

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

A.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pinellas Park, FL, Employer**

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**Docket No. 11-490
Issued: March 13, 2012**

Appearances:

*Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On December 16, 2010 appellant, through her attorney, filed a timely appeal from a June 29, 2010 decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 established that she had any employment-related disability beginning December 5, 2005 causally related to the conditions accepted by OWCP on November 12, 2009: cervical sprain, lumbar sprain or bilateral carpal tunnel syndrome.

On appeal, her attorney asserts that she is entitled to disability compensation for the period claimed, based on the opinions of her attending physician and that of an OWCP referral physician.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On December 15, 2008 appellant, then a 41-year-old letter carrier, filed an occupational disease claim alleging that her job duties caused bilateral carpal tunnel syndrome, tension headaches, cervical radiculopathy and lumbosacral radiculitis. She stated that she first became aware of the illness on December 1, 2005 and its relationship to her employment on January 1, 2006 and stated that she did not know to file an occupational disease claim. On the claim form Debora Melody, supervisor of customer service, advised that appellant had not worked since December 5, 2005 and first reported the claimed conditions to her on December 22, 2008. Appellant submitted a September 27, 2007 statement in which she described an October 1, 2004 work injury when she fell delivering mail and her job duties as a letter carrier. She stated that, after the October 2004 fall, in December 2004 she returned to full duty as well as after an employment-related dog bite that occurred in January 2005. Appellant maintained that her condition worsened, with problems within her hands, legs, low back and neck and continued, so that by December 2005 she could no longer perform her job duties.

The employing establishment controverted the claim, noting that appellant had a previous claim adjudicated under file number xxxxxx718 and referenced a recent Board decision. Ms. Melody indicated that appellant was first employed on January 10, 2004 and had additional claims for a January 20, 2005 dog bite and an October 14, 2005 claim when she fell and scraped her right leg and hand and had last worked on December 5, 2005. Ms. Melody described appellant's job duties as casing mail for less than two hours daily and then loading her mail into trays, into a hamper and then into her delivery vehicle. The employer also provided a duty status report that indicated that appellant's duties were to lift and carry 1 pound continuously and up to 45 pounds intermittently for eight hours a day; twist and perform simply grasping and fine manipulation for eight hours; sit and reach above the shoulder for five hours; stand three hours continuously, and eight hours intermittently; walk and drive a vehicle for six hours; bend and stoop for four hours; climb for two hours; and kneel, pull and push for one hour daily.

In support of her claim, appellant submitted a July 21, 2005 magnetic resonance imaging (MRI) scan of the cervical spine that demonstrated a disc protrusion at C5-6 with mild neural foraminal narrowing and multilevel facet arthritic changes. A December 2, 2005 upper extremity nerve conduction study indicated bilateral carpal tunnel syndrome and ulnar nerve entrapment neuropathy of the left elbow. A lower extremity study revealed tibial and peroneal neuropathies and lumbosacral radiculopathy. A December 7, 2005 MRI scan study of the cervical spine demonstrated broad-based disc bulges/spurs with mild bilateral neural foraminal encroachment and mild central canal stenosis at C3-4, C4-5 and C5-6. A January 6, 2006 MRI scan study of the lumbar spine was remarkable for minimal disc herniation at L5-S1 with disc desiccation and minimal spinal canal stenosis. An April 1, 2008 MRI scan of the left shoulder demonstrated hypertrophic arthritis at the acromioclavicular joint with rotator cuff tendinopathy with no focal tear. An April 1, 2008 left ankle MRI scan study demonstrated an ankle sprain with tenosynovitis of the peroneal tendons and small joint effusion at the tibiotalar joint.

In a number of reports dated from December 2, 2005 to June 13, 2008, Dr. Harish J. Patel, a neurologist, noted the MRI scan findings and appellant's complaints of headaches, neck and low back pain and hand pain and numbness. He reported findings and diagnosed tension headaches, cervical radiculopathy with neck pain, lumbosacral radiculopathy with pain and spasm, visual aura and depression. Dr. Patel explained that carpal tunnel syndrome could occur

from direct force or trauma to the wrist such as bracing the body from a free fall, and that upper extremity articulations from direct trauma could result in neck, shoulder, elbow and knee problems and advised that the conditions were caused by the October 2004 fall, indicating that she had neurological damage due to the October 2004 work injury. He opined that she had been unable to work since December 2005 and that she should not operate machinery due to medication. On July 10, 2008 Dr. Patel advised that appellant could perform sedentary work where she was allowed to frequently change positions, with permanent restrictions of occasional lifting of no more than 10 pounds and occasional use of either hand.

