

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

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**E.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Philadelphia, PA, Employer**

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**Docket No. 09-1116  
Issued: April 14, 2010**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 19, 2009 appellant, through his attorney, filed an appeal from a January 5, 2009 decision of the Office of Workers' Compensation Programs denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability from November 1, 2005 to April 1, 2006.

On appeal, appellant contends that the opinion of the impartial medical specialist is not well rationalized and should not constitute the weight of medical evidence.

## **FACTUAL HISTORY**

This is the second appeal before the Board. In a March 18, 2008 decision, the Board set aside an Office decision denying appellant's recurrence of disability claim.<sup>1</sup> The case was remanded for the Office to obtain a supplemental opinion from Dr. Edward J. Resnick, a Board-certified orthopedic surgeon selected as the impartial medical specialist, who was asked to address whether appellant was disabled for work from November 1, 2005 to April 1, 2006 due to either a change in his light-duty job or a worsening of his accepted medical conditions.<sup>2</sup> The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.

On remand, the Office requested that Dr. Resnick provide a supplemental report on whether appellant was disabled for work from November 1, 2005 to April 1, 2006. In a report dated April 9, 2008, Dr. Resnick stated that he had reviewed appellant's medical records and reiterated the findings of his November 1, 2005 examination. He diagnosed chronic bilateral wrist sprain with no objective evidence of arthropathy, neuropathy, plexopathy or radiculopathy of either wrist. Dr. Resnick noted that appellant's findings were primarily subjective, with complaint of pain, and that he could return to full-time limited duty with restrictions on repetitive use or lifting and carrying weights more than 25 to 30 pounds. He advised that he had reviewed the additional reports of Dr. Scott M. Fried, an osteopath, and noted that a February 1, 2006 duty status report found that appellant was able to perform most activities on a full-time basis, listing the work limitations. Dr. Resnick stated that the records also indicated a return to daily limited duty. He reiterated that appellant's objective findings from examination were unremarkable. Based on his review of the additional records, Dr. Resnick stated to a reasonable degree of medical certainty that appellant was not totally disabled for work from November 1, 2005, the date of his examination, to April 1, 2006 due to a worsening of his accepted medical conditions, noting that appellant's attending physician also supported his capacity for limited duty.

On April 22, 2008 the Office requested that Dr. Resnick further clarify whether appellant was able to perform full duty on a limited basis, noting that the January 30, 2006 report of Dr. Fried advised that he could perform only part-time limited duty. In an April 22, 2008 response, Dr. Resnick noted that he reviewed the January 30, 2006 report of Dr. Fried. He reiterated that appellant was not totally disabled for work, noting his prior work restrictions. Dr. Resnick added that, if the restrictions noted were actually the work requirements of appellant's full-duty position as a letter carrier, then under these circumstances he was considered as being capable of full duty as a letter carrier.

In a May 13, 2008 decision, the Office denied appellant's recurrence of disability claim for the period November 1, 2005, the date of examination by Dr. Resnick, to April 1, 2006. It found that the opinion of the impartial medical specialist constituted the special weight of medical evidence.

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<sup>1</sup> Docket No. 07-1808 (issued March 18, 2008).

<sup>2</sup> Appellant's claim was accepted for overuse syndrome of both wrists, a sprained ligament of the left wrist, triangular fibrocartilage complex of the left wrist, left ulnar neuropathy and bilateral tenosynovitis of the wrists. The Office accepted that appellant sustained a recurrence of disability from January 3, 2003 to November 1, 2005 but denied disability after that date as employment related.

Appellant requested a hearing before an Office hearing representative on May 16, 2008.

In a January 5, 2009 decision, the Office hearing representative affirmed the May 13, 2008 decision.

### **LEGAL PRECEDENT**

The Office's implementing regulations define a recurrence of disability as the 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.<sup>3</sup> To establish disability for the period claimed, the employee must submit medical evidence based on a complete and accurate factual and medical history explaining how the disability was caused by the accepted injury.<sup>4</sup>

When the medical evidence of record gives rise to a conflict in opinion between the physician for the employee and the physician making the examination for the United States, a third physician shall be appointed to make an examination as an impartial medical specialist.<sup>5</sup> When a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist will be given special weight when based on a proper factual and medical history and if sufficiently well rationalized.<sup>6</sup>

### **ANALYSIS**

The Office accepted that appellant sustained overuse syndrome and tenosynovitis of both wrists, a left wrist sprain, triangular fibrocartilage complex of the left wrist and left ulnar neuropathy. Appellant returned to work on June 27, 2001 as a full-time limited-duty letter carrier performing sedentary clerical duties with limited lifting. He stopped work on January 3, 2002 and claimed a recurrence of disability. As noted in the prior appeal, the Office accepted a recurrence of disability from January 3, 2003 to November 1, 2005, the date of his examination by Dr. Resnick, the impartial medical specialist. The case was remanded for clarification of the physician's opinion as to appellant's disability from November 1, 2005 to April 1, 2006, when appellant returned to work at the employing establishment.<sup>7</sup>

On remand, the Office provided Dr. Resnick with appellant's medical records and additional treatment records from Dr. Fried, the attending physician, dated January 20 through June 28, 2006. On April 9, 2008 Dr. Resnick referred to his examination of appellant on November 1, 2005 at which time he diagnosed chronic bilateral wrist sprain with no objective

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<sup>3</sup> 20 C.F.R. § 10.5(x). See *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>4</sup> See *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>5</sup> See *Guiseppe Aversa*, 55 ECAB 164 (2003).

<sup>6</sup> See *Richard R. LeMay*, 56 ECAB 341 (2005).

<sup>7</sup> See *Nancy Keenan*, 56 ECAB 687 (2005). The Office has the responsibility to secure a supplemental report from an impartial medical specialist for the purpose of correcting a defect in the original report.

evidence of any arthropathy, neuropathy, plexopathy or radiculopathy of either wrist. He reiterated that appellant's complaints were primarily subjective of pain to the wrists. Dr. Resnick noted that, at that time, appellant was found capable of performing full-time limited duty subject to work restrictions on repetitive use of the wrists and in lifting. He noted a duty status report, which listed appellant's physical work requirements and advised that appellant was able to perform most activities on a full-time basis, such as pulling, pushing, simple grasping and driving a vehicle. Reaching above the shoulders was limited to four hours a day and fine manipulation, including using a keyboard, was limited to six hours. Dr. Resnick repeated his finding that the objective examination was unremarkable. He stated that, to a reasonable degree of medical certainty, appellant was not totally disabled from November 1, 2005 to April 1, 2006 due to a worsening of his accepted medical conditions. On April 22, 2008 Dr. Resnick corrected the date of his initial addendum reports and noted that the duty status report prepared by a supervisor had listed appellant's current work requirements. He reiterated that appellant was able to perform the duties on a full-time basis.

The Board finds that the opinion of Dr. Resnick is thorough, well rationalized and based on a proper factual and medical background. As the impartial medical specialist, Dr. Resnick's opinion is entitled to special weight.<sup>8</sup> He did not support appellant's claim of total disability from November 1, 2005, the date of the examination by the impartial specialist, to April 1, 2006 when appellant returned to work. Therefore, appellant has not established a recurrence of total disability for this period. On appeal, he contends that the opinion of Dr. Resnick is not well rationalized and should not constitute the weight of medical opinion. For the reasons noted, the Board finds that the opinion of the impartial medical specialist represents the weight of the medical evidence of record.

### **CONCLUSION**

The Board finds that appellant did not sustain a recurrence of total disability from November 1, 2005 to April 1, 2006.

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<sup>8</sup> See *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 5, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 14, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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