United States Department of Labor
Employees' Compensation Appeals Board

G.W., Appellant	)	
and	)	**Docket No. 15-628**
	)	**Issued: July 6, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 27, 2015 appellant filed a timely application for review from a September 29, 2014 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 OWCP properly denied appellant's claim for wage-loss compensation for disability commencing July 22, 2014.

FACTUAL HISTORY

On December 9, 2007 appellant, then a 30-year-old city mail carrier, filed an occupational disease claim (Form CA-2) alleging left hand tendinitis as a result of his federal employment duties. He first became aware of the condition and of its relationship to his

[1] 5 U.S.C. § 8101 *et seq.*

employment on November 1, 2007. By decision dated January 23, 2008, OWCP accepted appellant's claim for de Quervain's tenosynovitis of the left wrist. On January 28, 2009 it granted a schedule award to appellant for two percent permanent impairment of the left arm.

Appellant underwent surgery on his left wrist with Dr. Forney Hutchinson III, a Board-certified orthopedic surgeon, on February 14, 2008. Dr. John Gaul, a Board-certified orthopedic surgeon, noted in a report of June 18, 2008 that appellant was concerned that ongoing pain in his left wrist may be related to his returning to work too soon after surgery. Appellant reported that he returned to work one week after surgery. Dr. Gaul reported that he gave appellant a note asking for the employing establishment to restrict repetitive activity wherever possible, and suggesting that his duties as a clerk be restricted to four hours within the course of an eight-hour workday. He further reported that appellant should refrain from returning to his previous job as a letter carrier due to his ongoing pain.

On January 7, 2010 appellant accepted an offer from the employing establishment as a modified mail processor. The physical restrictions of this assignment included no work involving the use of the left hand, grasping letters with the right hand only, lifting a mail tray, and reaching above the shoulder to case mail.

In a report dated June 16, 2010, Dr. Gaul noted that appellant had returned after an absence of almost two years. Appellant had worked with restrictions for this period of time, but presented complaining of worsening of symptoms. Dr. Gaul recommended that appellant continue with his previous restrictions.

On June 28, 2010 Dr. Jay Patti, a Board-certified radiologist, interpreted the results of a magnetic resonance imaging (MRI) scan of appellant's left wrist. He noted no evidence of tenosynovitis, no evidence of a ligament tear, and a longitudinal split tear of the extensor carpi ulnaris tendon. Dr. Patti stated that there was likely an air bubble within the radiocarpal joint. Dr. Gaul interpreted this MRI scan report on July 12, 2010 and stated, "[Appellant] may have some pain and tenderness associated with his previous surgical site, but I do not think there has been any worsening of his condition. I think he can continue to work."

On August 3, 2010 appellant accepted a modified mail processing clerk job offer from the employing establishment. The physical requirements of the position included lifting, carrying, pushing, and pulling for up to four hours intermittently per day; standing, walking, and sitting for up to four hours intermittently; simple grasping and reaching for up to eight hours intermittently; and bending/stooping for up to four hours intermittently.

In a memorandum dated March 11, 2011, a claims examiner noted that appellant's limited-duty position had been withdrawn under the employing establishment's National Reassessment Program (NRP). It stated that a loss of wage-earning capacity decision had not been issued, and that the examiner recommended processing of claims for wage loss on February 10 and 17, 2011.

On April 22, 2013 Dr. Gaul noted that appellant was at work with restrictions and was not carrying mail. He stated that appellant had a continuous lifting restriction of 20 pounds and

occasional lifting of 50 pounds. Dr. Gaul recommended keeping him on the same restrictions and conducting another MRI scan.

In a report dated June 14, 2013, Dr. Thomas Zban, a Board-certified radiologist, examined the results of an MRI scan of appellant's left wrist. He noted a subtle signal change in the abductor pollicis longus tendon of the 1st dorsal compartment, which could represent tendinopathy versus a partial tendon tear. Dr. Zban noted that this was not present on the prior MRI scan examination from 2010. He also noted a chronic linear signal within the extensor carpi ulnaris tendon suggesting a longitudinal split tear, likely healed, and no osteochondral or ligamentous injury. On July 3, 2013 Dr. Gaul interpreted this MRI scan report and documented his assessment of, "Status post previous tendon surgery, with some scar tissue, but stable. Essentially reassure him that there is some scar tissue and there is some swelling of his tendons, but I do not see any new injury. I think he could continue to work with the previous restriction."

