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

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| **LARRY G. CHARLESTON, Appellant** | ) | |
| **and** | ) | **Docket No. 04-343** |
| | ) | **Issued: September 1, 2004** |
| **U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer** | ) | |

*Appearances:*
*Jeffrey P. Zeelander, Esq.,* for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

### ***JURISDICTION***

On November 24, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated November 20, 2003. Pursuant to 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 has met his burden of establishing that he was disabled for work from November 11 to December 16, 2002 due to an employment-related aggravation of bilateral tenosynovitis, right fourth flexor, long and index fingers, and left third, fourth and fifth flexors.

### ***FACTUAL HISTORY***

On November 12, 2002 appellant, then a 53-year-old letter carrier, filed a claim alleging that on November 9, 2002 he injured his right hand at the base of his middle fingers while casing mail. Appellant did not return to work from that date.[1] In a report dated November 19, 2002,

[1] Appellant retired on disability effective October 28, 2003.

Dr. George L. Rodriguez, appellant's treating physician, Board-certified in physical medicine and rehabilitation, stated that appellant had de Quervain's tenosynovitis of the left hand and trigger fingers in the right hand and requested authorization for a functional capacity evaluation. Appellant also filed a notice of recurrence of disability on November 14, 2002 alleging a November 9, 2002 recurrence based on a December 5, 2000 injury.[2] The employing establishment stated on the reverse side of the claim form that appellant was on sick leave from November 14, 2002.

By letter dated March 10, 2003, the Office advised appellant he needed to submit additional information to establish that he sustained an employment-related injury on November 9, 2002. In a report dated November 14, 2002, Dr. Rodriguez noted a familiarity with appellant's history of a November 17, 1999 de Quervain's left hand tenosynovitis injury from which he was able to return to full duty. Appellant then related that on November 9, 2002 while casing mail he felt a "popping" sensation in his right palm and pain along the base of his third and fourth digits. The doctor reported the following findings: right hand -- extension limitation of the third proximal interphalangeal joint, fusiform swelling of the third digit, swelling of the metacarpophalangeal joints (MCP) of the second, third and fourth digits and a three millimeter nodule overlying the fourth MCP joint, full flexion of the right hand; left wrist -- normal range of motion and mild tenosynovitis about the radial head; left hand -- a positive Finkelstein's test. Dr. Rodriguez stated that appellant's calcific tenosynovitis of the right fourth flexor and left third, fourth and fifth flexors were moderately severe and were causally related to the November 9, 2002 injury. He also noted that de Quervain's tenosynovitis of the left long finger was due to a November 17, 1999 work-related injury. Dr. Rodriguez further noted that appellant's activity level had decreased to a moderately severe level and stated he should refrain from working. In a physical capacity evaluation, also dated November 14, 2002, Dr. Rodriguez provided restrictions to appellant's physical activity and advised that he could not work.

On November 25, 2002 a right hand magnetic resonance imaging scan (MRI) report was read as normal. In a return to work evaluation performed for Dr. Rodriguez on December 2, 2002, a physical therapist indicated that, appellant could not return to work as a mail carrier. In a physical capacity evaluation, also dated December 10, 2002, Dr. Rodriguez stated that based on the December 2, 2002 return to work evaluation and his examination, appellant could return to sedentary work with a 10-pound lifting and carrying restriction, and could stand, walk, sit and drive for over 8 hours a day. On the same day, he released appellant to light-duty work effective on December 16, 2002, noting a lifting restriction of 10 pounds, and limited him to frequent walking, stooping, crouching, handling and fingering. Dr. Rodriguez noted a limitation of carrying objects occasionally that did not exceed 15 pounds, and limited him to occasional pushing, pulling, kneeling, gripping and pinching.

On January 7, 2003 Dr. Rodriguez released appellant to return to sedentary duty with a lifting maximum of 10 pounds and occasional lifting and carrying lighter objects. In an attending physician's report dated February 23, 2003, he stated that appellant's tenosynovitis of

[2] The record for the other claim is not before the Board on appeal. The Board notes that appellant initially filed a CA-1 on this claim, but that the employing establishment directed him to file CA-2a for a recurrence of disability since he had a prior injury. The Office developed the present claim as a new occupational disease claim.

the fingers of the right hand and trigger finger, bilateral, were caused by an employment-related injury dated November 9, 2002. Dr. Rodriguez also noted no history of a concurrent or preexisting injury. He stated that appellant was able to return to light duty on November 14, 2002. Dr. Rodriguez noted treatment dates from November 11, 2002 to February 4, 2003. On February 22, 2003 appellant filed a claim for leave buy back from November 11 to December 16, 2002.

On April 9, 2003 the Office accepted appellant's claim for an aggravation of bilateral tenosynovitis, right and left fingers (right fourth flexor, long and index fingers, and left third, fourth, and fifth flexors)[3] and authorized physical therapy. On June 3, 2003 the Office authorized surgical release of the left trigger finger and follow-up therapy for 120 days. On October 28, 2003 the employing establishment requested Dr. Rodriguez to clarify appellant's disability status from November 11 to December 16, 2002, noting his conflicting reports of November 14, 2002 and February 23, 2003.

On October 23, 2003 the Office received appellant's claim for leave buy back for November 11 to December 16, 2002. By decision dated November 20, 2003, the Office denied appellant's claim for compensation for leave buy back from November 11 to December 16, 2002 on the grounds that, because he had retired, there was no basis for repurchase of sick leave.

