



## **FACTUAL HISTORY**

On August 17, 2011 appellant, then a 57-year-old mail handler, filed a traumatic injury claim alleging that she sustained a deep cut on the finger of her left hand on that date while in the performance of her federal duties. In a separate statement, she noted that she was opening a parcel sack when the clasp caught her finger and cut a lacerated groove into it. In a September 15, 2011 note, Dr. Stanley H. Nahigian, a Board-certified orthopedic surgeon with a subspecialty in surgery of the hand, diagnosed an open wound of the left index finger, uncomplicated. He recommended hand therapy to increase range of motion to the left finger. On October 3, 2011 OWCP accepted appellant's claim for laceration of the left index finger.

In an undated note received by OWCP on October 11, 2011, Dr. Nahigian stated that appellant was absent from work from September 19 through 20, 2011, and from September 23 through 30, 2011. He noted that she sustained finger trauma on August 17, 2011 and her finger pain was exacerbated after usage of the hand. Dr. Nahigian noted that appellant could return to work on September 30, 2011 with no restrictions/limitations. In an undated note received by OWCP on November 2, 2011, he noted that she was absent from September 19 to October 19, 2011. Dr. Nahigian reiterated that appellant had a laceration of the finger with hand swelling and constant pain exacerbated by usage.

In a note dated October 5, 2011, Ryan Dwyer Smith, an occupational therapist, advised that appellant was off work from October 3 through 19, 2011 due to problems with her finger and hand usage.

By letter dated October 25, 2011, the employing establishment informed appellant that the last day of continuation of pay was October 11, 2011.

On October 28, 2011 appellant filed a claim for compensation from October 12 to 21, 2011.

By decision dated December 14, 2011, OWCP denied appellant's claim as she did not submit sufficient documentation to establish total disability for the period commencing October 12, 2011.

On December 20, 2011 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

Appellant submitted additional occupational therapy notes. In a December 8, 2011 report, Dr. Matthew M. Keum, a Board-certified physiatrist, reviewed appellant's diagnostic studies and determined that she had mild bilateral median sensory nerve compression across both her wrists. The findings were consistent with mild bilateral carpal tunnel syndrome. Dr. Keum noted no conclusive electrophysiologic evidence of other focal neuropathy, peripheral neuropathy, brachial plexopathy or cervical radiculopathy.

In a September 9, 2011 progress note, Dr. Nahigian noted appellant's history of injury on August 17, 2011. He stated that the wound had healed without infection and that she had full range of motion in the digit. Dr. Nahigian found no evidence of any deficiency to the extensor mechanism over the joint. Appellant had severe osteoarthritis in the carpometacarpal (CMC)

joints of the thumbs which were not injured at that time. In a November 29, 2011 note, Dr. Nahigian stated that appellant was seen in a complicated evaluation because the pain in her left hand was a combination of carpal tunnel syndrome and severe arthritis involving the basilar joint of the left thumb with some small joint involvement as well. All of appellant's current problems were due to medical problems secondary to her underlying disease process. Dr. Nahigian recommended further tests. A November 29, 2011 x-ray report of appellant's thumbs and wrists found arthritic changes throughout the wrists and digits. In a December 30, 2011 note, Dr. Nahigian reiterated that she had been under his care for severe post-traumatic arthritis, left thumb CMC joint and left carpal tunnel syndrome. Appellant needed surgical reconstruction of the left thumb joint and a carpal tunnel release and was advised to restrict her work tasks to lifting of 10 pounds. Dr. Nahigian noted that, because of the severity of her condition, her work restriction would be permanent.

At the hearing held on April 4, 2012, appellant testified that she did not get stitches, but that the laceration covered the entire top part of the finger. She had trouble holding things in her hand. Appellant testified that she had returned to work twice before October 12, 2011 but that her hands became swollen each time. After the hearing, she submitted another occupational therapist report.

By decision dated May 25, 2012, the hearing representative affirmed the December 14, 2011 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her 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 or she 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> The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific diagnosis of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>5</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>6</sup> The opinion of the physician must be based on a complete factual

---

<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> See *Amelia S. Jefferson*, *supra* note 2; see also *David H. Goss*, 32 ECAB 24 (1980).

<sup>4</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>5</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>6</sup> See *Viola Stanko (Charles Stanko)*, 56 ECAB 436 (2005); see also *Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

and medical background of the employee, must be one of reasonable 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 employee.<sup>7</sup>

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>8</sup> Disability is not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as the term is used in FECA.<sup>9</sup>

### ANALYSIS

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relation between her claimed total disability for the period October 12 through 21, 2011 and the accepted laceration of her left index finger.<sup>10</sup> The reports of appellant's physicians do not provide a rationalized medical opinion addressing how her condition disabled her for work for the claimed period. Therefore, the medical evidence submitted is insufficient to meet appellant's burden of proof.

The treating physician, Dr. Nahigian, initially noted that appellant had a wound on her left index finger. He noted that she was absent from work from September 19 until October 19, 2011. Dr. Nahigian stated generally that appellant had a laceration of her finger and suffered from hand swelling and constant pain exacerbated by usage. This report is of diminished weight as it is undated and does not provide an adequate explanation for her disability for two months after the laceration on her finger. Dr. Nahigian did not address any activities in which appellant was engaged or how any work duties contributed to disability for work. In a September 9, 2011 progress note, he noted that her wound had healed without infection and that she had full range of motion in the digit. After this date, Dr. Nahigian discussed appellant's osteoarthritis and carpal tunnel syndrome and attributed her symptoms to her underlying disease. His reports are insufficient to establish disability for the period October 12 to 21, 2011.

Dr. Keum did not provide an opinion on disability with regard to appellant's laceration on her finger. Rather he discussed diagnostic tests which were consistent with bilateral carpal tunnel syndrome.

Section 8101(2) of FECA 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 state law. A nurse, physician's assistant, or physical and

---

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 464 (2005).

<sup>8</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>9</sup> *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

<sup>10</sup> *K.C.*, Docket No. 12-32 (issued October 9, 2012).

occupational therapist is not a physician as defined by FECA. Their opinions regarding diagnosis and causal relationship are of no probative medical value.<sup>11</sup> Accordingly, the reports of appellant's occupational therapist are not entitled to any probative weight.

Appellant has not submitted an adequate reasoned medical opinion to establish that she was disabled from October 12 through 21, 2011 as a result of her accepted employment injury. The Board finds that she has failed to meet her burden of proof.

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 failed to establish entitlement to wage-loss compensation for the period October 12 through 21, 2011.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 25, 2012 is affirmed.

Issued: December 14, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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

---

<sup>11</sup> See *Roy L. Humphrey*, 57 ECAB 238 (2005).