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

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| **B.D., Appellant** | ) | |
| **and** | ) | **Docket No. 13-403** |
| | ) | **Issued: May 7, 2013** |
| **U.S. POSTAL SERVICE, POST OFFICE, Sparta, NJ, Employer** | ) | |

*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
JAMES A. HAYNES, Alternate Judge

### *JURISDICTION*

On December 10, 2012 appellant filed a timely appeal from an October 24, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 sustained a recurrence of disability on November 19, 2011 causally related to his accepted employment injury.

### *FACTUAL HISTORY*

On February 1, 2002 appellant, then a 52-year-old mail carrier, filed an occupational disease claim alleging that he sustained bilateral carpal tunnel syndrome causally related to factors of his federal employment. He indicated that he became aware of his condition and its relationship to his employment on July 17, 2001. Appellant stopped work on February 4, 2002.

[1] 5 U.S.C. § 8101 *et seq.*

OWCP accepted the claim for bilateral carpal tunnel syndrome. Appellant underwent a left carpal tunnel release on March 19, 2002. He returned to work on August 13, 2002.

On December 10, 2011 appellant filed a recurrence of disability claim on November 19, 2011 causally related to his accepted employment injury. He noted that he had been out of work for years after bilateral hand surgery and continued to experience pain and numbness. The employing establishment indicated that appellant returned to his usual job duties following his work injury.

In a report dated November 1, 2011, Dr. Robert Vrablik, a Board-certified physiatrist, reviewed appellant's work duties and discussed his complaints of bilateral wrist pain and numbness which increased with repetitive movements. He noted that a June 8, 2010 electromyogram (EMG) revealed "slowing of the median sensory greater than motor nerves, with slowing across the carpal tunnel segments." Dr. Vrablik compared the 2010 EMG to a 2006 study and found that his condition had worsened. He diagnosed intractable wrist pain bilaterally as a result of median nerve compression at the carpal tunnel. Dr. Vrablik stated, "[Appellant] is status post bilateral carpal tunnel release, but continues to have pain in the median nerve distribution. There are changes on EMG testing to explain the altered sensation in the ulnar distribution of his hands, most likely as an extension of inflammation lateral to the carpal tunnels." Dr. Vrablik related:

> "I have reviewed his job description standards. Carpal tunnel is usually an injury caused by repetitive motion. His daily job, unfortunately, is basically repetitive activities including fine manipulation of mail, heavy lifting of mail racks and parcels, repetitive grabbing and opening of mail boxes, gripping of a steering wheel, [and] constant twisting. Subjectively, his pain worsens significantly throughout the day. Pain worsens with increased repetitive activities. All of these complaints are consistent with carpal tunnel syndrome condition, which is a compression/demyelination of the median nerve at the level of the wrist. Although he had undergone carpal tunnel release, nerve damage may still be residual, and scar tissue may form and put additional pressure on nerve tissues. In any case, he has objective worsening on his EMG testing, which correlates with his subjective complaints of worsening pain over the years, worsening function, reduced strength and coordination."

Dr. Vrablik found that appellant's job duties "could easily explain the worsening of his symptoms" and determined that he was unable to perform his usual employment. He listed work restrictions.[2]

In a statement dated January 6, 2012, appellant asserted that he could no longer grip objects, including steering wheels. He stopped work due to bronchitis and used sick leave until November 18, 2011, when he alleged a recurrence of disability.

By decision dated February 28, 2012, OWCP found that appellant had not established a recurrence of disability on November 19, 2011 due to his accepted work injury. It determined

[2] Dr. Vrablik continued to submit progress reports from December 20, 2011 to November 13, 2012.

that the opinion of Dr. Vrablik was not that of a qualified physician as he was a physiatrist rather than an orthopedic surgeon or neurologist.

On March 23, 2012 Dr. Vrablik diagnosed carpal tunnel syndrome. He challenged OWCP's finding that a physiatrist was not able to interpret diagnostic studies or render a disability determination. Dr. Vrablik opined that the EMG results were an objective measure of disability.

In a report dated June 1, 2012, Dr. David B. Basch, a Board-certified orthopedic surgeon, discussed appellant's complaints of pain, numbness and weakness of the hands with the pain increasing since 2001.[3] He experienced increased pain trying to grasp a steering wheel that had slipped from his hand. On examination Dr. Basch found positive Tinel's and Phalen's signs bilaterally at the wrists and right elbow with loss of grip strength. He diagnosed "[f]ailed carpal tunnel release bilaterally with persistent pain, numbness and weakness, [and] neurological involvement." Dr. Basch attributed appellant's condition to the initial injury of July 2001 and found that he had established a recurrence of disability. He opined that he was totally and permanently disabled from employment.

