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

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| **S.M., Appellant** | ) | |
| **and** | ) | **Docket No. 15-1667** |
| | ) | **Issued: April 20, 2016** |
| **U.S. POSTAL SERVICE, POST OFFICE, Memphis, TN, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On August 3, 2015 appellant filed a timely appeal from June 2 and July 16, 2015 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Appeals Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[2]

### ***ISSUE***

The issue is whether appellant established disability for the period March 22 to April 3, 2015 due to her accepted conditions.

On appeal, appellant contends that the employing establishment denied her work within her limitations. She further contends that OWCP ignored her evidence.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted new evidence on appeal. The Board however is precluded from considering evidence which was not before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

## ***FACTUAL HISTORY***

On January 12, 2007 appellant, then a 52-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that on November 11, 2006 she was placed in a full-duty assignment. She contended that the position required her to constantly use her wrists, elbows, and shoulders and that this caused joint contracture of the fourth and fifth fingers of the right hand. Appellant also noted that a claim for tendinitis had previously been submitted.[3] Although OWCP initially denied her claim, on May 29, 2009 OWCP accepted her claim for bilateral lateral epicondylitis, and bilateral enthesopathy of the wrist and carpus.

On September 29, 2010 Dr. Michelle A. Shelton, appellant's treating Board-certified family practitioner, listed appellant's restrictions as no standing, pushing, or pulling, reaching restricted to ½-hour each a day, walking, twisting, bending/stooping, and climbing, limited to 1 hour a day, lifting limited to 10 pounds for 2 to 4 hours a day, and repetitive movements of wrists and elbow limited to 4 hours a day. She continued to submit periodic duty status reports, dated from February 21, 2011 through November 7, 2014, that indicated "continue restrictions."

Appellant continued to work in a series of modified assignments for the employing establishment. On August 4, 2013 she accepted a new offer of modified assignment from the employing establishment as a mail handler. The duties of this position were listed as print placards for 6 hours; repair damaged letters for 1 hour; and 2 hours of resource "rcm." This position involved 0 hours a day of pushing, pulling, kneeling, and standing, reaching above the shoulder for 0.5 hours a day, walking for 1-hour a day, twisting, bending, stooping, climbing, repetitive movement of wrists, and elbow intermittently for 4 hours a day, lifting limited to 10 pounds for 2 to 4 hours a day, and sitting 8 hours a day intermittently.

By letter dated March 23, 2015, appellant stated that a dispute arose between her supervisor and herself with regard to how her leave slips were completed. She contended that her supervisor failed to approve 8 hours of annual leave for a follow-up medical appointment on March 25, 2015. Appellant then noted that her supervisor asked her to sign a new modified job offer and that she refused and asked to speak with her union steward, but that the request was denied. She stated that after returning to her supervisor's office, she stated that she would not sign the modified-job offer as it grossly exceeded her limitations and that it must first be approved by her doctor. Appellant stated that the supervisor indicated that if she refused the offered job, he would call postal police. She stated that postal police arrived, escorted her while she collected her belongings, and then escorted her to the parking lot and told that she had to leave.

The record contains a copy of the modified assignment (limited duty) offer signed by a supervisor at the employing establishment on March 14, 2015, appellant signed receipt of this offer on March 22, 2015. The duties of the modified assignment were listed as print placards for 2 hours, scan placards for 1½ hours, scan placards coming off of trucks for 2 hours, repair damaged letters for 1 hour. The position would require regular lifting of up to 10 pounds for 2 to

[3] The record indicates that appellant had previously filed several claims, for both traumatic injury and occupational disease, dating back to 2002. A July 16, 2002 claim was accepted and she was paid a two percent schedule award for permanent impairment of the right arm. Disability benefits were thereafter terminated, but appellant remained entitled to medical benefits.

4 hours per day, sitting for 6½ hours per day, intermittent walking for 2 hours a day, and intermittent standing for 8 hours per day.

By letter dated April 20, 2015, appellant stated that she refused to sign a modified job offer presented to her by her supervisor on March 22, 2015. She contended that the employing establishment refused to let her present the job offer to her treating physician for approval, and that when she refused to sign the job offer she was escorted from the building.

On April 21, 2015 appellant filed a claim for compensation, (Form CA-7), for the period March 22 through April 2, 2015, for a total of 68.5 hours.

