

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

B.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Danville, CA, Employer**

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**Docket No. 13-1372
Issued: December 16, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 20, 2013 appellant filed a timely appeal of the April 11 and May 9, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which denied her claims for compensation. 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.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was partially disabled for intermittent periods from January 22 to March 8, 2013 causally related to her accepted employment condition.

FACTUAL HISTORY

On February 10, 1997 appellant then a 35-year-old mail carrier, filed an occupational disease claim alleging pain and numbness in both hands while casing and delivering her mail

¹ 5 U.S.C. §§ 8101-8193.

route. OWCP accepted the claim for bilateral carpal tunnel syndrome and authorized a left carpal tunnel release which was performed on January 22, 1998. A right carpal tunnel release and right ulnar neurolysis was performed on March 20, 1998. Appellant stopped work on February 11, 1997 and worked intermittently thereafter.

Appellant was treated by Dr. Jack B. Drori, a Board-certified orthopedic surgeon, from February 10 to March 10, 1997, for numbness, tingling and pain in both hands. Dr. Drori noted that a March 4, 1997 electromyogram (EMG) revealed mild bilateral carpal tunnel syndrome. He opined that appellant's repetitive job duties caused and aggravated her symptoms of carpal tunnel syndrome. From May 16 to June 11, 1997, appellant was treated by Dr. Edward A. Stokel, a Board-certified orthopedic surgeon, for bilateral carpal tunnel syndrome and bilateral regional forearm pain. On January 22 and March 20, 1998 Dr. Kendrick Lee, a Board-certified orthopedic surgeon, performed the above-noted left and right carpal tunnel releases.

On January 28, 2001 OWCP granted appellant a schedule award for 20 percent impairment of the right arm and also for 20 percent impairment of the left arm. The period of the award was from November 15, 2001 to April 7, 2003.

On October 6, 2010 Dr. Lee noted that appellant was unable to perform her usual job but could work eight hours a day at limited duty with permanent restrictions. He noted that appellant reached maximum medical improvement. In a February 16, 2011 duty status report, Dr. Lee diagnosed carpal tunnel syndrome and cubital tunnel syndrome and advised that appellant could work eight hours per day subject to restrictions.

In 2013 appellant submitted CA-7 forms, claims for compensation, asserting that she was partially disabled from January 22 to 24, 2013 for 11.99 hours; from January 28 to February 8, 2013 for 41 hours; and from February 9 to 22, 2013 for 16.08 hours. In a Form CA-7a, time analysis form and OWCP time loss worksheets, the employing establishment confirmed the hours of leave without pay.

On February 6, 2013 Dr. Lee noted that appellant was a mail carrier and had a date of injury of July 13, 2004. Appellant complained of bilateral hand pain, swelling at the radial hand and thumb joint which was worse when fingering mail. Dr. Lee advised that she was postbilateral ulnar nerve transposition and left revision surgery, postbilateral carpal tunnel surgery and left lateral epicondylitis. He noted that appellant continued working at modified duty and had requested an increase in work hours to drive up to six hours a day. On examination, sensation was normal to light stroke and there was normal elbow, forearms, wrist and finger ranges of motion. There was no tenderness of the right or left thumb, capillary refill was normal, unchanged bilateral medial elbow scars and bilateral wrist flexors crease scars consistent with prior surgery, no atrophy, edema, discoloration or wounds with mildly positive right and negative left Phalen's and Tinel's signs. Dr. Lee diagnosed bilateral thumb carpometacarpal joint osteoarthritis, unrelated to the current claim, bilateral carpal tunnel syndrome, left side resolved, right side improved postsurgery, bilateral ulnar neuropathy at elbows, right and left resolved postsurgery and bilateral lateral epicondylitis, stable. He opined that appellant had stable on and off symptoms of left lateral epicondylitis and stable right residual carpal tunnel syndrome. Dr. Lee noted new symptoms, signs and x-rays confirming bilateral thumb carpometacarpal joint osteoarthritis; however, the new symptoms were not part

of the current claim. He opined that appellant remained at maximum medical improvement for some years and could continue modified duty, long-term permanent restrictions and increased her driving to six hours a day.

In letters dated February 11 to March 5, 2013, OWCP requested that appellant submit additional information with regard to her claim for compensation. It requested that she submit medical evidence establishing that she was disabled for the hours claimed due to the accepted condition. OWCP further noted that appellant was diagnosed with bilateral thumb carpometacarpal joint osteoarthritis, a condition not accepted as work related. If appellant believed the condition was work related she could submit a new Form CA-2, occupational disease claim.

