

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

M.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Woodland Hills, CA, Employer**

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**Docket No. 12-1895
Issued: April 18, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On September 13, 2012 appellant filed a timely appeal of an August 20, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.²

ISSUE

The issue is whether appellant met her burden of proof to establish that she was entitled to disability compensation for the period February 1 to March 7, 2012.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence after OWCP issued its August 20, 2012 decision. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On July 26, 2004 appellant, then a 38-year-old mail carrier, filed a Form CA-2 alleging that she sustained lower extremity injuries due to routine dismounted deliveries. OWCP accepted her occupational disease claim, assigned File No. xxxxxx821, for left plantar fasciitis and heel spur and later expanded it to include right plantar fasciitis and heel spur.

On February 16, 2010 appellant filed a Form CA-2a alleging that she experienced foot pain while in the performance of duty. Her claim for recurrence of medical condition was administratively converted to a new claim for occupational disease. OWCP accepted the new claim, assigned File No. xxxxxx710, for bilateral foot strain.

On August 23, 2010 appellant fell out of her mail truck and landed on her right hand. OWCP accepted her traumatic injury claim, assigned File No. xxxxxx865, for closed right distal radius fracture.

On December 5, 2011 appellant filed a Form CA-2 alleging that she sustained bilateral carpal tunnel syndrome due to repetitive casing, gripping, handling, lifting and writing on the job. OWCP accepted her occupational disease, assigned File No. xxxxxx378, for bilateral carpal tunnel syndrome and trigger finger.³

In a December 30, 2011 work ability evaluation form, Dr. Gregory J. Hanker, a Board-certified orthopedic surgeon, advised appellant to avoid lifting and carrying items weighing over five pounds. He also limited repetitive hand-oriented activities to 30 minutes per hour. Dr. Hanker anticipated a January 9, 2012 return to work.

Dr. Hanker related in a January 13, 2012 report that appellant resumed normal job activities, but remained symptomatic. On examination of the right arm, he observed localized annular pulley pain and tendon triggering in the thumb and middle finger. Dr. Hanker also elicited right wrist dysesthesia radiating to the first through fourth digits during provocative testing for median nerve entrapment. On examination of the left arm, he commented that the findings were “virtually identical.” Dr. Hanker diagnosed bilateral carpal tunnel syndrome due to repetitive tasks at work and recommended staged hand surgeries.⁴ A January 31, 2012 work status note indicated that appellant did not return to work and was placed on temporary total disability for four months.

Appellant filed multiple claims for compensation for the combined period January 14 to March 7, 2012. OWCP informed her in February 6 and March 5, 2012 letters that a medical report from a physician explaining how her accepted condition rendered her unable to perform her federal employment for the alleged period was needed.

³ OWCP combined appellant’s claims into File No. xxxxxx378, which has been designated as the master file.

⁴ Dr. Hanker reiterated these findings in a March 6, 2012 report, adding that appellant likely sustained three percent permanent impairment of the right hand and three percent permanent impairment of the left hand.

Dr. Hanker remarked in a February 17, 2012 report that he permitted appellant to return to work, but “this recommendation did not work out.” Following an examination that revealed “intolerable hand symptoms,” he determined that she was incapable of carrying out her normal job duties and placed her on temporary total disability retroactive to January 14, 2012. In two February 24, 2012 reports, Dr. Hanker concluded that appellant’s worsening condition necessitated surgery.

A March 1, 2012 report from Dr. Dennis P. Lewis, a Board-certified family practitioner, diagnosed carpal tunnel syndrome.⁵

In a March 2, 2012 attending physician’s report, Dr. Hanker detailed that appellant was totally disabled since January 14, 2012, scheduled for left hand surgery on March 8, 2012 and expected to return to full-time duty on April 19, 2012.⁶ He diagnosed left carpal tunnel syndrome as well as trigger thumb and middle finger.⁷

By decision dated March 8, 2012, OWCP denied appellant’s compensation claim, finding that the medical evidence did not sufficiently establish total disability for the period January 14 to March 7, 2012.

