

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

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**W.N., Appellant**

**and**

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

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**Docket No. 13-51  
Issued: January 23, 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 October 10, 2012 appellant filed a timely appeal from the April 9, 18 and 26, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 OWCP properly denied appellant's claims for wage-loss compensation for the period February 15 through March 23, 2012.

**FACTUAL HISTORY**

On December 31, 2011 appellant, a 55-year-old mail handler, filed a traumatic injury claim alleging that she sustained a right hand injury on that date when a shelf fell on her right

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

thumb and finger while she was pushing a “post case” at work. Her claim was accepted for an open wound of the right finger without complications.

The record contains an emergency room note dated January 8, 2012 bearing an illegible signature. The note indicated that appellant could return to work on that date.

Appellant was treated by Dr. Oscar E. Verzosa, a Board-certified internist. In a disability slip dated January 12, 2012, Dr. Verzosa diagnosed laceration right thumb and stated that appellant was unable to work from January 8 through 25, 2012. On January 20, 2012 he stated that appellant was unable to work from January 25 through February 20, 2012.

In a letter dated February 16, 2012, OWCP asked Dr. Verzosa to clarify appellant’s current medical status.

On February 24, 2012 appellant filed a claim for wage-loss compensation alleging that she was totally disabled due to her accepted injury from February 15 through 24, 2012.

Appellant submitted notes written on a prescription pad from Dr. Verzosa. On February 15, 2012 Dr. Verzosa stated that appellant would not be ready to go back to work until March 31, 2012. Notes dated February 17, 2012 reflected a diagnosis of laceration, contusion and sprain of the right thumb.

In a February 27, 2012 attending physician’s report, Dr. Verzosa noted that appellant had sustained a deep laceration and sprain of her right thumb when a metal post fell on her right thumb and cut it open. He indicated by placing a checkmark in the “yes” box that the diagnosed condition was causally related to her employment. Dr. Verzosa stated that appellant would be able to resume her normal duties on March 31, 2012. The report did not contain examination findings.

By letter dated March 5, 2012, OWCP informed appellant that the information submitted was insufficient to establish her claim and advised her to submit contemporaneous medical evidence of the disability for the period claimed. It provided her 30 days to submit the required evidence.

In a February 29, 2012 duty status report, Dr. Verzosa diagnosed “laceration” and indicated that appellant could return to work on a full-time basis on March 5, 2012. The record contains continuing prescriptions from Dr. Verzosa for physical therapy beginning February 15, 2012.

On March 10, 2012 appellant filed a claim for wage-loss compensation alleging that she was totally disabled due to her accepted injury from February 25 through March 9, 2012.

By letter dated March 15, 2012, OWCP informed appellant that the information submitted was insufficient to establish her claim for disability for the period February 25 through March 9, 2012 and advised her to submit contemporaneous medical evidence of the disability for the period claimed.

Appellant submitted a March 13, 2012 report from Dr. Richard Mackessy, a Board-certified orthopedic surgeon, who diagnosed chronic pain syndrome of the right thumb. Dr. Mackessy stated that she had sustained a work injury on December 31, 2011 when a tray fell on her hand, cutting the tip of her finger. Examination revealed that appellant's thumb was still swollen and tender to the touch. X-rays were negative.

On March 23, 2012 appellant filed a claim for wage-loss compensation alleging that she was totally disabled due to her accepted injury from March 10 through 23, 2012.

Appellant submitted a March 20, 2012 report from Dr. Naomi Betesh, a Board-certified physiatrist. On examination, Dr. Betesh noted limited range of motion in the right thumb, healed laceration and intact sensation to light touch. She diagnosed pain in the hand and fingers and possible Reflex Sympathetic Dystrophy (RSD) condition.

By letter dated March 26, 2012, OWCP informed appellant that the information submitted was insufficient to establish her claim for disability for the period March 10 through 23, 2012 and advised her to submit contemporaneous medical evidence of the disability for the period claimed.

The record contains a March 28, 2012 statement of accepted facts reflecting that appellant was released to return to full duty on January 8, 2012. Appellant worked only one hour before leaving her post and had not returned to work as of the date of the Statement of Accepted Facts.

In a decision dated April 9, 2012, OWCP denied appellant's claim for compensation for the period February 15 through 24, 2012, finding that the evidence did not support that she was disabled during the claimed period as a result of her December 31, 2011 injury. The claims examiner also indicated that she had failed to explain how the diagnosed RSD condition was causally related to the accepted incident. In a decision dated April 18, 2012, OWCP denied appellant's claim for compensation for the period February 25 through March 9, 2012.