In a medical report dated June 9, 2014, Dr. Gaul noted that appellant reported he was working in a magazine section, in which he lifted tubs that weighed 45 pounds on a repetitive basis. He stated,

> "On his previous work note, he had no limit on his right hand, but his left hand had some intermittent restrictions with the use of his left hand, *i.e.*, continuous weight limited at 20 pounds on the left, intermittent 50 pounds on the left, he was allowed to push and pull 40 pounds on the left, simple grasping, intermittent limited to 10 pounds, fine manipulation on the left hand limited to 15 minutes.
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> "I would continue with the previous recommendations of allowing continuous lifting with his left hand at 20 pounds, intermittent use, that is, up to 1/3 of the time with 50 pounds. It would seem to me that if he is lifting a magazine bin that is 45 pounds, that is about 22 pounds on the left side, so I think he could do this intermittently (*i.e.*, it is less than 50 pounds, so he could do it up to 1/3 of the time), but I would not want him to do it more than 2/3 of the time (*i.e.* continuously), as it is over 20 pounds. Therefore, it would seem like he could lift this magazine tub if doing it less than 1/3 of the time."

In a medical restrictions assessment form dated June 16, 2014, Dr. Gaul provided work restrictions for appellant's left hand only of no lifting greater than 50 pounds intermittently and up to 20 pounds continuously; no pushing or pulling greater than 40 pounds intermittently; fine manipulation of no more than 15 minutes per hour; grasping up to 10 pounds intermittently; and operating machinery of up to 20 minutes per hour.

On July 21, 2014 the employing establishment issued a written offer of a limited-duty city carrier position. The restrictions of the position included: sitting, driving, reaching, and fine manipulation with the right arm for up to 7 hours per day; standing and walking for up to 8 hours per day; reaching above the shoulders for up to 1 hour intermittently; and lifting/pushing/pulling not more than 40 to 50 pounds for 15 minutes intermittently. The job offer referenced the restrictions of Dr. Gaul in his assessment of June 16, 2014. Appellant explained that he refused the offer because the conditions of carrying mail were not conducive for healing his left wrist.

On August 1, 2014 appellant requested compensation for leave without pay from July 22 through 25, 2014. OWCP subsequently received additional CA-7 forms for compensation through September 5, 2014.

By letter dated August 8, 2014, OWCP informed appellant that the medical evidence did not establish disability for the period July 22 through 25, 2014. It noted that the job offer of July 21, 2014 was based upon the work restrictions of Dr. Gaul dated June 16, 2014.

In a work status report dated August 18, 2014, Dr. Gaul reported that appellant was unable to carry mail because appellant had to avoid fine manipulation for more than 15 minutes per hour. He issued a new set of work restrictions reflecting this statement.

In a record of a telephone conversation dated September 22, 2014, a claims examiner asked the employing establishment for clarification regarding what the refused job offer would require in terms of fine manipulation using the left hand. A supervisor responded that fine manipulation meant fingering through mail, which could be done with the right hand only, and that if he had to perform this task, it would be for no more than 15 minutes per hour.

By decision dated September 29, 2014, OWCP denied appellant's request for compensation for the period July 22 through 25, 2014, and continuing. It noted that he had refused a job offer within his work restrictions, and that Dr. Gaul's report dated August 18, 2014 was insufficient to establish that appellant could not perform the July 21, 2014 job offer because he provided no objective findings or medical rationale for the change in work restrictions.

LEGAL PRECEDENT

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.[2] 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.[3] Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[4] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative, and substantial medical evidence.[5]

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.[6] The Board will not

[2] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[3] *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

[4] *Donald E. Ewals*, 51 ECAB 428 (2000).

[5] *Tammy L. Medley*, 55 ECAB 182 (2003); *see Donald E. Ewals*, id.

[6] *See Amelia S. Jefferson, id. See also David H. Goss*, 32 ECAB 24, 27 (1980).

