



claim alleging that she developed a bilateral wrist condition as a result of her federal employment, which required fine manipulation, grasping and keying. OWCP accepted her claim for bilateral wrist tendinitis and bilateral carpal tunnel syndrome.

In a February 16, 1999 decision, OWCP noted that appellant had been reemployed as a modified postal clerk for 20 hours a week since 1996. It found that the duties of appellant's modified clerk position reflected the work tolerance limitations established by the weight of the medical evidence. Further, OWCP considered her training, education, and work experience in determining the suitability of the job. Citing 5 U.S.C. § 8115, it notified appellant that it was adjusting her compensation for wage loss to reflect her capacity to earn wages in her new position as a modified postal clerk.

On March 12, 2010 appellant filed a claim for compensation for wage loss (Form CA-7). She explained that her physician felt she could work only four hours a day, three days a week effective March 3, 2010.

Dr. Jeffrey R. Gray, the attending Board-certified internist, noted that appellant continued to have problems with her left hand. Appellant had seen an orthopedic surgeon, and surgery was discussed for pain on the dorsum of her left hand. She advised that she had issues completing a four-hour day at work. On examination Dr. Gray noted pain with any movement of the left wrist. The dorsal aspect of the wrist was tender to touch. Dr. Gray diagnosed carpal tunnel syndrome, suboptimal control, left. He filled out paperwork to request that her workweek be decreased by 40 percent.

On May 18, 2010 Dr. Gray indicated that he had been following appellant for the past three years. Appellant had a left median neuritis along with left dorsal wrist syndrome. Dr. Gray recommended that she work reduced hours and reduced days. "This would be considered a progression of [a] previous chronic condition and not a recurrence of a resolved condition." He noted that appellant had diminished use of the left hand secondary to pain and weakness. These conditions were a consequence of scar tissue from previous surgery along with degenerative joint disease from prolonged overuse.

On May 21, 2010 Dr. Gray reiterated that appellant had left carpal tunnel syndrome/median neuritis/dorsal wrist syndrome that was progressive and not improving. Left hand strength was diminished significantly. The first three fingers were numb.

In a decision dated June 21, 2010, OWCP denied modification of its 1999 loss of wage-earning capacity (LWEC) determination. It noted that medical evidence from September 2009 through May 2010 did not provide objective clinical findings to support a material worsening of appellant's condition to substantiate the reduction in her work hours.

Appellant requested an oral hearing before an OWCP hearing representative.

In a September 21, 2010 decision, an OWCP hearing representative found that the case was not in posture for decision. She explained that, while OWCP's June 21, 2010 decision was correct at the time it was issued, new evidence warranted further development. The hearing representative directed OWCP to obtain a second opinion on whether appellant's condition had

materially worsened as of March 2010 to the point that she could no longer perform the modified-duty job that she had been performing since 1996.

Dr. Joseph P. Laico, a Board-certified orthopedic surgeon and OWCP referral physician, examined appellant on May 12, 2011 and found no material worsening of her work injury as of March 2010.

In a decision dated July 12, 2011, OWCP denied modification of its February 16, 1999 LWEC determination. It found that appellant did not meet at least one of the three standards for obtaining modification.

Appellant requested an oral hearing before an OWCP hearing representative.

Following a preliminary review on September 30, 2011, a second OWCP hearing representative found the case not in posture for decision and remanded the case for a revised statement of accepted facts indicating, among other things, that appellant had accepted a limited-duty job in October 2009 after her prior limited-duty position was eliminated. She also remanded the case for a supplemental report from Dr. Laico. The hearing representative informed appellant that she may file a new claim for an occupational disease if she believed that the light-duty job she was performing caused or aggravated an injury.

In his January 9, 2012 supplemental report, Dr. Laico found nothing in his review of the medical records that showed appellant underwent a material change in the nature and extent of her employment-related condition on or about March 1, 2010. Asked if appellant was able to work in the currently offered rehabilitation program position, he answered that she could work for four hours a day, three days a week.

On February 7, 2012 OWCP notified appellant that it was expanding its acceptance of her claim to include left wrist dorsal syndrome. In a decision also dated February 7, 2012, it denied modification of its 1999 LWEC determination. Dr. Laico reported no material worsening of appellant's condition as of March 2010. OWCP found that appellant failed to establish that her medical condition had changed, that she had been vocationally rehabilitated, or that the original LWEC determination was in error.

Appellant requested an oral hearing before an OWCP hearing representative, which was held on May 16, 2012.

By decision dated August 1, 2012, an OWCP hearing representative affirmed OWCP's February 7, 2012 denial of modification. She reviewed the medical evidence contemporaneous to the March 2010 reduction in work hours and found no objective evidence of a worsening in appellant's condition. The hearing representative also noted that Dr. Laico's review of the medical records failed to reveal that appellant underwent a material change in the nature and extent of her employment-related condition on or about March 1, 2010. An appeal to the Board followed.

On the prior appeal of this case,<sup>3</sup> the Board found that OWCP's February 16, 1999 LWEC determination, based on her part-time reemployment as a modified postal clerk, was, in fact, erroneous. The Board reversed the hearing representative's August 1, 2012 decision and remanded the case for proper adjudication of appellant's claim for wage-loss compensation beginning on or about March 3, 2010.