Appellant submitted an April 11, 2012 report from Dr. Mackessy, who diagnosed chronic pain syndrome. Dr. Mackessy found some discoloration of the right thumb and some sensitivity on examination. He opined that appellant could work light duty using her right hand as a helper hand. Appellant should be restricted from lifting more than two pounds. The record contains a December 31, 2011 x-ray of the right fingers.

In a decision dated April 26, 2012, OWCP denied appellant's claim for compensation for the period March 10 through 23, 2012, finding that the record did not contain medical evidence explaining how she was disabled due to the accepted laceration or how the RSD condition was causally related to her accepted condition.

## LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the evidence.<sup>2</sup> For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.<sup>3</sup> Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>4</sup> 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 their disability and entitlement to compensation.<sup>5</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>6</sup> To be considered rationalized, the opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>7</sup> must be one of reasonable medical certainty<sup>8</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>10</sup> Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>11</sup>

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<sup>2</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>3</sup> See *Amelia S. Jefferson*, *id.* See also *David H. Goss*, 32 ECAB 24 (1980).

<sup>4</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>5</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>6</sup> See *Viola Stanko, claiming as widow of (Charles Stanko)*, 56 ECAB 436 (2005); see also *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

<sup>7</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>8</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>10</sup> 20 C.F.R. § 10.5(f).

<sup>11</sup> *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

## ANALYSIS

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her claimed total disability for the claimed periods and the accepted laceration.<sup>12</sup> The reports of her physicians do not provide a rationalized medical opinion finding her disabled for work for the claimed periods due to her accepted condition. Therefore, the medical evidence submitted is insufficient to meet appellant's burden of proof.<sup>13</sup>

Dr. Verzosa did not provide a narrative report explaining how appellant's claimed disability was causally related to her accepted injury. In his February 27, 2012 attending physician's report, he provided a history of injury and indicated by placing a checkmark in the "yes" box that the diagnosed condition was causally related to her employment. A mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish causal relationship.<sup>14</sup> Dr. Verzosa stated that appellant would be able to resume her normal duties on March 31, 2012. He did not, however, definitively state that she was totally disabled or explain how the claimed disability was causally related to her accepted condition. Therefore, the report is of limited probative value.<sup>15</sup>

The record contains reports and disability slips from Dr. Verzosa for the period January 12 through February 29, 2012 indicating that appellant was unable to work from January 8 through March 31, 2012. None of these reports contain an explanation as to how her inability to work is causally related to her accepted laceration.<sup>16</sup>

Dr. Mackessy's reports are also of limited probative value. On March 13, 2012 Dr. Mackessy diagnosed chronic pain syndrome of the right thumb. He provided a history of injury and examination findings. Dr. Mackessy did not, however, provide any opinion as to whether appellant was disabled during any of the claimed periods due to the accepted laceration. His report therefore does not support her claim. In his April 11, 2012 report, Dr. Mackessy diagnosed chronic pain syndrome and opined that appellant could work light duty provided that she was restricted from lifting more than two pounds. He did not opine, however, that her inability to perform her date-of-injury job was due to her accepted laceration. Rather, Dr. Mackessy's report implied that her disability was due to a condition that had not been accepted by OWCP. Moreover, the report did not address whether appellant was disabled during the claimed periods and, therefore, it is insufficient to establish entitlement to compensation.

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<sup>12</sup> See *Amelia S. Jefferson*, *supra* note 2.

<sup>13</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>14</sup> See *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>15</sup> See *Brenda L. DuBuque*, 55 ECAB 212 (2004); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>16</sup> *Id.*

Dr. Betesh's March 20, 2012 report also fails to establish that appellant was disabled for the periods in question. Dr. Betesh provided examination findings and diagnosed pain in the hand and fingers and possible RSD condition. She did not provide a definitive diagnosis<sup>17</sup> or an opinion as to appellant's disability during the claimed periods nor did she explain how appellant's current condition is causally related to the accepted laceration. Therefore, her report is of limited probative value.

The remaining medical evidence of record, including prescriptions for physical therapy and x-ray reports, does not contain an opinion as to whether appellant was disabled during the claimed periods.

Because appellant has not submitted any reasoned medical opinion evidence to show that she was disabled during the periods in question as a result of her accepted employment injury, the Board finds that OWCP properly denied her claims for wage-loss compensation.

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 not established that she was disabled for work and entitled to wage-loss compensation for the claimed periods.

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<sup>17</sup> Pain is a symptom, not a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 26, 18 and 9, 2012 are affirmed.

Issued: January 23, 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