



## **FACTUAL HISTORY**

On March 1, 2008 appellant, then a 39-year-old transitional postal carrier, filed a traumatic injury claim alleging that on February 1, 2008 she injured two fingers on her right hand in the performance of duty. OWCP accepted the claim for closed fracture of the phalanx or phalanxes. Appellant stopped work on February 1, 2008 and returned to light-duty work on February 16, 2008.

On May 6, 2009 appellant filed a claim for compensation (Form CA-7) for the period September 27, 2008 through February 19, 2009. She submitted a February 5, 2009 attending physician's report from Dr. Humberto T. Perez, a treating physician specializing in family medicine, who diagnosed right index finger nondisplaced fracture mid shaft distal phalanx. Dr. Perez noted May 19, 2008 as the last date of treatment. He checked "yes" to the question of whether the condition was employment related. Under explanation, he stated that the condition happened at work and had been aggravated by lack of any physical therapy.

On May 18, 2009 OWCP received a September 29, 2008 letter informing appellant that she was being terminated from work due to adjustments of operational staff as a result of shifting mail volumes.

In a letter dated May 22, 2009, OWCP informed appellant that the evidence of record was insufficient to support her claim. It advised her as to the medical and factual evidence required. Appellant was given 30 days to provide additional information.

In an October 2, 2009 report, Dr. Perez reviewed a history of appellant's injury, physical findings at the time of the injury and treatment provided. He related that she received no authorization during the month of February for physical therapy and that she returned to light-duty work on February 16, 2008. Appellant subsequently related having difficulty flexing her right finger and a March 18, 2008 x-ray revealed a nondisplaced fracture of the second finger midshaft distal phalanx.

By decision dated December 17, 2009, OWCP denied appellant's claim for wage-loss compensation for the period September 29, 2008 through February 19, 2009.

In a January 6, 2010 letter, counsel requested an oral hearing before OWCP's hearing representative, which was held on April 7, 2010.

In an April 30, 2010 letter, Michael R. Rizzolo, postmaster, related that appellant had been hired as a transitional employee. He indicated that her appointment expired on September 28, 2008.

By decision dated June 8, 2010, OWCP's hearing representative affirmed the denial of appellant's claim for wage-loss compensation.

## LEGAL PRECEDENT

The term disability as used in the FECA<sup>2</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>3</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>4</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>5</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.<sup>6</sup>

An employee generally will not be considered to have experienced a compensable recurrence of disability as defined in 20 C.F.R. § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing.<sup>7</sup>

## ANALYSIS

In support of her claim for disability from September 29, 2008 to January 26, 2009, appellant submitted reports from her treating physician, Dr. Perez. In a February 5, 2005 attending physician's report, Dr. Perez diagnosed right index finger nondisplaced fracture midshaft distal phalanx and checked "yes" to the question of whether it was employment related. In an October 2, 2009 report, he stated that following appellant's return to work in February 2008 she had difficulty flexing her right finger and a March 18, 2008 x-ray interpretation revealed a nondisplaced fracture second finger midshaft distal phalanx. The Board notes that Dr. Perez did not offer any opinion that appellant was disabled for work for the claimed period. Dr. Perez did not support that appellant should be excused from work during this time frame. These reports are of limited probative value. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>8</sup> Dr. Perez did not address whether appellants accepted condition caused disability for the period September 27, 2008 to February 19, 2009. He did not address whether she was disabled due to her accepted condition for the period at issue.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

<sup>3</sup> *S.M.*, 58 ECAB 166 (2006); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>4</sup> *Paul E. Thams*, *supra* note 3; *W.D.*, Docket No. 09-658 (issued October 22, 2009).

<sup>5</sup> *R.C.*, 59 ECAB 546 (2008); *Paul E. Thams*, *supra* note 3.

<sup>6</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> *See* 20 C.F.R. § 10.509.

<sup>8</sup> *K.W.*, 59 ECAB 271 (2007); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

Appellant alleged that she was disabled from December 24, 2008 to January 26, 2009, due to her accepted employment injury. The medical evidence of record does not establish that her claimed disability was related to her accepted closed fracture of the phalanx or phalanxes. No medical evidence specifically addressed how appellant's claimed period of disability related to her February 1, 2008 work injury.

The employing establishment confirmed that appellant was a transitional employee whose appointment ended on September 27, 2008. The employing establishment explained that, because the mail volume slowed down, she was separated. The employing establishment noted that one other mail handler transitional employee was also released at the same time as appellant. The employing establishment denied that appellant was let go because of her injury. As noted in 20 C.F.R. § 10.509, an employee generally will not be considered to have experienced a compensable recurrence of disability as defined in 20 C.F.R. § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing.<sup>9</sup> The Board finds that the evidence does not support that the end of appellant's term of work was in any way related to her work injury.

On appeal, counsel asserted that OWCP failed to properly apply precedent based on the evidence. Appellant has not submitted any evidence refuting that she was hired as a transitional employee whose term ended on September 27, 2008. As explained, she did not meet her burden of proof in establishing her claim.

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 failed to establish that she was disabled for the period September 27, 2008 to February 19, 2009 as a result of her employment-related injuries.

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<sup>9</sup> See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2)(a) (May 1997) (a recurrence of disability does not include a work stoppage caused by the termination of a temporary employment).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 8, 2010 is affirmed.

Issued: October 5, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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