In the claim adjudicated under file number xxxxxx718 for the October 1, 2004 injury, by decision dated November 13, 2008, the Board found that appellant failed to meet her burden of proof to establish that she sustained a recurrence of total disability on December 5, 2005 causally related to the October 1, 2004 employment injury.² The law and the facts of the previous Board decision are incorporated herein by reference, and the issue adjudicated is *res judicata*. Appellant was separated from the employing establishment due to disability effective February 27, 2009.

By decision dated March 27, 2009, OWCP denied the instant claim. Appellant timely requested a hearing and submitted medical evidence previously of record and a December 26, 2007 report in which Dr. Patel advised that he began treating appellant on December 2, 2005. Dr. Patel diagnosed cervical radiculopathy, bilateral carpal tunnel syndrome, tension headaches, and lumbosacral radiculitis, stating that these were permanent aggravations of underlying conditions since the October 1, 2004 fall at work which made her more susceptible to the diagnosed conditions. He further indicated that she had attempted to return to work after this injury and was able to perform the duties for a considerable period of time but that her day-to-day work activities, superimposed upon the underlying injuries caused by the October 1, 2004 fall, worsened the conditions so that she could not perform letter carrier duties and could only perform sedentary work. Dr. Patel provided permanent restrictions that would allow her to change positions frequently, no lifting more than 10 pounds, and occasional use of the hands. He advised that appellant had reached maximum medical improvement.

At the hearing, held telephonically on July 27, 2009, appellant testified that she began work as a part-time flexible carrier on January 10, 2004 but worked full time. She stated that, after the October 2004 injury and the January 2005 dog bite, she returned to regular duty. Appellant indicated that beginning in February 2005 she began to have pain in her feet and went to see Dr. Patel and that, after testing, she realized she had additional problems. She related that her condition worsened throughout 2005 with daily shoulder spasms, decreased neck range of motion, excruciating pain when she stood to case mail and hand numbness. Appellant stated that she did not have these symptoms before February 2005 but noted that she had another slight fall when her left ankle gave out. She described her letter carrier job duties and indicated that, since she stopped work at the employing establishment, she had been tutoring in her home.

By letter dated August 27, 2009, the employing establishment disputed appellant's testimony, asserting that her job duties were not as strenuous as she stated and attached

² Docket No. 08-1393 (issued November 13, 2008). The October 1, 2004 injury occurred when appellant tripped on uneven pavement. The claim was accepted for an open wound and contusion to the right knee and strains to the left ankle, left knee and left wrist.

descriptions of the five types of city delivery service and employing establishment policies regarding satchels, loading vehicles, parking and parcel delivery.

In a September 30, 2009 decision, an OWCP hearing representative vacated the March 27, 2009 decision and remanded the case to OWCP for further medical development. In October 2009 OWCP referred appellant, along with a statement of accepted facts and a set of questions, to Dr. William Dinenberg, a Board-certified orthopedic surgeon, for a second-opinion evaluation. The statement of accepted facts included a description of appellant's job duties and responsibilities, and the physician was specifically asked to provide an opinion as to whether employment factors in the period October 2004 to December 2005 caused or contributed to carpal tunnel syndrome, lumbar/thoracic radiculitis, cervical radiculitis or tension headaches.