On August 6, 2012 appellant, through his representative, requested reconsideration based on Dr. Basch's July 13, 2012 report.

In a decision dated October 24, 2012, OWCP denied modification of its February 28, 2012 decision. It found that the medical evidence did not describe objective worsening of the condition or relate his claimed recurrence to the July 17, 2001 employment injury.

On appeal appellant argues that the medical evidence establishes that he sustained a recurrence of disability due to his July 17, 2001 employment injury.

## ***LEGAL PRECEDENT***

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.[4] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[5]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP

[3] Dr. Basch submitted the same report in a letter dated July 13, 2012.

[4] *Carmen Gould*, 50 ECAB 504 (1999).

[5] *Mary A. Ceglia*, 55 ECAB 626 (2004).

shares responsibility to see that justice is done.[6] The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.[7]

## ***ANALYSIS***

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome due to factors of his federal employment. He stopped work on February 4, 2002 and returned to his usual employment on August 13, 2002. On November 19, 2011 appellant stopped work and alleged a recurrence of disability.

On November 1, 2011 Dr. Vrablik, a Board-certified physiatrist, diagnosed bilateral median nerve compression at the carpal tunnel. He noted that a 2010 EMG revealed increased median sensory nerve slowing compared to a 2006 study. Dr. Vrablik discussed in detail appellant's job duties and noted that his wrist pain increased with repetitive motion. He asserted that appellant's subjective complaints were consistent with carpal tunnel and explained that even following carpal tunnel releases there might be continued nerve damage and scar tissue. Dr. Vrablik determined that the objective worsening demonstrated on EMG study corresponded to his subjective complaints. He found that appellant was unable to perform his regular employment and listed work restrictions.

On June 1, 2012 Dr. Basch found bilateral positive Tinel's and Phalen's sign of the wrists. He diagnosed bilateral failed carpal tunnel releases. Dr. Basch attributed appellant's condition to his prior employment injury and found that he was totally and permanently disabled from employment.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[8] The Board has reviewed the reports of Dr. Vrablik and Dr. Basch and notes that they provided clear opinions that appellant sustained a recurrence of disability due to his accepted bilateral carpal tunnel syndrome. They based their diagnoses on positive clinical and diagnostic findings. Dr. Vrablik evidenced a thorough knowledge of appellant's work duties before finding that he sustained a worsening of his carpal tunnel syndrome. Both opinions are supportive, bolstered by objective findings and based on a firm diagnosis and an accurate work history.[9] While OWCP found that Dr. Vrablik's opinion was not evidence from a qualified physician as he was a physiatrist rather than an orthopedic surgeon or neurologist, the reports from a physiatrist constitute competent medical evidence under FECA.[10] The opinions of Dr. Vrablik and Dr. Basch are probative and based on a thorough examination. Their reports lack only a detailed explanation of why appellant's work duties resulted in a recurrence of his carpal tunnel

[6] *Jimmy A. Hammons*, 51 ECAB 219 (1999).

[7] 20 C.F.R. § 10.121.

[8] *A.A.*, 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

[9] *See L.D.*, Docket No. 09-1503 (issued April 15, 2010).

[10] *See* 5 U.S.C. § 8101(2).

syndrome and disability.[11] Consequently, while the medical evidence from Dr. Vrablik and Dr. Basch are insufficiently rationalized to meet appellant's burden of proof to establish that he sustained a recurrence of disability, they are sufficient to require further development by OWCP.[12] Accordingly, the Board will remand the case to OWCP. On remand, it should further develop the medical record to determine whether appellant sustained a recurrence of disability beginning November 19, 2011. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

## ***CONCLUSION***

The Board finds that the case is not in posture for decision.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the October 24, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: May 7, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[11] OWCP procedures provide that a recurrence of disability does not include a work stoppage caused by "a new injury, even if it involves the same part of the body previously injured, or by renewed exposure to the causative agent of a previously suffered occupational disease." It further states, however, that "in some occupational disease cases where the diagnosis remains the same but disability increases, the claimant may submit Form CA-2a rather than filing a new claim" and provides as an example that a claimant with carpal tunnel syndrome who has returned to work but whose repetitive duties cause a need for surgery. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

[12] *Id*.