

FACTUAL HISTORY

On February 1, 2015 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim alleging that on December 31, 2014 he fractured his left hand when he fell at work. He stopped work that day. OWCP accepted his claim for left finger contusion.

On January 6, 2015 appellant returned to work with restrictions of no use of the left hand.

Appellant was examined by Dr. Hannah H. Kim, Board-certified in occupational medicine, who, in a January 20, 2015 work status report, recommended that appellant work modified duty from January 20 to February 3, 2015. Dr. Kim reported the following restrictions of no driving, no repetitive left hand motion, no gripping or grasping of the left hand, and no lifting, carrying, pushing, or pulling more than five pounds.

In a February 3, 2015 work status report, Dr. Kim stated that appellant should work modified duty from February 3 to 18, 2015. She restricted appellant to repetitive left hand motions no more than 15 minutes per hour, gripping and grasping of the left hand no more than 15 minutes per hour, and no lifting, carrying, pushing, or pulling more than 10 pounds. Dr. Kim reported that appellant could return to full duty on February 19, 2015.

In a March 2, 2015 report, Dr. Kim related that on December 31, 2014 appellant sustained a fall injury and broke his left ring finger. She reported that appellant denied any radicular or radiation to his symptoms and any swelling, numbness, or weakness. Dr. Kim reviewed appellant's history and conducted an examination. She observed normal range of motion of the left wrist and no tenderness, body tenderness, swelling, effusion, crepitus, or deformity. Dr. Kim diagnosed left ring finger proximal phalanx fracture. She reported that there was no need for future medical treatment and that appellant could return to his usual preinjury regular job. Dr. Kim indicated that there were no limitations to lifting, carrying, standing or walking, and pushing or pulling.

On March 5, 2015 appellant requested disability compensation from February 17 to 18, 2015. He indicated that on February 17 and 18, 2015 he was told by his manager that there was no work for him and he was sent home. A time analysis form dated March 5, 2015, which appellant signed claiming 16 hours of leave without pay for February 17 to 18, 2015, was also signed by an employing establishment official.³ The employing establishment official noted that no documentation had been submitted to support that appellant was sent home and that the last medical report of record stated that he could return to full duty as of February 1, 2015.

By letter dated March 13, 2015, OWCP advised appellant that there was no evidence from his employing establishment to reflect unavailability of work on February 17 and 18, 2015. Appellant was advised that he should provide written documentation, within 30 days, from his manager or another employing establishment official who could confirm that he was sent home because no work was available. Appellant did not submit such documentation.

³ The signature is illegible.

Appellant submitted a December 31, 2014 medical report by Dr. Stephen R. Greene, a general practitioner who specializes in preventive medicine. Dr. Greene related appellant's complaints of right hand swelling and pain and described the history of injury. He reviewed appellant's history and conducted an examination. Dr. Greene observed mild swelling and tenderness of the right dorsal hand and full range of motion of appellant's fingers. He diagnosed right hand strain. Dr. Greene recommended that appellant resume regular work.

In a decision dated April 24, 2015, OWCP denied appellant's claim for disability compensation for the period February 17 to 18, 2015. It found that the evidence failed to substantiate that he had been sent home from work.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as 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.⁴ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered such that they exceed the employee's physical limitations.⁵ Appellant has the burden of establishing that there was no medically-appropriate light duty available for the claimed period.⁶

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

OWCP's procedures require that in cases where recurrent disability for work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability for work.⁸

⁴ 20 C.F.R. § 10.5(x).

⁵ *Id.*

⁶ *J.F.*, 58 ECAB 124 (2006).

⁷ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013).

ANALYSIS

OWCP accepted that on December 31, 2014 appellant sustained a left finger contusion in the performance of duty. Appellant stopped work and returned to modified duty on January 6, 2015.⁹

On March 5, 2015 appellant requested disability compensation from February 17 to 18, 2015. He claimed he had been sent home because there was no work for him. A review of the record, however, fails to corroborate appellant's assertion. On March 13, 2015 OWCP requested that appellant submit evidence corroborating that he had been sent home on February 17 and 18, 2015, but no such evidence was received. As previously noted, when establishing a recurrence of disability an employee has the burden of proof to demonstrate that a light-duty assignment made to accommodate his physical limitations due to his work-related injury or illness is unavailable.¹⁰ The Board thus finds that the evidence of record in this case fails to establish that no work was available to appellant within his restrictions on February 17 and 18, 2015.

Appellant submitted medical reports from Drs. Kim and Greene dated December 31, 2014 to March 2, 2015. Although the medical reports show that appellant was advised to work modified duty, they did not demonstrate that he was unable to perform modified work duties for the employing establishment on February 17 and 18, 2015 or that the employing establishment was unable to accommodate appellant's work restrictions.

Therefore, the Board finds that appellant did not meet his burden of proof to establish total disability on February 17 and 18, 2015 due to his December 31, 2014 employment injury.

CONCLUSION

The Board finds that OWCP properly denied appellant's claim for recurrence of total disability from February 17 to 18, 2015 due to his December 31, 2014 employment injury

⁹ The record is unclear as to the date appellant returned to full duty.

¹⁰ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 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