

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

R.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Nashville, TN, Employer**

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**Docket No. 13-986
Issued: December 24, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 28, 2013 appellant, through her attorney, filed a timely appeal from a December 5, 2012 decision of the Office of Workers' Compensation Programs (OWCP) finding an overpayment in compensation, a December 11, 2012 hearing representative's decision affirming termination of her wage-loss benefits and a December 31, 2012 decision denying a request for an oral hearing. 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.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss benefits effective July 1, 2012 on the grounds that she no longer had any disability causally related to her accepted employment-related injuries; (2) whether it properly determined that appellant received an overpayment in the amount of \$10,994.69 for the period July 1 to October 20, 2012 after her benefits were terminated; (3) whether appellant was at fault in the

¹ 5 U.S.C. § 8101 *et seq.*

creation of the overpayment and therefore not entitled to waiver of recovery; and (4) whether OWCP properly denied appellant's request for a hearing.

FACTUAL HISTORY

OWCP accepted that on February 24, 2010 appellant, then a 34-year-old letter carrier, sustained a right wrist sprain and right carpal tunnel syndrome as a result of repetitively casing mail and opening delivery doors in the performance of duty. She continued to work, but in a limited-duty capacity.²

On September 17, 2010 appellant underwent right carpal tunnel release surgery. She stopped work and OWCP paid wage-loss and disability compensation. Appellant was placed on the periodic rolls and submitted a direct deposit sign-up form.

On November 1, 2010 appellant returned to light duty as a modified carrier and clerk. She returned to full duty on December 18, 2010.³

On December 15, 2011 appellant underwent another right carpal tunnel release surgery by Dr. Christian F. Vissers, a Board-certified orthopedic surgeon. She stopped work again and OWCP paid wage-loss compensation benefits. Appellant was placed back on the periodic rolls.

On January 11, 2012 OWCP requested additional information from Dr. Vissers regarding appellant's current treatment, whether she could be expected to return to modified work and when she would reach maximum medical improvement with respect to her work-related conditions.

In a January 30, 2012 report, Dr. Vissers stated that appellant did not arrive for her appointment. He related that she was six weeks status post right carpal tunnel release surgery and opined that she could begin working limited duty. Dr. Vissers restricted her to lifting up to 10 pounds and no impact activities or vibratory tools. In a January 30, 2012 work capacity evaluation form, he noted that appellant had not reached maximum medical improvement and provided work restrictions.

In a February 13, 2012 report, Dr. Vissers advised that appellant had not arrived for her appointment that day or on January 30, 2012. He reported that, despite numerous attempts by his office to contact her regarding her appointment, she had not returned any telephone calls. Dr. Vissers related that appellant underwent a right carpal tunnel release on December 15, 2011. Although appellant was unavailable for a physical examination he could opine that at

² In a February 26, 2010 duty status report, Dr. Marc R. Watkins, Board-certified in occupational medicine, authorized appellant to work limited duty with restrictions of no use of the right hand and no driving the company vehicle. On May 10, 2010 appellant accepted a limited-duty job offer as a modified city carrier.

³ On January 14, 2011 OWCP issued a preliminary decision that appellant received an overpayment in the amount of \$4,439.79 because she received compensation for total disability from November 1 to December 18, 2010 after she returned to work on November 1, 2010. It found that she was at fault in creating the overpayment because she accepted payments that she knew or reasonably should have known to be incorrect. By decision dated February 25, 2011, OWCP finalized the overpayment decision and found that she was at fault in creation of the overpayment.

two-month status post carpal tunnel release she could return to full duty as a mailhandler. In a February 13, 2012 work capacity evaluation form, Dr. Vissers noted that she had not reached maximum medical improvement but could return to work without restrictions.

On February 15 and 22, 2012 a field nurse informed OWCP that she had attempted to contact appellant but her calls were not returned. She related that appellant did not show up on January 30 or February 13, 2012 for scheduled examination by Dr. Vissers.