By report dated October 16, 2009, Dr. Dinenberg noted his review of the medical record and a statement of accepted facts that included a description of appellant's job duties as a city carrier. He listed appellant's complaints of significant numbness in the left hand, bilateral foot tingling, constant cervical and lumbar spine pain, and loss of motion and pain in the left shoulder and that she was able to drive, water plants in her yard and wash dishes. Examination showed decreased cervical and left shoulder range of motion with tenderness over the left trapezial area. There was no thenar or hypothenar atrophy on hand examination. Phalen's, Tinel's and carpal tunnel compression tests were positive bilaterally with decreased sensation to light touch. Lumbar examination revealed paraspinous muscle tenderness. Straight-leg raising was negative. Dr. Dinenberg diagnosed left shoulder impingement, cervical sprain/strain, lumbar sprain/strain, bilateral carpal tunnel syndrome, minimal disc herniation at L5-S1 and minimal disc herniation at C2 to C6. In answering OWCP questions, he advised that the cervical and lumbar sprains and bilateral carpal tunnel syndrome were due to the October 1, 2004 injury but that the herniated discs were not, and that left shoulder changes were not related to the October 2004 work fall but could be due to lifting and overhead motions at work. Dr. Dinenberg noted that subjective complaints outweighed objective findings but that she had residuals of the October 2004 work injury of the cervical and lumbar spine including loss of range of motion and tenderness, and that the hands had decreased sensation and positive test results. He advised that appellant was at maximum medical improvement for the cervical and lumbar sprains but not at maximum medical improvement for bilateral carpal tunnel syndrome and recommended carpal tunnel release. Dr. Dinenberg listed temporary work restrictions of no overhead work with the left shoulder and no lifting greater than 20 pounds. On a work capacity evaluation, he stated that appellant could not perform the duties of a letter carrier and would need a primarily sedentary position with permanent restrictions of no reaching above the shoulder, and no bending, stooping, squatting, kneeling or climbing. Dr. Dinenberg indicated that appellant could repetitively move her wrists for 1 hour daily, and could push, pull and lift 20 pounds for 2 hours daily.

On November 12, 2009 OWCP accepted that appellant sustained a work-related cervical sprain, lumbar sprain and bilateral carpal tunnel syndrome. On November 20, 2009 appellant filed a claim for compensation from December 1, 2005 to the present. By letter dated December 8, 2009, OWCP discussed the medical evidence received and informed her of the type evidence needed to support her claim for disability compensation.

By decision dated January 11, 2010, OWCP denied appellant's claim for compensation for the period December 1, 2005 and continuing. It noted that she had not provided the information requested. Appellant, through her attorney, timely requested a hearing and submitted reports from Dr. Patel previously of record. In a February 15, 2010 report, Dr. Patel

noted tenderness and spasm on examination of the spine. Examinations of upper and lower extremities were unremarkable. Diagnoses included left shoulder and neck pain, headaches, restless leg syndrome and depression.

At the hearing, held on April 13, 2010, appellant testified that at the time she stopped work in December 2005 she was performing her regular duties as a letter carrier. She stated that during 2005 she had neck pain, daily headaches, numbness in her hand, and radiating low back pain such that she could hardly work, and that she continued to have neck and shoulder spasms, hand numbness and painful feet. Appellant's attorney argued that, based on the restrictions provided by Dr. Patel and Dr. Dinenberg, appellant could not return to her letter carrier position. Appellant thereafter submitted an April 27, 2010 report, in which Dr. Patel reiterated his physical findings and diagnoses.

By decision dated June 29, 2010, an OWCP hearing representative affirmed the January 11, 2010 decision on the grounds that the medical evidence did not establish total disability for the period claimed.

LEGAL PRECEDENT

Under FECA the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.³ Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.⁴ 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 his or her employment, the employee is entitled to compensation for any loss of wage-earning capacity resulting from the employment injury.⁵ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical opinion of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed

³ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁴ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁵ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁶ *Tammy L. Medley*, 55 ECAB 182 (2003).

⁷ *Jennifer Atkerson*, 55 ECAB 317 (2004).

condition and the specific employment factors identified by the claimant.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

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 employees to self-certify their disability and entitlement to compensation.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision. The conditions accepted by OWCP on November 12, 2009 are cervical and lumbar sprains and bilateral carpal tunnel syndrome. Appellant filed a claim for total disability beginning December 1, 2005. As the Board previously found that appellant did not establish a recurrence of total disability on December 5, 2005 causally related to an October 1, 2004 injury, accepted for open wound and contusion to the right knee and strains to the left ankle, left knee and left wrist,¹¹ the issue in the case at hand is whether appellant established total work disability beginning on December 5, 2005 due to the conditions accepted in November 2009.

