

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

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**B.E., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Francisco, CA, Employer**

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**Docket No. 11-242  
Issued: August 18, 2011**

*Appearances:*  
*Appellant, pro se*  
*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 November 8, 2010 appellant filed a timely appeal from the May 26, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his recurrence of disability claim. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> 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 sustained a recurrence of partial disability beginning August 1, 2009.

**FACTUAL HISTORY**

On September 16, 1998 appellant, then a 50-year-old truck driver, filed a claim for compensation alleging that his carpal tunnel syndrome was a result of pushing and pulling pieces of heavy rolling equipment. OWCP accepted his claim for bilateral carpal tunnel syndrome.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

Appellant returned to work on October 12, 1999 with restrictions. He sustained a recurrence of the accepted medical condition in 2003. Appellant received compensation for time lost for medical appointments.

On August 30, 2005 appellant accepted limited-duty working six hours in the prepping unit and two hours in the dispatch office. On June 22, 2006 he accepted limited duty as a tractor trailer operator working eight hours a day.

Appellant claimed compensation for partial disability beginning August 1, 2009. He indicated that medical restrictions prevented him from working four hours a day beginning August 4, 2009 and that beginning October 15, 2009 there were no necessary tasks within his medical restrictions.

Dr. George Wu, the attending hand surgeon, saw appellant on July 31, 2009. He stated:

“[Appellant] wants to retire now and is applying for disability retirement. He states that he has no work at this time -- he clocks in daily at work, sits in his car for [8½] hours and then clocks out. The last time [appellant] performed driving tasks at work was in 1998 and he states that he has not done any since that time.”

Dr. Wu examined appellant, found continued symptoms of bilateral carpal tunnel syndrome and released appellant to modified duties with restrictions on the use of both hands for six months. Appellant was not to lift, pull or push more than one pound and to lift or pull only occasionally, not repetitively. Dr. Wu added: “[Appellant] was to be limited to four hours of [nonrepetitive] activities [a] day and was restricted to four hours of work daily.” On a duty status report he stated: “[Appellant] may not work over [four] hours [a] day. Dr. Wu cannot perform any repetitive tasks with his upper extremities.”

Appellant took disability retirement effective October 31, 2009.

In a November 10, 2009 decision, OWCP denied appellant’s recurrence claim. It found that Dr. Wu failed to explain why appellant could no longer work his modified assignment for eight hours a day.

On November 7, 2009 Dr. Wu repeated appellant’s earlier complaint: “By July 31, 2009, [appellant] indicated that he was seeking a disability retirement as he was performing no work other than to arrive at the [workplace] and sit in his car for [8½] hours before he would ‘clock out.’ He continued to offer similar complaints as in the past.” Objective findings on July 31, 2009 were improved from October 8, 2008. Sensibility in all digits of both hands was now normal; grip and pinch strength were increased; Phalen’s test was positive after 30 seconds, whereas earlier the test became positive immediately. Dr. Wu explained that he modified appellant’s restrictions on July 31, 2009, including the reduction in work hours, “[d]ue to his increased subjective symptoms.”

In a decision dated May 26, 2010, OWCP reviewed the merits of appellant’s claim and denied modification of its November 10, 2009 decision. It found that Dr. Wu failed to explain how appellant’s condition objectively worsened as of August 4, 2009 such that he could no longer work eight hours a day with restrictions.

Appellant appealed from OWCP's May 26, 2010 decision because he was not given a job that was suited to his medical restrictions: "Since I had no regular duties to perform, I had to sit and wait in the cafeteria, break room or parking lot. I used to do this for up to [eight] hours a day. This situation lasted for years."<sup>2</sup>

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>3</sup> "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>4</sup>

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>5</sup>

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of disability and to show that he cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>6</sup>

### **ANALYSIS**

Before appellant claimed compensation for partial disability beginning August 1, 2009, he was working limited duty eight hours a day. He alleged, however, that medical restrictions beginning August 4, 2009 prevented him from working more than four hours a day. Appellant therefore has the burden of proof to show a change in the nature and extent of his injury-related condition or a change in the nature and extent of the limited-duty job requirements.

Dr. Wu, the attending hand surgeon, examined appellant on July 31, 2009 and reported that objective findings had improved. Sensibility, grip and pinch strength and the onset of Phalen's test were all better than previously reported. Appellant continued to offer similar complaints as in the past, but his subjective complaints had increased. As Dr. Wu explained on

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<sup>2</sup> Appellant expresses no disagreement with OWCP's July 30, 2010 schedule award, which found that he had a five percent permanent impairment of each upper extremity.

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> 20 C.F.R. § 10.5(f).

<sup>5</sup> *Id.* at § 10.5(x).

<sup>6</sup> *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

November 7, 2009, appellant's work hours on July 31, 2009 were reduced because of his increase in subjective complaints.

The Board finds that appellant has not shown that the disability for which he seeks compensation was the result of a change in the nature and extent of his injury-related condition. The medical evidence fails to establish an objective worsening of his bilateral carpal tunnel syndrome such that he was no longer able to work eight hours a day with restrictions. By reducing appellant's work hours on the basis of increasing subjective complaints without the support of worsening objective findings, Dr. Wu essentially allowed appellant to self-certify his disability.

Appellant advised Dr. Wu that there was nothing for him to do at work. He would arrive, sit in his car for 8½ hours and then clock out. Given this statement, it is difficult to understand how appellant's bilateral carpal tunnel syndrome justified a reduction in his work hours beginning August 1, 2009. The impression is that he did not want to sit around all day long, and so Dr. Wu reduced his hours.

The Board also finds that appellant has not shown that the disability for which he seeks compensation was the result of a change in the nature and extent of his limited-duty job requirements. If there was nothing for appellant to do, then the requirements of his limited duty could hardly have prevented him from working more than four hours a day.

Because appellant has not met his burden to establish a recurrence of partial disability beginning August 1, 2009, the Board will affirm OWCP's May 26, 2010 decision denying his claim for compensation.

On appeal, appellant explained that he had no regular duties to perform. The question for determination is not whether he liked his job or found it to be rewarding or even worthwhile, but whether his bilateral carpal tunnel worsened or his job requirements changed such that he was medically no longer able to work eight hours a day with restrictions. The record contains no probative evidence of this and that is the reason OWCP denied his claim for compensation.

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 has not met his burden to establish that he sustained a recurrence of partial disability beginning August 1, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2011  
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