On April 20, 2012 OWCP proposed to terminate appellant's wage-loss compensation benefits based on Dr. Vissers' February 13, 2012 report. Dr. Vissers found that she was no longer disabled due to her employment-related conditions and was capable of working full duty. OWCP advised appellant that she had 30 days to submit additional relevant evidence or argument if she disagreed with the proposed termination of benefits.

Appellant resubmitted a December 5, 2011 work restriction report and a December 15, 2011 hospital discharge report.

By decision dated June 18, 2012, OWCP terminated appellant's wage-loss benefits effective July 1, 2012 finding that Dr. Vissers' reports established that she had no continuing disability due to the accepted February 24, 2010 employment injury. Appellant remained entitled to medical benefits.

On June 25, 2012 appellant, through counsel, requested a telephone hearing, which was held on October 15, 2012. She had not returned to work and described pain she experienced due to her employment-related conditions. Appellant tried to return to work after her first carpal tunnel release surgery but was unable to continue doing the same repetitive motions. Her counsel requested 30 days to provide additional medical evidence.

On August 15, 2012 appellant requested a schedule award. By letter dated August 27, 2012, OWCP advised her that no medical evidence was submitted to establish permanent impairment as a result of her work-related condition. On October 19, 2012 it advised appellant that she was not at maximum medical improvement as noted by Dr. Vissers.

Appellant received disability compensation by direct deposit every 28 days until October 20, 2012. She received a net compensation of \$2,750.66 for the period July 1 to 28, 2012; \$2,775.27 for the period July 29 to August 25, 2012; \$2,779.16 for the period August 26 to September 22, 2012; and \$2,689.60 for the period September 23 to October 20, 2012.

An overpayment worksheet dated October 15, 2012 noted that appellant received compensation payments for 112 days of time lost which totaled \$10,994.69. It also noted that her wage-loss compensation benefits were terminated on July 1, 2012.

On October 19, 2012 OWCP issued a preliminary decision that appellant received an overpayment in the amount of \$10,994.69 because she received wage-loss compensation for total disability from July 1 to October 20, 2012 after her benefits were terminated effective July 1, 2012. It found that she was at fault in creating the overpayment because she accepted payments that she knew or reasonably should have known to be incorrect. OWCP determined that appellant was paid a gross amount of \$3,016.86 every 28-calendar days. It calculated the

gross daily amount of \$107.75 by the number of overpayment days, 112, for a total amount of \$12,067.44. OWCP subtracted \$1,072.75 for health and life insurance deductions to determine that appellant received a total overpayment amount \$10,994.69. It informed her of her appellate options and instructed her to complete an enclosed overpayment recovery form and submit supporting financial documentation. No additional evidence regarding appellant's overpayment was received.

In a November 20, 2012 letter, appellant's counsel again requested a schedule award. He stated that an attached medical report included a date of maximum medical improvement and a conclusion on permanent impairment.⁴

In a November 10, 2012 report, Dr. Martin Fritzhand, an occupational health specialist, related appellant's complaints of constant pain in the right palm that radiated up to her elbow and numbness in the digits of the right hand. Appellant stated that she could not use her right hand and was unable to do the things she needed to do at work. Dr. Fritzhand noted her accepted conditions for right wrist sprain and right carpal tunnel syndrome. He reviewed appellant's medical history and noted that she underwent carpal tunnel release surgeries on September 2010 and December 2011. Upon examination of the right wrist, Dr. Fritzhand observed tenderness on palpation of the volar aspect and diminished pinprick and light touch over the ulnar aspect of the distal right forearm. Dorsiflexion and palmar flexion of the right wrist was normal to 60 degrees. Tinel's sign on the right side was positive. Dr. Fritzhand stated that maximum medical improvement was met by August 2012. He opined that, according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Table 15-23, appellant had six percent permanent impairment to the right upper extremity. Dr. Fritzhand included a *QuickDASH* score report.

In a December 5, 2012 decision, OWCP finalized the overpayment of \$10,994.69. It found that appellant was at fault in the creation of the overpayment because she accepted payments that she knew or reasonably should have known to be incorrect.