Dr. Jonathan S. Jaivin, a Board-certified orthopedic surgeon, noted in a March 21, 2012 report that appellant “has been off work for three months due to carpal tunnel syndrome.” He agreed with Dr. Hanker’s assessment that she remain on temporary total disability status.

Appellant requested reconsideration on May 22, 2012. She clarified that she sought disability compensation for the period February 1 to March 7, 2012.⁸

On August 20, 2012 OWCP denied modification of the March 8, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that he or she was disabled for work as a result of the accepted employment injury. 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

⁵ Dr. Lewis restated his diagnosis in an April 25, 2012 report.

⁶ The case record contains a March 8, 2012 operative report specifying left open carpal tunnel release and left thumb and middle finger proximal flexor tendon sheath incisions. The case record also contains an April 5, 2012 operative report specifying right open carpal tunnel release and right thumb and middle finger proximal flexor tendon sheath incisions.

⁷ Appellant provided various medical records for the period March 14 to July 11, 2012. None of these addressed disability for the relevant period.

⁸ Appellant detailed that the employing establishment agreed to pay her regular wages for the period January 13 to 31, 2012, because it failed to find a position that accommodated her physical restrictions and advised her not to return to work.

preponderance of reliable, probative and substantial medical opinion evidence.⁹ Such medical evidence must include findings on examination and the physician's opinion, supported by medical rationale, showing how the injury caused the employee disability for his or her particular work.¹⁰

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.¹¹ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates 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.¹²

ANALYSIS

OWCP accepted, *inter alia*, that appellant sustained bilateral carpal tunnel syndrome and trigger finger while in the performance of duty. Appellant thereafter filed multiple claims for disability compensation and submitted medical evidence.

The Board finds that appellant did not establish her entitlement to disability compensation because the medical evidence did not sufficiently demonstrate that she was disabled for the period February 1 to March 7, 2012 due to her accepted injuries. In a December 30, 2011 work ability evaluation form, Dr. Hanker anticipated that she would be released to work on or around January 9, 2012. He confirmed in a January 13, 2012 report that appellant returned to her job. Subsequent records from Dr. Hanker for the period January 31 to March 2, 2012 indicated that she did not resume work and was placed on temporary total disability status for four months retroactive to January 14, 2012. Dr. Jaivin also mentioned in a March 21, 2012 report that appellant "has been off work for three months due to carpal tunnel syndrome." Although Dr. Hanker and Dr. Jaivin both concluded that she was totally disabled, neither offered adequate medical rationale setting forth the pathophysiological mechanism by which bilateral carpal tunnel syndrome rendered her unable to perform her regular duties as a mail carrier.¹³ Medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value.¹⁴ Furthermore, while appellant claimed that she was entitled to disability compensation for the period February 1 to March 7, 2012, neither Dr. Hanker nor Dr. Jaivin directly addressed these specific dates.¹⁵

⁹ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹¹ *Laurie S. Swanson*, 53 ECAB 517, 520 (2002). See also *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

¹² *Jefferson*, *supra* note 9.

¹³ *Emma R. Bowman*, Docket No. 94-2431 (issued September 13, 1996); *Arita M. Cruz*, Docket No. 94-1694 (issued June 11, 1996). The Board notes that Dr. Jaivin merely deferred to Dr. Hanker's opinion on the matter.

¹⁴ See *William C. Thomas*, 45 ECAB 591 (1994).

¹⁵ *M.F.*, Docket No. 08-1927 (issued April 16, 2009).

The remaining evidence of record did not address whether appellant's bilateral carpal tunnel syndrome led to her disability for the claimed period and was therefore of limited probative value.¹⁶ In view of the totality of the evidence, the Board finds that appellant did not discharge her burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 did not establish that she was entitled to disability compensation for the period February 1 to March 7, 2012.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

¹⁶ *Tracy A. Thorsen*, Docket No. 93-1232 (issued July 21, 1994).