

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

K.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Goodyear, AZ, Employer**

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**Docket No. 15-1218
Issued: August 22, 2016**

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 May 5, 2015 appellant filed a timely appeal of two January 23, 2015 merit decisions and a March 31, 2015 nonmerit 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.

ISSUES

The issues are: (1) whether OWCP properly denied her requests for a review of the written record as untimely under 5 U.S.C. § 8124(b); and (2) whether appellant has established disability for intermittent periods from September 11 to October 3, 2014 and commencing October 20, 2014 due to her accepted employment injury.

FACTUAL HISTORY

On March 18, 2014 appellant, then a 57-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that on September 16, 2011 she first became aware of her

¹ 5 U.S.C. § 8101 *et seq.*

medial and lateral epicondylitis of the right hand and bilateral carpal tunnel syndrome. She further alleged that her conditions were caused or aggravated by casing mail for six hours a day.

On March 18, 2014 appellant accepted the employing establishment's job offer for a full-time modified position. On April 9, 2014 she underwent right and left carpal tunnel release performed by Dr. Matthew T. Weichbrodt, an attending osteopath specializing in orthopedic and hand surgery.

On June 16, 2014 OWCP accepted appellant's claim for bilateral carpal tunnel syndrome.

On October 17 and 23, 2014 appellant filed claims for compensation (Forms CA-7) for periods of leave without pay (LWOP) from September 11 to October 3 and October 6 to 17, 2014.

A time analysis form (Form CA-7a) dated October 17, 2014 showed that appellant worked six hours a day from September 11 to 19 and September 22 to October 3, 2014. Appellant claimed compensation for the hours not worked to attend therapy. The employing establishment certified 14 hours of LWOP claimed from September 11 to 19, 2014 and 18 hours of LWOP claimed from September 22 to October 3, 2014. It stated that appellant was paid for her evaluated hours. An October 21, 2014 Form CA-7a showed that she worked six hours a day on October 6, 7, 9, 10, and from October 14 to 17, 2014 and claimed compensation for the hours not worked to attend therapy. The employing establishment certified 16 hours of LWOP and stated that appellant was paid 8 hours of sick leave. It also stated that she was paid her evaluated hours. The employing establishment challenged eight hours of sick leave used on October 8, 2014 for therapy.

By letters dated October 28, 2014, OWCP informed appellant of the evidence needed to support her claims.

On November 6, 2014 appellant filed a Form CA-7 for compensation for LWOP from September 22 to October 31, 2014. A November 7, 2014 Form CA-7a indicated that she worked six hours a day on October 20, 21, 2014 and from October 23 to 29, 2014, and three hours on October 31, 2014. Appellant claimed compensation for the hours not worked due to her disability and a medical appointment. The employing establishment certified 19 hours of LWOP and challenged 5 hours of LWOP claimed on October 31, 2014 to attend a medical appointment. It also questioned appellant's six-hour workdays, stating that there was no medical evidence of record to support the reduction in her work hours.

In a December 3, 2014 duty status report (Form CA-17), Dr. John R. Monroe, a Board-certified family practitioner, diagnosed carpal tunnel syndrome due to repetitive motion. He advised that appellant could work six hours a day with restrictions. In a progress note also dated December 3, 2014, Dr. Monroe provided appellant's history. He reported findings on physical examination and diagnosed carpal tunnel syndrome and hand pain. Dr. Monroe advised that appellant could work six to eight hours a day with restriction.

By decision dated January 23, 2015, OWCP denied appellant's claim for intermittent periods of wage loss during the period September 11 to October 3, 2014 while attending therapy. It found that she had failed to submit any evidence to establish that disability was for treatment for her accepted employment-related condition on the dates and during the hours claimed.

In another decision of even date, OWCP denied appellant's claim for intermittent periods of compensation for LWOP commencing October 20, 2014 due to work restrictions. It found that the medical evidence failed to establish any work restrictions related to her accepted work injury.

By appeal request forms dated March 3, 2015 and containing an illegible postmark, OWCP's Branch of Hearings and Review received on March 10, 2015, a request for review of the written record by an OWCP hearing representative regarding both of the January 23, 2015 decisions. Additional evidence was submitted.