On March 12, 2013 appellant submitted a Form CA-7, claim for compensation for leave without pay, asserting that she was partially disabled from February 23 to March 8, 2013 for 19.01 hours. In a Form CA-7a, time analysis form and OWCP time loss worksheets, the employing establishment confirmed the hours of leave without pay. In a letter dated March 19, 2013, OWCP requested that appellant submit additional information.

In a decision dated April 11, 2013, OWCP denied appellant's claim for compensation for partial disability from January 22 to 24, 2013 for 11.99 hours; from January 28 to February 8, 2013 for 41 hours; and from February 9 to 22, 2013 for 16.08 hours. It advised that her claim was accepted for bilateral carpal tunnel syndrome and was combined with file number xxxxxx116 which was accepted for left lateral epicondylitis and left lesion of the ulnar nerve. OWCP noted that the February 6, 2013 report of Dr. Lee diagnosed bilateral thumb carpometacarpal joint osteoarthritis which the physician noted was unrelated to her accepted claims.

In a letter dated April 6, 2013, appellant noted that her permanent restrictions were the result of her carpal tunnel surgery in 1997. For several years the employing establishment was able to provide sufficient work that fit her medical restrictions for an eight-hour workday. Appellant asserted that the employing establishment did not have sufficient work to perform for an eight-hour workday and that she worked six hours a day. She submitted reports from Dr. Lee dated October 6, 2010 and February 6, 2013, previously of record.

In a decision dated May 9, 2013, OWCP denied appellant's claim for compensation. It found that the medical evidence was not sufficient to establish her partial disability for the period February 23 to March 8, 2013 for 19.01 hours.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.² Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.³ The issue of

² See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

³ *Id.*

whether a particular injury causes disability for work must be resolved by competent medical evidence.⁴ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁵

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. 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.⁶

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome, left lateral epicondylitis and left elbow cubital tunnel syndrome. It authorized a left carpal tunnel release which was performed on January 22, 1998 and a right carpal tunnel release which was performed on March 20, 1998. A left ulnar neurolysis with anterior submuscular transposition was performed on October 24, 2002. In an October 6, 2010 work capacity evaluation, Dr. Lee noted that appellant could work eight hours per day limited duty within restrictions.

The Board finds that the medical evidence is insufficient to establish her partial disability from January 22 to 24, 2013 for 11.99 hours; from January 28 to February 8, 2013 for 41 hours; from February 9 to 22, 2013 for 16.08 hours; and from February 23 to March 8, 2013 for 19.01 hours caused or aggravated by the accepted conditions.

In a February 6, 2013 report, Dr. Lee noted that appellant was a mail carrier and complained of bilateral hand pain, swelling at the radial hand and thumb joint which was worse when fingering mail. Appellant was postbilateral ulnar nerve transposition and left revision surgery, postbilateral carpal tunnel surgery and left lateral epicondylitis. Dr. Lee noted that appellant continued to work modified duty and had requested an increase in work hours for driving up to six hours a day which he granted. The findings on examination included normal sensation in the hands and normal ranges of motion of the elbows, forearms, wrists and fingers. Dr. Lee diagnosed bilateral thumb carpometacarpal joint osteoarthritis, unrelated to current claim; bilateral carpal tunnel syndrome, left side resolved and right side improved postsurgery; bilateral ulnar neuropathy at elbows, right and left side resolved postsurgery; and stable bilateral lateral epicondylitis. Appellant had a stable left lateral epicondylitis and right residual carpal tunnel syndrome. Dr. Lee stated that the new symptoms of bilateral thumb carpometacarpal joint osteoarthritis were not part of the current claim. He advised that appellant could continue modified duty. Dr. Lee did not support that appellant was partially disabled due to her accepted conditions for the intermittent periods claimed from January 22 to March 8, 2013. He did not

⁴ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

⁶ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

explain how appellant's modified duties aggravated her accepted conditions or exceeded her work restrictions for the claimed period. Dr. Lee attributed appellant's symptoms to the newly diagnosed bilateral carpometacarpal joint osteoarthritis, which is not accepted as work related. Appellant's burden of proof includes submitting rationalized medical evidence which supports a causal relationship between the alleged disabling condition and the accepted injury. She 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 that her disability for the period beginning January 22 to March 8, 2013 is causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 9 and April 11, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 16, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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