

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

M.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 12-1449
Issued: January 4, 2013**

Appearances:
Richard A. Daniels, 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 June 27, 2012 appellant, through her representative, filed a timely appeal from an April 11, 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was entitled to disability compensation beginning on May 3, 2011.

On appeal her representative asserts that the medical opinion of the attending physician is sufficient to establish disability, especially as there is no evidence to refute his opinion.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On May 27, 2010 appellant, then a 48-year-old mail handler, filed an occupational disease claim, asserting that her repetitive job duties caused right elbow pain. She noted first being aware of the condition and its relationship to her employment on March 20, 2010. Wei Jiong Hu, supervisor of distribution operations, advised that he first learned of appellant's condition on August 30, 2009 and that appellant had been accommodated with light duty beginning on that date.

On October 6, 2010 OWCP accepted as employment-related right medial epicondylitis, lateral epicondylitis and radial neuritis. It advised appellant to submit claims for compensation if she had missed work due to these conditions. In a September 27, 2010 report, Dr. William T. Ingram, II, an attending Board-certified osteopath specializing in family medicine, noted that appellant was injured at work on or about March 20, 2010. Appellant was initially examined on April 28, 2010 with symptoms of pain, numbness and tingling in both hands. Dr. Ingram diagnosed cubital tunnel syndrome, medial epicondylitis, radial neuritis, lateral epicondylitis, and Guyon's syndrome, all on the right. He advised that all diagnoses were due to the repetitive activities of appellant's work sorting mail and that she was to limit sorting to three hours a day.

Appellant filed claims for compensation beginning May 3, 2011, when she reduced her hours to six hours daily. She intermittently missed work due to pain and for medical appointments. In a duty status report dated May 3, 2011, Dr. Ingram diagnosed right cubital tunnel and Guyon's syndrome and left arm work-related conditions. He advised that appellant could only work six hours a day, five days a week with simple grasping, fine manipulation, reaching above the shoulder and operating machinery limited to one hour daily. On May 11, 2011 Dr. Robert D. Kelly, an osteopath, performed an electrodiagnostic study. He diagnosed right medial epicondylitis and right median nerve neuropathy at the wrist, clinically consistent with moderate carpal tunnel syndrome and advised that the diagnosed conditions were related to a March 20, 2010 work incident. In treatment notes dated April 5 through June 21, 2011, Dr. Ingram noted that appellant was right-handed and was seen for work-related injuries sustained on January 16, 1995 and March 20, 2010. He diagnosed right cubital tunnel syndrome, Guyon's syndrome, restricted elbow motion and decreased grip strength and left upper extremity pain. Dr. Ingram recommended that appellant decrease her workload. On May 31, 2011 he advised that she should not work for three days due to right arm and hand pain. Dr. Ingram also referred her for physical therapy with a chiropractor several times a week.

By letter dated June 1, 2011, OWCP informed appellant of the evidence needed to support her claims for compensation. Appellant stopped work on June 24, 2011. On June 28, 2011 Dr. Ingram advised that she could not work as of June 24, 2011 due to pain in both arms and hands. He noted increased hypesthesia on the right, and diagnosed right cubital tunnel and Guyon's syndrome. Dr. Ingram advised that appellant could not work due to marked pain.

By decision dated August 12, 2011, OWCP denied appellant's claim for wage loss on the grounds that the medical evidence was insufficient to establish a change in her light-duty job or a change in the nature of her employment-related condition.

On September 3, 2011 appellant's representative requested a hearing that was changed to a review of the written record. In treatment notes dated June 23 to November 4, 2011, Dr. Ingram advised that appellant was seen for follow-up of workers' compensation injuries of January 16, 1995 and March 20, 2010.²

In a November 3, 2011 report, Dr. A. Lee Osterman, Board-certified in orthopedic and hand surgery, noted that he examined appellant who reported that she worked with automatic machinery and had been on limited duty but no longer worked. Appellant had a chief complaint of right elbow pain that radiated into the right hand with a burning sensation in the lateral and posterior aspects of the elbow and numbness of the right small finger. Dr. Osterman provided physical examination findings and diagnosed right elbow pain and ulnar nerve symptoms in the right hand. A November 5, 2011 magnetic resonance imaging (MRI) scan of the right elbow demonstrated no significant joint fluid and normal bone alignment and signal.

