAL PRECEDENT

OWCP regulations define the term a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³ OWCP's procedure manual provides that a recurrence of disability also includes worsening of disability due to an accepted consequential injury.⁴

Where an employee, who is disabled from the job he or she held when injured returns to a light-duty position or the medical evidence establishes that he or she 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 show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁵ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to the employment injury. The medical evidence

³ 20 C.F.R. § 10.5(x).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997).

⁵ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, 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.⁸

ANALYSIS

OWCP accepted that appellant sustained a right thumb sprain as a result of an October 25, 2010 employment injury. Appellant stopped work and returned to full duty on November 10, 2010. OWCP also accepted in another claim that she sustained right thumb tenosynovitis as a result of a June 7, 2011 employment injury. Appellant stopped work and returned to full duty on June 29, 2011. On January 26, 2012 she submitted a recurrence of disability claim alleging that she continued to feel pain in her thumb as a result of the October 25, 2010 employment injury. Appellant stopped work and submitted a claim for disability compensation beginning January 26, 2012. The issue is whether she sustained a recurrence of total disability on January 26, 2012 causally related to the October 25, 2010 employment injury.

Appellant has not alleged a change in her light-duty job requirements. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant must provide medical evidence to establish that she was disabled due to a worsening of her accepted work-related conditions. The Board finds that she has not met her burden of proof to establish her claim.

Appellant submitted medical reports and disability slips from Dr. Singh. The relevant reports are dated March 6 to July 10, 2012. In March 6 and April 17, 2012 disability notes, Dr. Singh excused her from work for the period February 28 to April 30, 2012. In a June 5, 2012 work capacity evaluation form, he authorized appellant to return to modified duty with restrictions of no heavy lifting. Although Dr. Singh excused her from work for the period February 28 to April 30, 2012, he did not provide any explanation on the cause of her inability to work during that period.⁹ The Board finds that he fails to provide an explanation, based on objective medical findings and rationale demonstrating why appellant's current conditions were disabling and how any inability to work was a result of the October 25, 2010 employment injury.

In a July 10, 2012 report, Dr. Singh noted that appellant had been out of work since January 26, 2012 and that her duties as a rural mail carrier required repetitive activity of pulling,

⁶ *Supra* note 4 at Chapter 2.805.2 (March 2011).

⁷ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁹ *T.S.*, Docket No. 13-227 (issued April 9, 2013); *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

pushing, reaching overhead and heavy lifting. Upon examination, he observed tenderness over supraclavicular and infraclavicular region on the right side. Dr. Singh diagnosed cervicobrachial plexus traction injury on the right side and carpal tunnel syndrome, among other conditions. He opined that appellant's right upper extremity symptoms were more likely due to brachial plexus traction injury and that her symptoms appeared to be from lateral cord. Dr. Singh stated that she was unable to tolerate more than two hours of work because she still had significant difficulty performing her assigned work as a rural carrier. He concluded that appellant's right upper extremity symptoms were more likely than not causally related to her October 25, 2010 injury. Although Dr. Singh notes that she was unable to work beginning January 26, 2012 and states that her right upper extremity symptoms were related to the October 25, 2010 employment injury, he also attributes her right upper extremity condition to a brachial plexus traction injury, not the accepted right thumb sprain. As previously noted, a recurrence of disability means an inability to work after an employee has returned to work that is caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹⁰ In this case, Dr. Singh attributes appellant's current right upper extremity symptoms to a brachial injury, which is a new injury. He does not discuss a worsening of her accepted right thumb condition or provide a well-rationalized medical opinion establishing a recurrence of total disability on January 26, 2012.¹¹ Without a clear opinion relating appellant's inability to work to the accepted October 25, 2010 right thumb injury, the Board finds that Dr. Singh's reports are insufficient to establish her recurrence of disability claim.

Appellant also submitted reports by Dr. Parikh dated January 26 and February 18, 2012. Dr. Parikh related her complaints of right arm pain and numbness and noted a history of right thumb strain. He diagnosed carpal tunnel syndrome and right lateral epicondylitis. Dr. Parikh stated that appellant was partially disabled from January 26 to February 9, 2012 and authorized her to return to light duty with no lifting of the upper extremities. The Board finds that his reports do not establish that she sustained a recurrence of total disability because he authorized her to return to light duty on January 26, 2012. Dr. Parikh's opinion does not support that appellant was totally disabled beginning January 26, 2012.

The additional reports by Drs. Dutka and Pepe are similarly insufficient to establish appellant's recurrence of disability claim as they do not address whether she was disabled from work beginning January 26, 2012 as a result of the accepted October 25, 2010 employment injury. Dr. Dutka found no evidence for ligament or tendon tear and no evidence of recent fracture or suspicious bony lesion. Dr. Pepe diagnosed sprain and strain of carpometacarpal joint of the hand. Neither physician, however, addressed appellant's inability to work as a result of the October 25, 2010 employment injury. Furthermore, the January 31, 2012 urgent care record by a physician with an illegible signature is insufficient to establish appellant's claim as it lacks proper identification.¹²

On appeal, appellant's counsel alleges that Dr. Singh's July 10, 2012 report clearly reported an overall worsening of appellant's symptoms up to January 25, 2012 and attributes her

¹⁰ *Supra* note 4.

¹¹ See *H.M.*, Docket No. 09-864 (issued November 6, 2009).

¹² *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

symptoms to the October 25, 2010 injury. He acknowledges that, while appellant's initial injuries were accepted for a thumb condition, Dr. Singh felt that there was more of an upper extremity impairment related to a neurologic dysfunction in the right arm. As previously explained, the Board finds that Dr. Singh failed to provide a rationalized medical opinion explaining how appellant was unable to work beginning January 26, 2012 as a result of her accepted October 25, 2010 right thumb sprain. Dr. Singh diagnosed her current right upper extremity conditions as brachial plexus traction injury and carpal tunnel syndrome, which are new injuries that were not previously accepted. He has not established a recurrence of appellant's October 25, 2010 employment injury.

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 did not meet her burden of proof to establish a recurrence of total disability commencing January 26, 2012.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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