

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

K.U., Appellant

and

**U.S. POSTAL SERVICE, HALTHORPE
BRANCH, Baltimore, MD, Employer**

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**Docket No. 12-1406
Issued: March 19, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 15, 2012 appellant filed a timely appeal of the May 3, 2012 merit decision of Office of Workers' Compensation Programs (OWCP) denying her claim 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 this case.

ISSUE

The issue is whether OWCP properly exercised its discretion by denying a change of treating physicians and appellant's request for reimbursement of four hours of compensation for a medical appointment on December 2, 2011.

FACTUAL HISTORY

This case was previously before the Board with respect to appellant's request for authorization to undergo left thumb surgery. In a July 10, 2008 decision, the Board found that

¹ 5 U.S.C. § 8101 *et seq.*

OWCP properly denied authorization for the requested surgery as the medical evidence did not establish that it was for treatment of her accepted injury.² In a May 18, 2009 order, the Board denied appellant's petition for reconsideration of the July 10, 2008 decision.³ The facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

In a May 15, 2006 clinical note, Dr. Michael A. Ellis, an attending Board-certified orthopedic surgeon, noted appellant's history of employment-related bilateral carpal tunnel syndrome and bilateral thumb carpometacarpal arthritis. He listed findings on physical examination and addressed her treatment plan. Dr. Ellis stated that appellant's thumbs were not diseased enough to warrant surgery. On July 10, 2006 he injected cortisone in her left carpometacarpal joint. On April 30, 2007 Dr. Ellis requested that OWCP authorize surgery for left thumb post-traumatic arthritis.

In a July 31, 2011 letter, appellant advised OWCP that, as of July 11, 2011, Dr. Ellis had retired and closed his practice. On August 23, 2011 she stated that her new physician was Dr. Raymond Drapkin, a Board-certified orthopedic surgeon. By letter dated October 4, 2011, appellant requested that OWCP authorization a change of physician from Dr. Drapkin to Dr. Raymond A. Pensy, a Board-certified hand surgeon. She stated that Dr. Drapkin agreed with Dr. Ellis' opinion that she required left thumb surgery, but Dr. Drapkin did not perform this type of surgery and he advised her to see a hand specialist.⁴

By letter dated October 17, 2011, OWCP advised appellant that it was unable to authorize a change of physicians. Appellant had not provided sufficient evidence to support her request. OWCP requested that she submit an additional explanation detailing why she wanted a new physician and information regarding the physician's name, address and specialty. Appellant did not respond.

On December 3, 2011 appellant filed a Form CA-7 claiming compensation for four hours of leave without pay on December 2, 2011. In a Form CA-7a dated December 4, 2011, she noted that she attended a doctor's appointment on the claimed date.

In a December 2, 2011 report, Dr. Pensy stated that appellant was evaluated on that date. Appellant's chief complaints were of left hand and wrist pain. She had significant pain about the left thumb and with gripping activities. Appellant described a throbbing, aching and sharp pain in the left hand which she rated as 5 out of 10 with associated weakness and persistent numbness.

² Docket No. 08-545 (issued July 10, 2008). On September 20, 2004 OWCP accepted that appellant, a letter carrier, sustained bilateral carpal tunnel syndrome as a result of her repetitive work duties. In a July 20, 2011 decision, it granted her a schedule award for two percent impairment of the right upper extremity and three percent impairment of the left upper extremity.

³ *Order Denying Petition for Reconsideration*, Docket No. 08-545 (issued May 18, 2009).

⁴ In a September 12, 2011 medical report, Dr. Drapkin advised that appellant was a candidate for a repeat carpal tunnel release on the left hand for her recurrent carpal tunnel. She was also a candidate for a reconstruction which would probably be a tendon interposition instead of a prosthetic. Dr. Drapkin told appellant that "I do carpal tunnel surgery, but if it was a recurrent carpal tunnel with surgery for the carpometacarpal joint she would have to go to a hand surgeon to get this done. It is my opinion that her current ongoing problem is definitely occupationally related."

Dr. Pensy listed findings on physical and x-ray examination and diagnosed left carpometacarpal arthritis and left recurrent carpal tunnel syndrome. He recommended that appellant undergo a functional capacity evaluation and electromyogram and nerve conduction studies to determine her limitations. Dr. Pensy advised that, following the test results, further surgical intervention was possible given the nature of her thumb joint arthritis and possible recurrent carpal tunnel.

By letter dated December 16, 2011, OWCP advised appellant that her claim for four hours of leave without pay was not compensable based on its October 17, 2011 letter. Since she attended the December 2, 2011 medical appointment without prior authorization, appellant was required to use one of her leave categories.

On December 20, 2011 OWCP informed appellant that there was no record of a telephone call from any provider seeking permission to treat her condition. If someone called, it was probably to ask whether her claim was still open.

In a December 21, 2011 decision, OWCP denied appellant's claim for disability compensation on December 2, 2011 on the grounds that she did not have authorization to change her physician.

