

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

V.R., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Tiburon, CA, Employer

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**Docket No. 13-1065
Issued: September 10, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 27, 2013 appellant, through counsel, filed a timely appeal of a February 1, 2013 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 is entitled to wage-loss compensation for the period August 10 to September 24, 2012 due to her accepted June 23, 2012 employment injury.

FACTUAL HISTORY

On June 23, 2012 appellant, then a 42-year-old mail carrier, filed a traumatic injury claim alleging that on that day she sprained her left ring finger while delivering mail. She stopped work on June 23, 2012 and returned to modified work on September 25, 2012. OWCP accepted the claim for closed fracture of the left fourth finger.

¹ 5 U.S.C. § 8101 *et seq.*

In a July 30, 2012 work excuse note, Dr. Michael E. Hebrard, a treating Board-certified psychiatrist, indicated that appellant was totally disabled from working for the period July 30 to August 20, 2012 and was under his medical care.

Appellant filed claims for compensation (Form CA-7) for the period August 10 to September 24, 2012.

In an August 20, 2012 work excuse note, Dr. Hebrard stated that appellant was under his medical care and unable to perform her regular work duties from August 20 to September 24, 2012.

In a letter dated August 23, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical evidence required to support her claim and given 30 days to provide the requested information.

In response to OWCP's request, appellant submitted medical evidence in support of her claim for wage-loss compensation. In a July 30, 2012 report, Dr. Scott Taylor, an examining physician, indicated that appellant was capable of working a modified job providing it involved no use of her left ring finger. On August 27, 2012 he stated that appellant required no further orthopedic or surgical treatment.

By decision dated September 27, 2012, OWCP denied appellant's claim for wage-loss compensation for the period August 10 to September 24, 2012.

Subsequent to the September 27, 2012 decision, appellant submitted medical and factual evidence.

In a September 19, 2012 supplemental report, Dr. Hebrard indicated that appellant had been released to unrestricted active duty on September 24, 2012, if appropriate following an examination by Dr. Taylor.

In a September 24, 2012 report, Dr. Taylor related that appellant sustained a minimally displaced fracture at the base of the fourth ring finger and middle phalanx due to a June 23, 2012 employment injury. He indicated that she was capable of modified work with a restriction of not using her left ring finger.

On October 17, 2012 OWCP received an August 20, 2012 progress report from Dr. Hebrard, who provided physical findings on examination, noted appellant's symptoms and diagnosed a closed left fourth digit fracture and finger sprain. Dr. Hebrard reported that Dr. Taylor saw appellant and modified her splint to allow movement of the distal interphalangeal joint in order to keep it from getting stiff. He stated that appellant continued to be temporarily totally disabled from working.

On November 1, 2012 appellant requested reconsideration.

Following her reconsideration request, OWCP received a July 18, 2012 progress note from Dr. Hebrard who opined that appellant was temporarily totally disabled. Under treatment plan, Dr. Hebrard related taping appellant's fourth and fifth digits of the left hand and instructing her to minimize her left hand use.

In a November 19, 2012 report, Dr. Taylor stated that appellant had been totally disabled from working for the period June 23, 2012 until her return to a modified job on September 25, 2012.

By decision dated February 1, 2013, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.³ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁴ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁵

Under 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.⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁸ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, he or she is entitled to compensation for any loss of wages.

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.⁹

² 5 U.S.C. §§ 8101-8193

³ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁴ See *Amelia S. Jefferson*, *supra* note 3; see also *David H. Goss*, 32 ECAB 24 (1980).

⁵ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁶ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *Merle J. Marceau*, 53 ECAB 197 (2001).

⁹ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS

OWCP accepted appellant's claim for a closed fracture of the left fourth finger. Appellant claimed she was totally disabled for work for the period August 10 to September 24, 2012 and filed a claim for wage-loss compensation. OWCP denied her claim by decisions dated September 12, 2012 and February 1, 2013. The issue on appeal is whether the evidence establishes that appellant is entitled to wage-loss compensation for the period in question. The Board finds that appellant failed to meet her burden of proof.

In support of her claim for wage-loss compensation, appellant submitted reports and disability slips from Dr. Hebrard, who, in reports and disability slips, diagnosed closed left fourth digit fracture and finger sprain, indicated appellant was under his medical care and stated that she was totally disabled from working from August 10 to September 24, 2012 as a result of employment injuries sustained on June 23, 2012. None of the reports or disability slips by Dr. Hebrard contain any supporting rationale explaining why she was unable to work during this period. Although he provided a firm diagnosis and opined that appellant was disabled, he failed to provide a rationalized medical explanation as to why or how her June 23, 2012 employment injury rendered her totally disabled from any type of work. Dr. Hebrard merely noted that she was to be off work for the period in question.

In a November 19, 2012 report, Dr. Taylor indicated only that appellant had been totally disabled for the period June 23, 2012 until her return to work on September 24, 2012. The Board has held that medical conclusions unsupported by rationale are of little probative value.¹⁰ As neither Dr. Hebrard nor Dr. Taylor provided any supporting rationale for their opinions that appellant's disability was related to the accepted June 23, 2012 employment injury, the Board finds that they are insufficient to establish appellant's claim for disability. Thus, appellant has not met her burden of proof to establish that she was disabled for work due to the employment injury for the period August 10 to September 24, 2012.

The record also contains reports dated July 30 and September 24, 2012 from Dr. Taylor, indicating that appellant was capable of modified work involving no use of her left ring finger. These reports are also insufficient to support appellant's claimed period of disability as Dr. Taylor indicated that appellant was capable of working with restrictions. Without reasoned medical evidence supporting that she had an employment-related disability during the period in question, appellant has not met her burden of proof to establish her claim for wage-loss compensation for the period August 10 to September 24, 2012.

An award of compensation may not be based on surmise, conjecture or speculation.¹¹ Neither the fact that appellant's condition became apparent during a period of employment nor her belief that her disability was due to her accepted June 23, 2012 employment injury is sufficient to establish causal relationship.¹² Causal relationship must be established by

¹⁰ See *F.T.*, Docket No. 09-919 (issued December 7, 2009); *S.S.*, 59 ECAB 315 (2008); *Richard A. Neidert*, 57 ECAB 474 (2006); *Willa M. Frazier*, 55 ECAB 379 (2004).

¹¹ *D.I.*, 59 ECAB 158 (2007); *D.E.*, 58 ECAB 448 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹² *G.T.*, 59 ECAB 447 (2008); *V.W.*, 58 ECAB 425 (2007); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

rationalized medical opinion evidence.¹³ As appellant failed to submit such evidence, she has failed to establish her claim for wage-loss compensation for the period August 10 to September 24, 2012.

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 her disability for the period August 10 to September 24, 2012 due to her accepted June 23, 2012 employment injury and, thus, OWCP properly denied her claim for wage-loss compensation for this period.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2013 is affirmed.

Issued: September 10, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹³ *Roy L. Humphrey*, 57 ECAB 238 (2005); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).