On December 11, 2012 appellant's counsel requested a prerecoupment hearing from the December 5, 2012 decision.

By decision dated December 11, 2012, an OWCP hearing representative affirmed the June 18, 2012 termination of benefits based on Dr. Vissers' report. She found that Dr. Fritzhand's report failed to establish that appellant continued to be disabled as a result of her employment-related conditions.

In a decision dated December 31, 2012, OWCP found that appellant was not entitled to a prerecoupment hearing regarding the December 5, 2012 final overpayment decision.

⁴ As OWCP has not issued a final decision regarding the schedule award claim, the Board does not have jurisdiction to review the schedule award issue. See 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT -- ISSUE 1

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.⁵ OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

To be of probative value, a medical report must provide an opinion on the issue presented that is supported by medical rationale. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for right wrist sprain and right carpal tunnel syndrome and paid wage-loss compensation benefits. In a decision dated June 18, 2012, it terminated appellant's wage-loss compensation benefits effective July 1, 2012 based on Dr. Vissers' February 13, 2012 report. By decision dated February 11, 2012, an OWCP hearing representative affirmed the termination.

Dr. Vissers advised that appellant was two months post carpal tunnel release surgery. He advised in general that she could return to full duty as a mailhandler. OWCP's burden of proof to terminate appellant's compensation requires the furnishing rationalized medical opinion evidence.⁹ A well-reasoned medical opinion must be consistent with findings upon examination, such as findings during physical examination, laboratory testing or diagnostic procedures.¹⁰ Dr. Vissers noted that appellant did not appear for two appointments following surgery. He provided medical opinions concerning her capacity for limited duty and regular duty that were not based on any physical examination

⁵ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁶ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁷ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁹ *Supra* note 7.

¹⁰ *See Federal (FECA) Procedure Manual, Part 2 -- Disability Management, Developing and Evaluating Medical Evidence*, Chapter 2.810.6(a)(2) (September 2010).

The Board finds that Dr. Vissers' report does not clearly establish that appellant was no longer disabled as a result of her accepted right wrist or hand conditions. There is no rationalized medical evidenced to establishing that her disability ceased or was no longer related to her employment. The February 13, 2012 opinion of Dr. Vissers is not sufficiently detailed or rationalized to support OWCP's termination of wage-loss compensation benefits.¹¹ The Board will reverse OWCP's December 11, 2012 decision affirming the termination of appellant's disability compensation benefits.

LEGAL PRECEDENT -- ISSUES 2&3

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹² Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section of FECA provides that while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay or remuneration of any type from the United States, except in limited specific instances.¹³

ANALYSIS -- ISSUES 2&3

The underlying overpayment in this case was based on OWCP's June 18, 2012 decision to terminate appellant's wage-loss benefits. The Board has held that it may review the underlying decision to determine if fact of overpayment has been established.¹⁴ In its December 5, 2012 decision, OWCP determined that appellant received an overpayment of \$10,994.69 for the period July 1 to October 20, 2012 because she received wage-loss benefits after the termination. The Board finds, however, that OWCP did not meet its burden of proof to terminate her wage-loss benefits. Accordingly, the fact of overpayment has not been established. In view of the Board's finding on the fact of overpayment, the issues of fault and denial of waiver are moot.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation benefits effective July 1, 2012. For this reason, OWCP did not establish the fact of overpayment.¹⁵

¹¹ See *R.M.*, Docket No. 11-1701 (issued March 19, 2012).

¹² 5 U.S.C. § 8102.

¹³ *Id.* at § 8116(a).

¹⁴ See *Russell E. Wageneck*, 46 ECAB 653 (1995).

¹⁵ In view of the Board's disposition on the termination and overpayment issues, the December 31, 2012 decision regarding the denial of a prerecoupment hearing is moot.

ORDER

IT IS HEREBY ORDERED THAT the December 11 and 5, 2012 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: December 24, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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