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 her disability and entitlement to compensation.[7]

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty 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 employee.[9]

ANALYSIS

OWCP accepted that appellant sustained de Quervain's tenosynovitis of the left wrist on January 23, 2008. Appellant claimed that he was disabled from July 22 through 25, 2014 because he refused an offer of work from the employing establishment that was outside of his medical restrictions. As noted above, it is his burden to submit evidence necessary to establish his claim for benefits. As the employing establishment made an offer of employment in writing pursuant to 20 C.F.R. § 10.507, appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence that he was disabled for work for the claimed period due to his accepted injuries.[10]

In a medical restrictions assessment form dated June 16, 2014, Dr. Gaul stated work restrictions for appellant's left hand only of no lifting greater than 50 pounds intermittently and up to 20 pounds continuously; no pushing or pulling greater than 40 pounds intermittently; fine manipulation of no more than 15 minutes per hour; grasping up to 10 pounds intermittently; and operating machinery of up to 20 minutes per hour.

On July 21, 2014 the employing establishment offered appellant a limited-duty city carrier position. The restrictions of the position included: sitting, driving, reaching, and fine manipulation with the right arm for up to 7 hours per day; standing and walking for up to 8 hours per day; reaching above the shoulder for up to 1 hour intermittently; and lifting/pushing/pulling not more than 40 to 50 pounds for 15 minutes intermittently. The job offer referenced the restrictions of Dr. Gaul in his assessment of June 16, 2014. Appellant explained that he refused the offer because the conditions of carrying mail were not conducive for healing the conditions of his left wrist.

By letter dated August 8, 2014, OWCP informed appellant that the medical evidence did not establish disability for the period July 22 through 25, 2014. It noted that the job offer of July 21, 2014 was based upon the work restrictions set forth by Dr. Gaul on June 16, 2014.

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[7] *See William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[8] *See Viola Stanko (Charles Stanko)*, 56 ECAB 436, 443 (2005); *see also Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (2005).

[10] *V.N.*, Docket No. 13-1909 (issued July 29, 2014).

In a work status report dated August 18, 2014, Dr. Gaul reported that appellant was unable to carry mail because appellant had to avoid fine manipulation for more than 15 minutes per hour. He issued a new set of work restrictions reflecting this new opinion.

In a record of a telephone conversation dated September 22, 2014, a claims examiner asked the employing establishment for clarification regarding what the refused job offer would require in terms of fine manipulation using the left hand. A supervisor responded that fine manipulation meant fingering through mail, which could be done with the right hand only, and that if he had to perform this task, it would be for no more than 15 minutes per hour.

The determination of whether an employee is physically capable of performing a modified assignment is a medical question that must be resolved by medical evidence.[11] OWCP procedures state that acceptable reasons for refusing an offered position include medical evidence of inability to do the work.[12]

The job offer of July 21, 2014 incorporated Dr. Gaul's restrictions and the physical requirements of the job did not exceed these restrictions. Appellant's claim that the restrictions were exceeded because the new position required fine manipulation with the left hand for more than 15 minutes per hour is not correct, because as noted by his supervisor, fine manipulation in the context of this job offer meant fingering through mail, which could be accomplished using the right hand only and in any event would not amount to more than 15 minutes per hour. Dr. Gaul's later work status report dated August 18, 2014, in which he reported that appellant was unable to carry mail because appellant had to avoid fine manipulation for more than 15 minutes per hour, was not supported by objective findings with medical rationale. As appellant has not submitted medical reports containing medical rationale relating the dates of disability to his accepted conditions, he has not met his burden of proof to establish disability for the period July 22 through 25, 2014. Therefore, OWCP's September 29, 2014 decision denying appellant's claim for wage-loss compensation for those dates was proper under the law and facts of the case.

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 OWCP properly denied appellant's claim for wage-loss compensation for the period July 22 through 25, 2014.

[11] *Gayle Harris*, 52 ECAB 319 (2001).

[12] *See K.J.*, Docket No. 14-1886 (issued February 3, 2015); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work, Job Offer Refusal*, Chapter 2.814.5a (July 2013).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 29, 2014 is affirmed.

Issued: July 6, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board