In support of her claim for compensation, appellant submitted an April 15, 2015 work capacity evaluation (Form CA-17) signed by Dr. Shelton, indicating that appellant was limited in an 8-hour day to 1 hour of intermittent standing, walking, bending/stooping, and twisting; 0.5 hours of reaching above the shoulder, 4 hours of simple grasping, and was prohibited from pushing/pulling, fine manipulation, and operating machinery. Dr. Shelton listed the diagnosis as tendinitis of appellant's wrists and elbows (pain).

By decision dated June 2, 2015, OWCP denied appellant's claim for compensation for the period March 22 to April 3, 2015.

By letter dated May 28, 2015, appellant requested reconsideration and expressed her concerns with OWCP's decision. She stated that OWCP could disregard the claim for compensation she had submitted on April 21, 2015 and instead should consider opening the file for a thorough examination of all material. Appellant stated that the employing establishment withdrew her modified job offer and instead offered her a job offer that grossly exceeded her restrictions, and that it was OWCP's duty to determine if her refusal of the job was valid. She contended that OWCP improperly ignored the evidence of record.

In a letter dated April 1, 2015 and received by OWCP on June 5, 2015, Dr. Shelton indicated that appellant had been on modified work status since 2002 secondary to tendinitis, de Quervain's disease, and lateral epicondylitis in both arms. She indicated that appellant had been examined by multiple orthopedic specialists and had multiple steroid injections for these chronic conditions. Dr. Shelton opined that all of appellant's employment-related injuries were permanent and exacerbated by repetitive motion.

Dr. Shelton alleged that the current offer of modified assignment was in conflict with appellant's well-established work restrictions that had been verified by orthopedic specialists. She noted that, since appellant's condition was exacerbated by repetitive upper extremity motions, she had for the last 12 years had a restriction of simple grasping to four hours a day and a restriction on most other upper extremity activities to two hours per day. It was Dr. Shelton's opinion that appellant's employment activities related to processing duties, such as lifting and throwing mail trays and packages weighing up to 70 pounds, throwing parcels and packages in a repetitive manner over an eight-hour shift, and pushing and pulling mail material and equipment weighing up to and exceeding 1,000 pounds on a daily basis for years, directly caused and continued to cause flare-ups of appellant's condition.

Dr. Shelton opined that appellant's disability affected her ability to perform prolonged repetitive motions, although she could perform repetitive motions for short, limited periods of

time during the workday. She noted that prognosis for a complete recovery was poor as it was caused and exacerbated by her employment. Dr. Shelton noted that appellant's offer of modified assignment outlined expectations for duty was not acceptable, and that if appellant performed the duties to the extent of the modification, she would experience significant pain, swelling, exacerbation of her conditions, and could possibly lead to more permanent damage. She asked that restrictions remain as they had been to prevent further bodily harm to appellant. In a May 27, 2015 note, Dr. Shelton indicated that OWCP's denial failed to mention the documents received from appellant, and that the statement in the decision that she stopped working was not factual as she was actually walked off the job by security at the behest of her supervisor. She argued that the decision should be reversed, and as much as the original revocation of her modification was reinstated, appellant should be paid for time she was walked off job site and was prevented to return to her employment.

By decision dated July 16, 2015, OWCP denied modification of its June 2, 2015 decision.

## ***LEGAL PRECEDENT***

A claimant has the burden of establishing the essential elements of his or her claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.[4] Compensation for wage loss due to disability is available for periods during which an employee's work-related medical condition prevents her from earning the wages earned before the work-related injury.[5] The claimant must submit medical evidence showing that the condition claimed is disabling.[6] The evidence submitted must be reliable, probative, and substantial.[7]

By OWCP regulation benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a CA-7 form to the extent that evidence contemporaneous with the period claimed on a CA-7 form establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available.[8]

The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty, and must include objective findings in support of its conclusions.[9] Subjective complaints of pain are not sufficient,

[4] 20 C.F.R. § 10.115(e); *see Tammy L. Medley*, 55 ECAB 182, 184 (2003). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996).

[5] *Id.* at § 10.500(a).

[6] *Id.* at 10.515(f).

[7] *Id.* at 10.115.

[8] *Id*. at 10.500(a).

[9] *Id.* at § 10.501(a)(2).

in and of themselves, to support payment of continuing compensation.[10] Likewise, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of continuing compensation.[11]

## ***ANALYSIS***

The Board finds that appellant has not established disability for the period March 22 to April 3, 2015 due to her accepted condition.

