



## **FACTUAL HISTORY**

On May 20, 2008 appellant, then a 56-year-old parcel post distributor clerk, filed an occupational disease claim alleging that her right thumb was swollen and stiff and her knuckle popped. She also alleged that her left hand was sore. Appellant alleged that her condition was due to the use of sacks with Velcro closures that were not ergonomic. She noted having her condition since December 4, 2007 and advised that she also sought to file a claim in March 2008. In March 24 and April 28, 2008 treatment records, nurses listed appellant's right thumb problem. Appellant stopped work on May 20, 2008.

Appellant received treatment from Dr. Gary Farley, a Board-certified orthopedic surgeon and osteopath. In a July 3, 2008 disability certificate, Dr. Farley requested that appellant be excused from work from July 3 to 28, 2008. In a July 17, 2008 report, he diagnosed trigger thumb and synovitis with osteoarthritis of the right thumb. Dr. Farley checked a box "yes" to indicate that appellant's condition was work related, noting that it was due to the repetitive nature of her job. He immobilized the thumb, prescribed anti-inflammatory medicine and placed her off work from July 3 through 28, 2008. Dr. Farley recommended her return to work on July 28, 2008.<sup>1</sup> He stated that appellant should avoid repetitive use of the right hand and no lifting over five pounds.

On August 1, 2008 the Office accepted the claim for right trigger thumb. It noted that, if appellant claimed that her injury caused lost time from work, she could request compensation by filing a Form CA-7, claim for compensation.

In an August 28, 2008 work capacity evaluation, Dr. Farley diagnosed right trigger thumb and recommended that appellant return to light duty with a brace and restrictions to include no repetitive use of the wrists, a 20-pound pushing and pulling restriction, and a five-pound lifting restriction. The Office received physical therapy reports dated July 3 to August 26, 2008.

Appellant subsequently submitted claims for wage-loss compensation from May 20 through August 21, 2008. In e-mail correspondence dated August 1, 2008, the employing establishment noted that appellant worked 3.25 hours on May 20, 2008 and had not yet returned to work.

In an August 28, 2008 report, Dr. Farley noted that appellant had resolving synovitis of the right thumb and resolved trigger thumb. He advised keeping her restrictions in place. He completed a work restriction form which recommended that appellant utilize a brace on both hands.

By letter dated August 29, 2008, the Office informed appellant of the evidence needed to support her claim and requested that she submit additional evidence within 30 days.

The Office received treatment notes from Dr. Farley dated July 3 to 31, 2008. Dr. Farley diagnosed appellant's condition as synovitis with carpometacarpal (CMC) joint arthritis of the

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<sup>1</sup> The record contains two copies of the same report, on one report it indicated July 3 to 20, 2008 and the other July 3 to 28, 2008.

right thumb and trigger thumb which were aggravated by her work duties. He recommended a brace and keeping her off work for a few weeks. On July 17, 2008 Dr. Farley noted that appellant's condition remained unchanged. He opined that her condition appeared to be aggravated by her work. On July 31, 2008 Dr. Farley allowed appellant to return to work with light-duty restrictions and the use of a brace.

In a September 10, 2008 statement, appellant contended that she was unable to obtain medical information to support her time from work because she was denied treatment. She also questioned the veracity of her former supervisor with regard to when she reported her injury.

By decision dated October 1, 2008, the Office denied appellant's claim for wage-loss benefits for the period May 20 through August 21, 2008. It found that the medical evidence failed to establish disability for the claimed period.

Appellant subsequently requested a telephonic hearing. In an October 7, 2008 report, Dr. Farley diagnosed right trigger of the thumb and repeated his restrictions for appellant. They included a brace on both hands, no repetitive use of the wrists, a 20-pound pushing and pulling restriction and a 5-pound lifting restriction. Dr. Farley noted that appellant had resolving synovitis of the right thumb as well as resolved trigger thumb. He noted that she continued to have pain in both thumbs. Dr. Farley opined that appellant's job aggravated her synovitis and early degenerative joint disease of the CMC joints of both thumbs.

On October 16, 2008 the Office accepted appellant's claim for villonodular synovitis and bilateral osteoarthritis.

Appellant stopped work on October 30, 2008 and claimed disability compensation beginning November 1, 2008. She also claimed a recurrence of disability beginning October 30, 2008. In an October 30, 2008 report, Dr. Farley stated that appellant was disabled from October 30 to November 14, 2008. He also placed her off work from November 13 to December 5, 2008. On December 4, 2008 Dr. Farley advised that appellant could return to work on December 9, 2008.

In a December 2, 2008 report, Dr. Farley noted that he initially saw appellant on July 3, 2008 for right thumb complaints. Appellant complained of pain mostly over the base of the right thumb and described her work activities for the past 30 years, which included repetitious use of the thumb while working with approximately 200 to 250 bags at night. On examination, Dr. Farley noted tenderness over the proximal wrist crease of the thumb, tenosynovitis of a trigger thumb with tenderness over the volar aspect of the metatarsal phalangeal (MP) joint and a positive grind test with pain to palpation at the CMC joint of the thumb. X-rays of the CMC joint revealed spur formation. Dr. Farley diagnosed a trigger thumb on the right as well as CMC joint arthritis. He opined that appellant was initially believed to "have a work condition at least that was aggravating with her work." Dr. Farley stated that she was put in a brace and placed off work to be evaluated after rest and splinting. When he saw appellant on July 17, 2008 her symptoms were unchanged. Dr. Farley noted that she was to return to work at that time with limitations. Appellant returned on July 31, 2008 with unchanged symptoms. Dr. Farley noted that she had not returned to work although he had agreed to let her work with light-duty restrictions. When he saw appellant on October 30, 2008, he placed her off work as she had a

positive CMC joint grind test and had not improved. Dr. Farley opined that she had not recovered from her original disability or returned to regular employment. He stated that the repetitive nature of her job produced her symptoms. Appellant was prone to a recurrence due to the nature of her condition involving inflammation and degenerative changes. Dr. Farley noted there were no other precipitating factors such as trauma.