## ***LEGAL PRECEDENT***

Under the Federal Employees' Compensation Act[4] the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn the wages that he was receiving at the time of injury, has no disability as that term is used in the Act and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[5]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[6] Neither the mere fact

[3] The Office stated "left third, right and fifth flexors." However, Dr. Rodriguez stated that appellant had calcific tenosynovitis of the "left third, fourth and fifth flexors."

[4] 5 U.S.C. §§ 8101-8193.

[5] *Maxine J. Sanders*, 46 ECAB 835 (1995).

[6] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence. The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[8]

With respect to claimed disability for medical treatment, section 8103 the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.[9] Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.[10] However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only two expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.[11]

## ***ANALYSIS***

In this case, the Office accepted that appellant sustained an aggravation of bilateral tenosynovitis, right fourth flexor, long and index fingers, and left third, fourth and fifth flexors. Appellant stopped work on November 14, 2002, and retired effective October 28, 2003. Appellant subsequently claimed that he was disabled for work from November 11 to December 16, 2002. Appellant maintained the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as a result of his employment injury.[12]

The factual evidence establishes that appellant sustained an employment-related injury on November 9, 2002, and retired from federal service on disability in October 2003 for a medical condition unrelated to this claim. Appellant did not return to work after November 14, 2002 when the employing establishment placed him on sick leave.

[7] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[8] *See Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also Yvonne R. McGinnis*, 50 ECAB 272 (1999) (the employee has the burden of proving that he is disabled for work as a result of an employment injury or condition. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to employment).

[9] 5 U.S.C. § 8103(a).

[10] *Vincent E. Washington*, 40 ECAB 1242 (1989).

[11] *Dorothy J. Bell*, 47 ECAB 624 (1996).

[12] *Fereidoon Kharabi*, *supra* note 8.

In denying the claim, the Office found that appellant's retirement precluded any basis of leave buy back. However, there is no legal precedent or regulatory support for such a determination.[13] The Office may determine whether a claimed period of disability is causally related to an accepted employment injury while the employing establishment makes a determination regarding whether a claimant is eligible for leave buy back.[14]

The medical reports of record include a November 14, 2002 report from Dr. Rodriguez who provided a detailed examination of appellant's hands and fingers, stating that his calcific tenosynovitis of the right fourth flexor and left third, fourth and fifth flexors were causally related to the November 9, 2002 injury and that restricted him from work. Further, Dr. Rodriguez stated that on December 10, 2002, based on the return to work evaluation and his examination, appellant could return to light duty, noting a 10-pound lifting restriction. However, in a February 23, 2003 form report, he noted that appellant was released to light duty on November 14, 2002. Dr. Rodriguez did not clarify this apparent discrepancy. In any event, the contemporaneous medical evidence establishes that appellant was either totally disabled or partially disabled for the time period in question, and that he received medical care for certain dates included in the time period. Dr. Rodriguez' November 14, 2002 report is somewhat ambiguous in that he stated that appellant should refrain from work but does not specify whether appellant was unable to work at his full-time regular position as a letter carrier or was unable to work in any position. Further, his December 10, 2002 report, which listed appellant's work restrictions, is not clear with respect to the precise dates appellant was released to return to light duty, whether it was the date of the report, December 10 or December 16, 2002 which he noted in a separate report. In any event, the record supports that appellant was either totally disabled or partially disabled for work for the period of November 14 to December 16, 2002. It is noted that appellant received medical treatment during the claimed period for the accepted injury which would entitle appellant to compensation for those treatment dates.[15] Regarding the portion of the claimed period when appellant was only partially disabled, the record does not indicate whether the employing establishment made appropriate limited-duty work available. This information is important in determining appellant's possible entitlement to compensation.[16]

The case must therefore be remanded to the Office for further development. Upon remand, the Office should request Dr. Rodriguez clarify whether appellant was totally disabled and, if so, for what time period, and whether he was partially disabled and, if so, the period and the restrictions. The Office should also determine whether the employing establishment offered appellant a light-duty position with restrictions consistent with those noted by Dr. Rodriguez. It

[13] 20 C.F.R. § 425; *Lloyd E. Griffin, Jr.*, 46 ECAB 979 (1995) (if an employee has used sick or annual leave to prevent wage loss following an employment injury, and the absences from work would otherwise be compensable under the Act, the employee may buy back this leave from the employing establishment). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 9.901.19 (July 2000).

[14] *See Laurie S. Swanson*, 53 ECAB ___ (Docket Nos. 01-1406 & 02-765, issued May 2, 2002). The Board also notes that the alleged period of disability is almost one year prior to the date of retirement.

[15] *Vincent E. Washington*, *supra* note 10.

[16] *See* 20 C.F.R. § 10.505. *See also Terry Hedman*, 38 ECAB 222 (1986).

should also determine the dates of his medical treatment based on his accepted injuries and take appropriate action to provide compensation for wage loss.[17]

## ***CONCLUSION***

The Board finds that the case is not in posture for decision and must be remanded to the Office for further development regarding periods of claimed disability.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 20, 2003 is set aside and the case remanded to the Office for further consideration consistent with this opinion.

Issued: September 1, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[17] 20 C.F.R. § 10.425 states: "The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing establishment. Forms CA-7 and CA-7b are used for this purpose." *See supra* note 13.