

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

E.B., Appellant

and

**U.S. POSTAL SERVICE, GREENVILLE
PROCESSING & DISTRIBUTION CENTER.
Greenville, SC, Employer**

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**Docket No. 13-2088
Issued: February 21, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 13, 2013 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs (OWCP) dated April 9 and August 13, 2013 that 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.

ISSUE

The issue is whether appellant is entitled to disability compensation for the period January 23 to 25, 2013.

On appeal appellant generally asserts that she is entitled to wage-loss compensation for the period claimed.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On November 3, 2006 appellant, then a 48-year-old mail handler, filed an occupational disease claim, alleging that her daily job duties caused carpal tunnel syndrome in both hands. After an initial denial on January 19, 2007, on March 30, 2007 an OWCP hearing representative reversed the denial, and OWCP accepted bilateral carpal tunnel syndrome. OWCP adjudicated the claim under file number xxxxxx625.

Appellant had a right carpal tunnel release on June 25, 2007, and returned to full-time modified duty on August 12, 2007. By decision dated June 12, 2009, she was granted a schedule award for five percent impairment of the right hand. In a June 25, 2009 decision, OWCP determined that appellant's actual earnings fairly and reasonably represented her wage-earning capacity with zero loss. On September 16, 2009 appellant had a carpal tunnel release on the left, and returned to full-time modified duty on June 3, 2010. She received appropriate disability compensation.

On March 10, 2011 appellant filed an occupational disease claim for a left elbow condition. She did not stop work. OWCP adjudicated the claim under file number xxxxxx065 and accepted bilateral lesion of the ulnar nerve. It combined the two cases on May 5, 2011.

On December 22, 2011 appellant was granted a schedule award for a five percent impairment of the left arm. On May 31, 2012 she was granted a schedule award for an additional five percent impairment of the left arm and on June 1, 2012 was granted an additional five percent impairment of the right arm.

In a work capacity evaluation dated December 17, 2012, Dr. Phillip G. Esce, an attending Board-certified neurosurgeon, advised that appellant was limited to two hours of modified duty daily due to ulnar and median nerve problems. On January 31, 2013 appellant filed a claim for compensation for January 23 through 25, 2013. The attached time analysis form indicated that on each of these three days she worked two hours and claimed compensation for six hours.

By letter dated February 5, 2013, OWCP informed appellant of the type of evidence needed to support her compensation claim. In a February 7, 2013 report, Dr. Esce indicated that appellant could return to eight hours of modified duty daily on February 13, 2013. On February 12, 2013 appellant filed a claim for compensation for January 26 through February 8, 2013. On February 20, 2013 she accepted a full-time modified mail handler position. On March 5, 2013 appellant filed a claim for compensation for February 9 through 22, 2013. The latter indicated that she returned to full-time modified duty on February 20, 2013. In a March 7, 2013 report, Dr. Esce indicated that appellant was restricted to two hours of work daily until February 13, 2013 due to worsening nerve pain, dysfunction and worsening symptoms associated with her diagnoses of carpal tunnel syndrome and ulnar neuropathy.

In a decision dated April 9, 2013, OWCP denied appellant's claim for compensation for the period January 23 to February 22, 2013 on the grounds that the medical evidence did not provide a thorough explanation with objective findings to show how her condition had worsened such that she was no longer able to perform the duties of the modified position.

On May 9, 2013 appellant requested a review of the written record. In a May 6, 2013 statement, she indicated that she was forced to work only two hours daily by her physician and

the employing establishment and that she had no say in the matter. On May 2, 2013 Dr. Esce noted that he had been treating appellant over the past two years. He advised that she was unable to work full duty from January 26 to February 8, 2013, due to upper extremity dysfunction of both hands which was caused by nerve entrapments in the median and ulnar locations, as evidenced by a positive Tinel's sign, electrodiagnostic study findings, and a surgical history consistent with nerve entrapment and weakness and numbness in the arms. Dr. Esce described physical examination findings and diagnosed carpal tunnel syndrome and ulnar neuropathy.²