In a decision dated November 25, 2013, OWCP reviewed the medical evidence and found that the medical evidence contemporaneous to the March 2010 reduction in work hours did not note any objective findings of a worsening in appellant's condition or provide any rationale to support a reduction of hours. It reviewed the July 6, 2012 report of Dr. Samir Sodha, a Board-certified hand surgeon, who advised that clinical studies obtained showed normal conduction in November 2009 and no acute pathology in February 2010. An imaging study of the left wrist in June 2010 showed findings that collaborated appellant's symptoms of increased impairment of the left wrist. The right hand impairment was static over her treatment course from October 2009 to present. OWCP also reviewed the second opinion report of Dr. Laico, who reviewed all available medical evidence and concluded there was nothing to support that appellant underwent a material change in the nature and extent of her employment-related condition on or about March 1, 2010. It found that the weight of the medical evidence rested with Dr. Laico and established that appellant did not sustain a material worsening of her accepted condition that precluded her from performing her light-duty position for four hours a day.

In a decision dated September 30, 2014, an OWCP hearing representative affirmed the November 25, 2013 OWCP decision.

On appeal, appellant's representative argues that claimants who are performing light duty are not considered fully recovered from their work-related injuries. He notes that at no time did any doctor to whom appellant was referred state that her condition worsened from any nonjob factors. Therefore, if appellant's disability increased, this was due to her accepted job-related condition. Further, Dr. Laico found that appellant could work only four hours a day for three days a week. Although OWCP found this to be in error, it was in no position to question its own second opinion physician without further development. Appellant's representative adds that although OWCP found that appellant's condition did not worsen, it expanded its acceptance in 2012 to include enthesopathy of the wrists and carpus. This fact acknowledged a worsening of appellant's condition.

### **LEGAL PRECEDENT**

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

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<sup>3</sup> Docket No. 13-84 (issued July 24, 2013).

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> 20 C.F.R. § 10.5(f).

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.<sup>6</sup>

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a light-duty position, or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>7</sup>

### ANALYSIS

Following her accepted employment injury, appellant returned to work in 1996 to a part-time modified clerk assignment. In October 2009 she accepted another modified clerk assignment, which was noted to be in strict compliance with her medically defined work limitations. Thus, when appellant claimed compensation for reduced hours effective March 3, 2010, appellant had the burden to establish a change in the nature and extent of her injury-related condition.<sup>8</sup>

It appears that Dr. Gray, the attending internist, reduced appellant’s hours based on her subjective complaints. Appellant complained that she had difficulty completing a four-hour day at work. She complained of pain with any movement of the left wrist. Dr. Gray recommended reduced hours and reduced days to allow appellant to continue to work. Although he advised that this would be considered a progression of a previous chronic condition and not a recurrence of a resolved condition, he did not substantiate the progression with objective clinical findings. Dr. Gray noted only that appellant had diminished use of the left hand secondary to pain and weakness. In May 2010 he found that left hand strength was diminished significantly, and the first three fingers were numb.

OWCP sought a second opinion from Dr. Laico, an orthopedic surgeon, who was able to find no material worsening of the work injury as of March 2010. Given a revised statement of accepted facts, together with appellant’s medical record, Dr. Laico found nothing in his review of the medical records that showed appellant underwent a material change in the nature and extent of her employment-related condition on or about March 1, 2010.

Based on Dr. Laico’s review of appellant’s medical record, it was his opinion that there was nothing to show a material change in the nature and extent of the employment-related

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<sup>6</sup> *Id.* at § 10.5(x).

<sup>7</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>8</sup> No physician has attributed her increased disability beginning March 3, 2010 to any change in her light-duty job requirements.

condition on or about March 1, 2010. His report is comprehensive, based on a proper medical and factual history, and directly addresses the issue raised by appellant's recurrent claim. Notwithstanding Dr. Gray's description of appellant's condition as progressive and the observation of Dr. Sodha, the hand surgeon, that a June 2010 imaging study in June 2010 showed findings that corroborated appellant's symptoms, the Board finds that the weight of the medical opinion rests with Dr. Laico's review of appellant's medical record.

Accordingly, the Board finds that appellant has not met her burden to establish that she sustained a recurrence of disability on or around March 3, 2010. The Board will, therefore, affirm OWCP's September 30, 2014 decision. 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.

A claimant seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>9</sup>

Appellant's representative notes that Dr. Laico found that appellant could work only four hours a day for three days a week. The Board notes, Dr. Laico was asked if appellant was able to work in the currently offered rehabilitation program position. In his 2012 report, Dr. Laico answered that she could work for four hours a day, three days a week. As this opinion related to a different position two years after the claimed recurrence, it does not suggest that appellant was able to work only four hours a day, three days a week on or about March 3, 2010 in the modified clerk assignment she had been working since October 2009.

Finally, appellant's representative notes that OWCP expanded its acceptance in 2012 to include enthesopathy of the wrists and carpus. On February 7, 2012 OWCP notified appellant that it was expanding its acceptance of her claim to include left wrist dorsal syndrome. This does not mean that her injury-related condition worsened such that she could no longer perform her modified duties for 20 hours a week beginning March 3, 2010.

### **CONCLUSION**

The Board finds that appellant has not met her burden to establish that she sustained a recurrence of disability on March 3, 2010.

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<sup>9</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 30, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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