On December 28, 2011 appellant requested an oral hearing before an OWCP hearing representative.⁵

In an April 12, 2012 decision, an OWCP hearing representative set aside the December 21, 2011 decision and remanded the case to determine whether the December 2, 2011 examination was reasonable and medically necessary. The hearing representative found that OWCP failed to exercise its discretion because its denial of medical expenses was based solely on the fact that the claimant had not obtained prior approval for a change of physicians.

In a May 3, 2012 decision, OWCP denied appellant's claim for wage-loss compensation for four intermittent hours on December 2, 2011 on the grounds that she did not have authorization to change her physician. It found that Dr. Pensy's December 2, 2011 diagnosis of left carpometacarpal arthritis was not a condition accepted by OWCP under the current claim.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.⁶ As used in FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is thus, not synonymous with physical

⁵ By letter dated January 24, 2012, OWCP authorized appellant to change her attending physician to Dr. Paul Apostolo, a Board-certified hand surgeon, for treatment of her accepted employment-related bilateral carpal tunnel syndrome.

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

⁷ *Patricia A. Keller*, 45 ECAB 278 (1993); *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

impairment, which may or may not result in an incapacity to earn wages.⁸ Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.⁹

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.¹⁰ Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.¹¹ However, OWCP's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.¹²

OWCP procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.¹³ It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.¹⁴ As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.¹⁵

The payment of medical expenses incident to securing medical care is provided for under section 8103 of FECA. The pertinent part provides that an employee may initially select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instruction as the Secretary considers necessary. Further, section 10.316(a) of OWCP regulations provide that an employee only has an initial choice of physicians and thereafter must submit a written request to OWCP containing his or her reasons for desiring a

⁸ See *Fred Foster*, 1 ECAB 21 (1947).

⁹ See *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

¹⁰ 5 U.S.C. § 8103(a).

¹¹ *Vincent E. Washington*, 40 ECAB 1242 (1989).

¹² *Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (December 1995).

¹⁴ See also *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

¹⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

change of physician.¹⁶ Section 10.316(b) provides that OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating a condition like the work-related one or the need for a new physician when an employee has moved.¹⁷

In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to show merely that the evidence could be construed to produce a contrary conclusion.¹⁸

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome. On October 4, 2011 she explained that her treating physician, Dr. Drapkin, a Board-certified orthopedic surgeon, declined surgery to treat her left thumb post-traumatic arthritis as he did not perform this type of surgery. Appellant requested a change of physician to Dr. Pensy, a Board-certified hand surgeon, to perform the procedure. On October 17, 2011 OWCP advised her that she had not provided sufficient evidence and requested additional information. On December 3, 2011 appellant filed a claim for wage-loss compensation for four hours of leave without pay to attend a medical appointment with Dr. Pensy on December 2, 2011 who saw her for left thumb arthritis and possible recurrent left carpal tunnel syndrome. In a May 3, 2012 decision, OWCP denied her claim on the grounds that she did not have authorization to change her physician. The Board finds that OWCP properly denied appellant's claim.

The Board notes that OWCP did not accept her claim for work-related left thumb post-traumatic arthritis. For conditions not accepted by OWCP, it is appellant's burden to provide rationalized medical evidence to establish causal relation; not OWCP's burden to disprove such relationship.¹⁹ Dr. Drapkin did not adequately explain how appellant's left thumb arthritis condition or the proposed surgery were caused or contributed to by the accepted injury. The Board has held that a medical opinion not fortified by rationale is of diminished probative

¹⁶ 20 C.F.R. § 10.316(a). See *Billy W. Forbes*, 45 ECAB 742 (1994) (where the Board held that OWCP should have employed a reasonable and necessary standard in determining whether a change of physician should be authorized when appellant did not obtain authorization prior to changing physicians). See also *Elizabeth J. Davis-Wright*, 39 ECAB 1232 (1988).

¹⁷ 20 C.F.R. § 10.316.

¹⁸ See *D.L.*, Docket No. 10-318 (issued September 8, 2010); see also *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁹ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

value.²⁰ Dr. Pensy did not provide a medical opinion addressing the causal relationship between appellant's left thumb arthritis or proposed surgery to the accepted employment injury.²¹ Moreover, he did not provide medical rationale explaining how the diagnosed recurrent left carpal tunnel syndrome was caused by the accepted condition.²²

The medical evidence of record does not support that appellant's medical treatment on December 2, 2011 was for residuals of the accepted employment-related bilateral carpal tunnel syndrome. OWCP properly exercised its discretion by denying authorization for a change of physicians. It properly denied appellant's claim for wage-loss compensation to attend the medical appointment with Dr. Pensy on that date.

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 meet her burden of proof to establish that she was entitled to four hours of compensation for a medical appointment on December 2, 2011.

²⁰ *Cecilia M. Corley*, 56 ECAB 662 (2005).

²¹ *Id.*

²² *See Fredrick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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