On December 10, 2008 the Office accepted appellant's claim for a recurrence of disability beginning on October 30, 2008.

On January 8, 2009 Dr. Farley advised that appellant's restrictions were permanent. On February 26, 2009 he provided full-duty release slip. The Office also received physical therapy reports dated October 30 to December 15, 2008.

A telephonic hearing was held on February 18, 2009. Appellant's representative stated that the medical evidence supported that the condition she had in May 2008 was the same as that accepted in October 2008. Appellant stated that on May 20, 2008 she had been performing modified duty but her supervisor told her that she would have to go back to regular duty as her restrictions had run out. She tried regular-duty work for two hours prior to filing her claim and leaving. Appellant encountered difficulty being seen by a physician from May to July 2008 due to not having a claim number. Although Dr. Farley found that she could return to work after July 31, 2008, she did not return until August because she was not mentally ready.

By decision dated April 21, 2009, an Office hearing representative found that appellant had provided sufficient medical evidence to establish that she was disabled for work from July 3 to 16, 2008. The hearing representative directed the Office to compensate her for total disability for this time frame. As for the period May 20 to August 21, 2008 the medical evidence was found insufficient to establish that appellant was totally disabled for work.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of his claim by the weight of the evidence.<sup>2</sup> For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.<sup>3</sup> Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>4</sup> To meet his burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.<sup>5</sup>

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<sup>2</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>3</sup> *C.S.*, 60 ECAB \_\_\_\_ (Docket No. 08-2218, issued August 7, 2009). See *Amelia S. Jefferson*, *supra* note 2.

<sup>4</sup> *C.S.*, *supra* note 3; see *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>5</sup> *A.D.*, 58 ECAB 149 (2006).

Under the Act, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>7</sup> An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>8</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he or she is entitled to compensation for any loss of wages.<sup>9</sup>

### ANALYSIS

In support of her claim for disability for the period May 20, July 20 and July 17 to August 21, 2008, appellant provided several reports from her treating physician, Dr. Farley, whose reports, however, do not support appellant's claim of total disability. In a July 3, 2008 disability certificate, Dr. Farley placed appellant off work from July 3 to 28, 2008. The Board notes that Dr. Farley did not provide any opinion explaining why appellant should be excused from work during this time frame. As noted, for each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury. Dr. Farley also provided a July 3, 2008 note in which he diagnosed synovitis with CMC joint arthritis of the right thumb and trigger thumb, conditions he found aggravated by her work. He recommended a brace and keeping her off work for a few weeks. As noted, the period of disability from July 3 to 16, 2008 was accepted by the Office.

On July 17, 2008 Dr. Farley reiterated that appellant's condition was work related and that he placed her off work from July 3 through 28, 2008. However, in a separate report also dated July 17, 2008, he advised that he would try to return her to work with limitations. Dr. Farley explained in a December 2, 2008 report that he saw appellant on July 17, 2008 and, while her symptoms were unchanged, he found that she was able to return to work at that time with limitations. When he saw her on July 31, 2008, however, she had not returned to work. Appellant explained this period of claimed disability by noting that she was not mentally ready to return to work. The reports of Dr. Farley support that appellant was able to return to work with restrictions on July 17, 2008 and do not establish that she was totally disabled as of that date. Dr. Farley reiterated on July 31 and August 28, 2008 that appellant could work with a brace and physical restrictions. The reports of the attending physician establish that appellant was able to work with modifications and do not support her claim of total disability on or after July 17, 2008. Other medical reports submitted by appellant did not specifically address the period in question.

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<sup>6</sup> *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

<sup>7</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>8</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>9</sup> *Id.* See *C.S.*, *supra* note 3.

The Office received reports from nurses and physical therapists. However, these reports do not constitute probative medical evidence. Section 8101(2) of the Act provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law.<sup>10</sup> Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses<sup>11</sup> and physical therapists<sup>12</sup> are not physicians under the Act. Their opinions on causal relationship have no weight or probative value.<sup>13</sup>

Appellant alleged that she was disabled for the period May 20 to August 21, 2008 due to her accepted employment injury. The medical evidence of record does not establish that her claimed disability was related to her accepted employment injuries.

### **CONCLUSION**

The Board finds that appellant failed to establish that she was disabled from May 20 to July 2 and July 17 to August 21, 2008 as a result of her employment-related injuries.

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<sup>10</sup> 5 U.S.C. § 8101(2).

<sup>11</sup> *G.G.*, 58 ECAB 389 (2007).

<sup>12</sup> *A.C.*, 60 ECAB \_\_\_\_ (Docket No. 08-1453, issued November 18, 2008).

<sup>13</sup> *Jane A. White*, 34 ECAB 515, 518 (1983).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 21, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 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