In correspondence dated June 28, 2013, Charles Johnson, Health and Resource Management Specialist with the employing establishment, advised that on September 11, 2012 employees who had not submitted medical evidence in one year were advised to provide updated reports. He indicated that on December 21, 2012 appellant's physician faxed a work capacity evaluation limiting appellant to two hours of work daily. Mr. Johnson stated that in January he became aware that appellant was still working full duty, and he, her supervisor, and appellant had a teleconference where appellant asserted that she was not aware that her physician had restricted her to two hours work per day. He indicated that once all parties were informed, appellant's supervisor abided by the new work restrictions and sent appellant home, with the restrictions effective January 23, 2013. Mr. Johnson stated that once appellant's physician advised that she could work eight hours per day, a full-time modified job offer was provided and signed on February 20, 2013. He concluded that it was not appellant's choice to be reduced to two hours of work per day, but that her physician placed this restriction without notifying appellant or giving her a chance for her input. Mr. Johnson requested that OWCP honor her claim for compensation for January 23 to February 8, 2013.

By decision dated August 13, 2013, an OWCP hearing representative affirmed the April 9, 2013 decision with regard to the period January 23 to 25, 2013 on the grounds that the medical evidence did not establish recurrent disability for this period. The hearing representative set aside the decision regarding compensation from January 26 to February 22, 2013 because OWCP had not provided appellant proper notice and advice regarding the evidence needed to support her claim for continuing disability. On remand OWCP was to afford her 30 days to submit sufficient evidence of meet her burden of proof for this period.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ This term also means an inability to work 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 (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical

² Appellant also submitted additional medical evidence that did not discuss her ability to work during the period of claimed disability.

³ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁴

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.⁵

OWCP procedures provide that, if recurrent disability occurs after 90 days from return to work, if the employing establishment has withdrawn a limited-duty assignment when no wage-earning capacity determination is in place, the claims examiner need only establish continuing injury-related disability for regular duty to accept this recurrence and begin payment of compensation benefits.⁶

ANALYSIS

The Board finds that this case is not in posture for decision. On January 23, 2013 appellant changed her schedule from eight hours of limited duty daily to two hours a day. She filed a claim for compensation for the remaining six hours she no longer worked. On a December 17, 2012 work capacity evaluation, appellant's physician Dr. Esce, placed a two-hour workday restriction. He apparently faxed this to the employing establishment; but appellant continued to work eight hours of modified duty daily until the employing establishment became aware of the two-hour restriction. Following a conference with appellant, her supervisor, and the health management specialist, the employing establishment restricted appellant to a two-hour workday. Appellant then filed claims for six hours of compensation daily until she returned to her eight-hour workday in February 2013.

In the case *Terry R. Hedman*, the Board held that to establish a claimed recurrence of disability, a claimant must establish 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.⁷ In its April 9, 2013 decision, OWCP denied this claim on the grounds that the medical evidence did not establish that her injury-related condition had worsened to the extent that she could no longer perform the modified position. This decision was affirmed by an OWCP hearing representative with regard to claimed disability from January 23 to 25, 2013. OWCP did not address *Hedman* or determine whether appellant's reduced hours represented a withdrawal of her light-duty position.

As noted above, OWCP procedures provide that, if the employing establishment has withdrawn a limited-duty assignment and no wage-earning capacity determination is in place, the

⁴ *Id.*

⁵ *J.F.*, 58 ECAB 124 (2006); *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6.a(4) (June 2013).

⁷ 38 ECAB 222 (1986).

claims examiner need only establish continuing injury-related disability for regular duty to accept this recurrence and begin payment of compensation benefits.⁸

The Board will set aside the August 13, 2013 decision and remand the case for proper development in accordance with OWCP procedures. After such further development as deemed necessary, OWCP shall issue an appropriate decision regarding appellant's claim for disability compensation for the period January 23 to 25, 2013.

CONCLUSION

The Board finds this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 13, 2013 is set aside and remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: February 21, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

⁸ Federal (FECA) Procedure Manual, *supra* note 6. Although the record in this case includes a June 25, 2009 carpal tunnel release in which OWCP determined that appellant's actual earnings fairly and reasonably represented her wage-earning capacity with zero loss, when appellant resume total disability in 2010, her wage-loss compensation after that date was not based on a wage-earning capacity determination.