The medical evidence relevant to whether appellant was totally disabled for any period on or after December 1, 2005 due to the newly accepted conditions includes a number of reports from her attending physician, Dr. Patel, who advised that she became totally disabled in December 2005 and that her diagnoses of headaches, cervical radiculopathy with hand numbness and lumbosacral radiculopathy with pain and spasm were caused by an October 1, 2004 fall.¹² Dr. Patel also diagnosed bilateral carpal tunnel syndrome and advised that appellant could not return to her regular duties but could perform sedentary work where she was allowed to change positions on a frequent basis, with permanent restrictions of occasional lifting of no more than 10 pounds and only occasional use of either hand to perform movements.

The Board finds that Dr. Patel provided insufficient rationale to establish that appellant was totally disabled on or after December 1, 2005 due to the conditions of cervical and lumbar sprain and bilateral carpal tunnel syndrome. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *Supra* note 2.

¹² *Id.*

the claimant.¹³ Dr. Patel did not furnish a reasoned explanation regarding how the above conditions caused total disability or whether the restrictions he provided were due to these conditions. Moreover, while bilateral carpal tunnel syndrome has been accepted, in his February 15 and April 27, 2010 reports, Dr. Patel advised that upper extremity examination was unremarkable. His opinion is therefore insufficient to establish that appellant had any period of disability on or after December 1, 2005 due to the accepted conditions of cervical and lumbar sprain and bilateral carpal tunnel syndrome.

The Board, however, finds that the opinion of Dr. Dinenberg, OWCP's referral physician, is supportive of appellant's disability claim. In the body of his report, Dr. Dinenberg provided temporary work restrictions of no overhead work with the left shoulder and no lifting greater than 20 pounds. A left shoulder condition has not been accepted as employment related. On a work capacity evaluation, Dr. Dinenberg stated that appellant could not perform the duties of a letter carrier and would need a primarily sedentary position with permanent restrictions of no reaching above the shoulder, and no bending, stooping, squatting, kneeling or climbing. He indicated that appellant could repetitively move her wrists for one hour daily, and could push, pull and lift 20 pounds for two hours daily.

Appellant's job duties as a city carrier, as listed in the statement of accepted facts provided to Dr. Dinenberg, indicated that she was required to carry mail satchels weighing as much as 35 pounds, and to load and unload sacks of mail weighing up to 70 pounds. The employing establishment indicated that for less than two hours daily appellant had to use her hands to case mail prior to street delivery, that she would then place the mail in a tray, load it into a hamper and then into her vehicle. The employer also provided a duty status report that indicated that appellant's duties were to lift and carry one pound continuously and up to 45 pounds intermittently for eight hours a day; twist and perform simple grasping and fine manipulation for eight hours; sit and reach above the shoulder for five hours; stand three hours continuously, and eight hours intermittently; walk and drive a vehicle for six hours; bend and stoop for four hours; climb for two hours; and kneel, pull and push for one hour daily. Thus, Dr. Dinenberg's restrictions and the physical requirements of appellant's regular job duties as a city carrier are not in agreement. It is, however, unclear whether the restrictions provided by Dr. Dinenberg are due to the accepted cervical and lumbar sprains and/or bilateral carpal tunnel syndrome or other conditions not accepted as employment related.

The Board finds that, while Dr. Dinenberg's opinion lacks detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that she was totally disabled for any period on or after December 1, 2005 due to the accepted conditions, this does not mean that the opinion may be completely disregarded by OWCP. It merely means that its probative value is diminished.¹⁴ It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁵ The case shall therefore be remanded to OWCP. On remand OWCP should ask Dr. Dinenberg to furnish a supplementary report regarding whether the

¹³ *A.D.*, 58 ECAB 149 (2006).

¹⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).

¹⁵ *See Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

restrictions he provided in both the body of his report and on the work capacity evaluation were due to the conditions accepted on November 12, 2009 of cervical and lumbar sprains and/or bilateral carpal tunnel syndrome or whether the restrictions were due to conditions that have not been accepted by OWCP, such as the diagnosed left shoulder impingement. He should further provide an opinion as to whether she was totally disabled beginning on December 1, 2005 solely due to the accepted conditions. After this and such further development as deemed necessary, OWCP shall issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant established that she was totally disabled beginning on December 5, 2005 due to her accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: March 13, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board