The Board notes that OWCP accepted appellant's claim for bilateral lateral epicondylitis, and bilateral enthesopathy of the wrist and carpus. Appellant returned to work in a series of modified work assignments. On March 22, 2015 the employing establishment made a new job offer of a modified assignment. This modified duty offer was made in writing, as required by 20 C.F.R. § 10.500. The duties of the modified assignment were listed as print placards for 2 hours, scan placards for 1½ hours, scan placards coming off of trucks for 2 hours, repair damaged letters for 1 hour. This position contained work restrictions, which included lifting up to 10 pounds 2 to 4 hours a day, sitting for 6½ hours a day, intermittent walking for 2 hours a day, and intermittent standing for 8 hours a day. Appellant refused the job offer and filed a Form CA-7 claim for compensation for the period March 22 through April 3, 2015. She alleged that the offered position was not within her restrictions. OWCP denied appellant's claim for compensation for this period.

The Board finds that appellant failed to present rationalized medical opinion evidence establishing that she was unable to perform the position offered by the employing establishment on March 22, 2015. Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee disability for her particular work.[12] In the instant case, appellant has not provided rationalized medical opinion evidence that established that she was disabled from March 22 to April 3, 2015.

The prior modified job offer of record, dated August 4, 2013, which appears to be the position appellant performed until March 22, 2015, listed the duties of this position as print placards for six hours; repair damaged letters for one hour; and two hours of resource "rcm." Appellant alleges that the new modified job offer of March 22, 2015 required that she perform duties which far exceeded her medical restrictions. Neither she nor her physician have however explained how the new duties, which required printing placards for 2 hours, scanning placards for 3½ hours and repairing damaged mail for one hour, were in fact substantially different from her previous modified work duties, and that appellant was medically unable to perform such duties.

Appellant submitted multiple work capacity evaluations by her treating physician, Dr. Shelton, indicating that she had certain work restrictions. It does appear that the offered position exceeded Dr. Shelton's restrictions for walking and standing. The requirements of the

[10] *Id.*

[11] *Id.*

[12] *G.P.*, Docket No. 15-1360 (issued September 25, 2015).

modified position included standing for eight hours a day and walking for two hours a day. The previous position held by appellant at the employing establishment limited walking to one hour a day and prohibited standing. In her April 15, 2015 work capacity evaluation, Dr. Shelton limited standing and walking to one hour a day. However, the conclusions stated on these work capacity evaluation forms are not sufficiently detailed or rationalized to support appellant's restrictions. It is important to note that appellant's accepted employment-related conditions pertained to the upper extremities. The evidence of record does not substantiate that appellant's walking and standing restrictions were due to her accepted employment injuries.

Appellant also submitted an April 1, 2015 report by Dr. Shelton, which attempted to explain why appellant could not perform the March 22, 2015 job offer. However, this report does not constitute a well-rationalized medical opinion establishing that appellant was unable to perform the work assignment offered on March 22, 2015. Dr. Shelton's conclusions appear to be based in large part on appellant's recitation of the facts, which appear to not be in conformance with the established facts of the case. For example, she attributes appellant's injuries, in part, to her pushing and pulling mail material and equipment weighing up to and exceeding 1,000 pounds on a daily basis for years. There is no factual evidence in the record supporting this statement. Also, Dr. Shelton concluded that if appellant performed the duties of the limited-duty work assignment, she would experience an exacerbation of her condition which would possibly lead to more permanent damage. However, limitations based solely on the fear of a possible future injury are insufficient to support payment of continuing compensation.[13]

In Dr. Shelton's subsequent May 27, 2015 report, she argued that OWCP had not considered certain evidence and that the statement by OWCP that appellant stopped working was not factual as she was actually walked off the job by security at the behest of her supervisor and prevented from returning to her employment. This letter does not contain any medical diagnoses, description of a physical examination, or discussion of the medical evidence. Accordingly, the record does not contain a rationalized medical opinion establishing that appellant was unable to perform the modified position offered on March 22, 2015 due to the accepted condition. Therefore, appellant has not established her entitlement to compensation from March 22 to April 3, 2015.

Appellant also contends that the employing establishment failed to approve eight hours of annual leave for March 25, 2015 for a medical appointment. There is no supporting evidence that appellant had a medical appointment on that date or any explanation as to why the appointment would last 8 hours.[14]

[13] *A.G.*, Docket No. 14-1590 (issued September 9, 2015).

[14] An injured employee may be entitled to compensation for lost wages incurred while obtaining authorized medical services. *Gayle L. Jackson*, 57 ECAB 546 (2006). This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location. As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. *T.B.*, Docket No. 11-0663 (issued December 15, 2011); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

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 failed to establish disability for the period March 22 to April 3, 2015 due to her work-related conditions.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 16 and June 2, 2015 are affirmed.

Issued: April 20, 2016
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