In a decision dated March 31, 2015, OWCP's Branch of Hearings and Review denied appellant's requests for a review of the written record, finding that the requests were not made within 30 days of the January 23, 2015 decisions. It further determined that the issues in the case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered regarding her claim for disability.

LEGAL PRECEDENT -- ISSUE 1

Section 8124(b)(1) of FECA provides that before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim before a representative of the Secretary.²

Section 10.615 of the federal regulations implementing this section of FECA provides that, a claimant shall be afforded a choice of an oral hearing or a review of the written record.³ OWCP regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁴ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁵ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant's requests for a review of the written record regarding its January 23, 2015 decisions were untimely filed.

Appellant's March 3, 2015 requests for a review of the written record were made more than 30 days after the date of issuance of OWCP's prior decisions dated January 23, 2015. The

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615.

⁴ *Id.* at § 10.616(a).

⁵ *See G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

⁶ *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

requests contained an illegible postmark and were not received until March 10, 2015. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.⁷ Because the applications were not timely filed within 30 days of the January 23, 2015 decisions, appellant was not entitled to a review of the written record as a matter of right.

OWCP has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right. In each of its January 23, 2015 decisions, it considered the matter in relation to the issues involved and determined that the issues in the case could equally well be addressed by submitting additional evidence to OWCP with a reconsideration request. The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.⁸ In the present case, the evidence of record does not establish that OWCP committed any action in connection with its denial of appellant's requests for a review of the written record which could be found to be an abuse of discretion. Accordingly, OWCP properly denied her requests for a review of the written record as untimely under section 8124 of FECA.

LEGAL PRECEDENT -- ISSUE 2

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.⁹ 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.¹⁰ Whether a particular injury causes an employee disability from employment is a medical issue which must be resolved by competent medical evidence.¹¹ 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.¹²

For each period of disability claimed, the employee has the burden of establishing that she was disabled from work as a result of the accepted employment injury.¹³ 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

⁷ See *William F. Osborne*, 46 ECAB 198 (1994).

⁸ See *L.W.*, 59 ECAB 471 (2008); *André Thyratron*, 54 ECAB 257 (2002).

⁹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

¹¹ *Donald E. Ewals*, 51 ECAB 428 (2000).

¹² *Tammy L. Medley*, 55 ECAB 182 (2003); see *id.*

¹³ See *Amelia S. Jefferson*, 57 ECAB 183 (2005). See also 20 C.F.R. § 10.501(a).

essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁴

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.¹⁵ 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.¹⁶

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome while working as a rural mail carrier. She claimed compensation for intermittent periods of disability from September 11 to October 3, 2014 and commencing October 20, 2014. OWCP denied appellant's claimed compensation for disability compensation, finding that the evidence was insufficient to establish that the disability was due to her accepted bilateral carpal tunnel syndrome. Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her claimed disability and the accepted condition.¹⁷ The Board finds that she failed to submit sufficient medical evidence to establish employment-related disability for the periods claimed, due to her accepted injury.

Dr. Monroe's December 3, 2014 report and progress note found that appellant had carpal tunnel syndrome due to repetitive motion. In the December 3, 2014 Form CA-17 report, he advised that she could work six hours a day with restrictions. In the December 3, 2014 progress note, Dr. Monroe advised that appellant could work six to eight hours a day with restrictions. The Board notes that appellant performed full-time modified work as of June 16, 2014. Dr. Monroe did not provide an opinion stating that appellant's reduced work hours were caused or contributed to by the accepted work exposure or explain the discrepancy between his two reports regarding her work ability. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.¹⁸ The Board has further held that a medical opinion not supported by medical rationale is of little probative value.¹⁹ Thus, Dr. Monroe's reports are insufficient to meet appellant's burden of proof.

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.

¹⁴ See *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁵ See *Viola Stanko (Charles Stanko)*, 56 ECAB 436, 443 (2005); see also *Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

¹⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (2005).

¹⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁹ *Caroline Thomas*, 51 ECAB 451 (2000).

CONCLUSION

The Board finds that OWCP properly denied appellant's requests for a review of the written record as untimely under 5 U.S.C. § 8124(b)(1). The Board further finds that appellant has failed to establish intermittent periods of total disability from September 11 to October 3, 2014 and commencing October 20, 2014 due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 31 and January 23, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 22, 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