

FACTUAL HISTORY

On July 25, 2009 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim alleging that on July 24, 2009 she injured her left thumb in the performance of duty. OWCP accepted the claim for left thumb joint tendinitis or synovitis and left rupture of synovium. Appellant began light-duty work following the injury.

On October 15, 2010 appellant filed a claim for a recurrence of disability beginning October 5, 2010.

In a letter dated November 10, 2010, OWCP noted that appellant had returned to light-duty following her accepted employment injury. It informed her as to the definition of a recurrence and advised her regarding the medical and factual evidence required to support her recurrence claim.

In a December 2, 2010 letter, the employing establishment informed appellant that following the guidelines set forth by the National Reassessment Process (NRP), Phase 2, it was unable to provide her with a modified job within her restrictions.

By decision dated December 20, 2010, OWCP denied appellant's recurrence claim on the grounds that there was insufficient medical evidence to establish that her disability was causally related to the accepted July 24, 2009 employment injury.

Subsequent to their December 20, 2010 decision, OWCP received a November 16, 2010 letter from appellant in which she explained that she had been working limited duty since the injury. Appellant related that the employing establishment advised her to file a recurrence claim because it had no work for her within her restrictions. She noted that she had no increase in her restrictions or limitations at the time she filed her recurrence claim.

In a December 28, 2010 letter, appellant's representative requested a telephonic hearing before an OWCP hearing representative, which was held on April 15, 2011.

In a December 21, 2010 duty status report (Form CA-17), appellant was diagnosed with left thumb tendinitis and released to light-duty work with restrictions.² The restrictions included no lifting more than 10 pounds and limited reaching above the shoulders.

By decision dated June 28, 2011, OWCP's hearing representative affirmed the denial of appellant's recurrence claim. She found the medical evidence insufficient to support appellant's recurrence claim. The hearing representative further found the withdrawal of appellant's light-duty job on October 15, 2010, because the employing establishment did not have any work for appellant within her restrictions, did not constitute a recurrence of disability.

In a letter dated October 28, 2011, appellant's representative requested reconsideration. In support of her request, she submitted a September 20, 2011 CA-17 detailing work restrictions and September 20, 2011 attending physician's report (Form CA-20) by Dr. Franklin A. Reyes, a

² The signature and name on the form are illegible.

treating Board-certified orthopedic surgeon, who diagnosed left synovitis of the metaphalangeal joint, which he attributed to appellant's work. Dr. Reyes noted that appellant returned to light-duty work on August 4, 2009 and that her condition was permanent.

By decision dated April 2, 2012, OWCP denied modification. It found that appellant failed to submit any rationalized medical evidence supporting her recurrence claim. OWCP also found that the withdrawal of her light-duty position did not constitute a basis for a recurrence of disability.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁴ It may be partial or total.⁵

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 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 that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force.⁷

FECA Bulletin No. 09-05 outlines procedures when light-duty positions are withdrawn under NRP. If the claimant has been on light duty due to an injury-related condition without a loss of wage-earning capacity (LWEC) rating, or OWCP has set aside the LWEC rating, payment for total wage loss should be made based on the CA-7 form as long as the following criteria are met: (1) the current medical evidence in the file (within the last six months) establishes that the injury-related residuals continue; (2) the evidence of file supports that light duty is no longer available; and (3) there is no indication that a retroactive LWEC determination should be made. Retroactive LWEC determinations should not be made in NRP cases without approval from the district Director. FECA Bulletin No. 09-05 states that, if the medical evidence is not sufficient, OWCP should request current medical evidence from the employing establishment and the claimant.⁸

³ 5 U.S.C. § 8102(a).

⁴ See *W.B.*, Docket No. 09-934 (issued January 11, 2010); *D.M.*, 59 ECAB 164 (2007); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁵ 20 C.F.R. § 10.5(f).

⁶ See *K.C.*, Docket No. 09-1666 (issued August 25, 2010); *S.S.*, 59 ECAB 315 (2008); *Hubert Jones, Jr.*, *supra* note 4.

⁷ 20 C.F.R. § 10.5(x); see *J.F.*, 58 ECAB 124 (2006); *Hubert Jones, Jr.*, *supra* note 4.

⁸ FECA Bulletin No. 09-05 (issued August 18, 2009). See *T.W.*, Docket No. 12-458 (issued September 13, 2012); *M.B.*, Docket No. 12-435 (issued July 3, 2012).

ANALYSIS

Appellant filed a claim for disability commencing October 5, 2010. The record indicates that the employing establishment withdrew appellant's light-duty job pursuant to NRP process. OWCP failed to properly follow the guidelines for evaluating a claim for total disability under these circumstances as noted in FECA Bulletin No. 09-05.⁹ The hearing representative found that, while there was a withdrawal of the position under NRP, the loss of the light-duty position did not constitute a recurrence of disability. In its April 2, 2012 decision denying modification, OWCP reiterated the hearing representative's finding that the withdrawal of a light-duty position did not constitute a recurrence of disability.

The guidance from the FECA Bulletin No. 09-05 provides that OWCP should consider whether the current medical evidence established that appellant had continuing employment-related residuals at the time of the withdrawal of the light-duty position. If the medical evidence is not sufficient, OWCP should request additional evidence.¹⁰

In this case, the Board finds that OWCP failed to properly consider the evidence of record and make appropriate findings on the issue presented. The case will be remanded to OWCP for further consideration. After such further development as OWCP deems necessary, it should issue a *de novo* decision with proper findings on the issue presented under FECA Bulletin No. 09-05.

CONCLUSION

The Board finds that OWCP did not make proper findings on the issue presented.

⁹ The Bulletin refers to a CA-7 claim for compensation, but the CA-2a claim for a recurrence of disability also represents a claim for total disability.

¹⁰ It would be OWCP's burden of proof to show that employment-related residuals had ceased. See *Joseph Roman*, 55 ECAB 233 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 2, 2012 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: January 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