In a November 8, 2011 duty status report, Dr. Ingram advised that appellant could return to limited duty on November 14, 2011. He indicated that she could not drive at work and could not work in automation and provided additional restrictions.³ In treatment notes dated November 8 to 29, 2011, Dr. Ingram advised that appellant was seen in follow-up for her January 16, 1995 and March 20, 2010 work injuries.

On December 1, 2011 Dr. Osterman provided examination findings and diagnosed right lateral epicondylitis and numbness and tingling in the right small finger. He recommended surgery. On February 23, 2012 Dr. Osterman performed percutaneous release of the lateral epicondylar extensor carpi radialis brevis attachment and platelet rich plasma injection to the right elbow.⁴

In a April 11, 2012 decision, an OWCP hearing representative affirmed the August 12, 2011 decision finding that the medical evidence did not substantiate a worsening of appellant's condition to support an increase in disability subsequent to May 3, 2011.⁵

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁶ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-

² Many of the treatment notes are illegible. Appellant also resubmitted Dr. Ingram's September 27, 2010 letter.

³ The restrictions provided by Dr. Ingram are unclear.

⁴ The record indicates that the procedure was not authorized.

⁵ The hearing representative also noted that appellant filed a new claim for right upper extremity conditions on December 22, 2011 adjudicated under file number xxxxxx457 that was under development. The instant case is adjudicated under file number xxxxxx763.

⁶ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁷

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.⁸

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she was entitled to wage-loss compensation beginning May 3, 2011 due to the accepted right elbow conditions.

At the time appellant reduced her work hours from full-time to six hours a day, she was working modified duty. Neither Dr. Kelly nor Dr. Osterman provided an opinion regarding her ability to work. Moreover, the surgery performed by Dr. Osterman was not authorized.

Appellant submitted reports from Dr. Ingram, an attending osteopath, who reduced her work schedule to six hours daily on May 3, 2011, and advised that beginning June 24, 2011 she could not work at all due to pain in both arms and hands. The only accepted conditions in this case are right medial epicondylitis, lateral epicondylitis and radial neuritis. A left upper extremity condition has not been accepted under this claim. While Dr. Ingram diagnosed cubital tunnel syndrome and Guyon's syndrome, these conditions have not been accepted as employment related.⁹ He did not adequately explain how these conditions related to the accepted claim or the reason for appellant's disability for work.

When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹⁰ The Board has held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹¹ Dr. Ingram's reports are insufficient to establish that appellant

⁷ *Id.*

⁸ *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁹ While cubital tunnel syndrome is defined as a complex of symptoms resulting from injury or compression of the ulnar nerve at the elbow, Guyon's syndrome refers to the area where the ulnar nerve passes through the wrist. See *Dorland's Illustrated Medical Dictionary*, 29th ed. (2000).

¹⁰ *G.T.*, 59 ECAB 447 (2008).

¹¹ See *Albert C. Brown*, 52 ECAB 152 (2000).

was totally disabled for the claimed periods. 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.¹² As there is no rationalized medical evidence contemporaneous with the period of claimed disability, appellant failed to establish entitlement to wage-loss compensation for the periods.

The Board, however, finds this case is not in posture for decision regarding whether appellant would be entitled to wage-loss compensation for attending medical appointments. If a claimant has returned to work following an accepted injury or the onset of an occupational disease and must leave work and lose pay or use leave to undergo treatment, examination or testing for the accepted condition, compensation should be paid for wage loss under section 8105 of FECA, while undergoing the medical services and for a reasonable time spent traveling to and from the location where services were rendered.¹³ The medical evidence in this case supports that appellant was seen for medical visits for treatment of the accepted right elbow conditions during some of the dates of claimed disability. On remand, OWCP should adjudicate her entitlement to wage loss for attending medical treatment.

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 did not establish that she was entitled to disability compensation beginning May 3, 2011 due to the accepted right elbow conditions. The Board further finds this case is not in posture for decision regarding whether she would be entitled to compensation for lost wages incidental to appropriate medical treatment.

¹² *William A. Archer*, 55 ECAB 674 (2004).

¹³ 5 U.S.C. § 8105. Any leave used cannot be compensated until it is converted to leave without pay. For a routine medical appointment, a maximum of four hours of compensation is usually allowed. See *William A. Archer*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: January 4, 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