

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

L.G., Appellant	)	
	)	
and	)	Docket No. 16-1438
	)	Issued: December 21, 2016
U.S. POSTAL SERVICE, FORT DEARBORN STATION, Chicago, IL, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 5, 2016 appellant, through counsel, filed a timely appeal from a June 1, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 appellant met her burden of proof to establish total disability for intermittent dates from August 26 to December 20, 2013, causally related to her accepted right wrist tendinitis.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

On appeal counsel asserts that the June 1, 2016 decision is contrary to fact and law.

### **FACTUAL HISTORY**

On April 25, 1996 OWCP accepted that appellant, then a 38-year-old sorting machine operator, sustained work-related right wrist tendinitis causally related to factors of her federal employment. Appellant began modified duty and missed intermittent periods from work. In September 2002, she began treatment with Dr. Steven Wolf, an attending Board-certified orthopedic surgeon.

In a November 10, 2012 report, Dr. Wolf noted that appellant was under his care for a many-year history of right arm and wrist pain with symptoms of mild swelling and grip strength weakness that had slowly worsened over the past year. He diagnosed right wrist chronic tendinitis and overuse syndrome. Dr. Wolf provided restrictions of no pushing and pulling, and no lifting over 10 pounds regularly or 30 pounds intermittently. Casing of mail was restricted to four hours in an eight-hour shift.

On November 12, 2012 appellant accepted a full-time modified position with duties of distributing mail for up to six hours daily, scanning and filing mail for up to four hours daily, spreading mail into carrier cases for two to three hours daily, and miscellaneous duties within restrictions for two to three hours daily.<sup>3</sup>

Appellant began filing claims for intermittent periods of wage loss in March 2013 CA-7 forms. By decision dated September 24, 2013, OWCP found that appellant did not establish a recurrence of disability commencing on July 15, August 5, and 9, 2013 because the medical evidence of record did not establish a change in the accepted injury-related condition or in the nature and extent of her job requirements.

Appellant retired on disability, effective December 20, 2013. On December 26, 2013 she filed a claim for compensation (Form CA-7) for intermittent dates during the period August 26 to December 20, 2013.<sup>4</sup> Appellant had previously submitted an August 29, 2013 treatment note in which Dr. Wolf noted that her right wrist swelling had resolved, and that she had mild pain on flexion and extension of the wrist. Dr. Wolf diagnosed tenosynovitis of hand and wrist and advised that appellant was unable to perform modified work duties involving hand and wrist movement from July 15 to 19, 2013, on July 30, 2013, and from August 5 through 18, 2013. He reported that she had also recovered from a recent motor vehicle accident with a neck and head injury. Dr. Wolf concluded that she should continue to follow her work restrictions. In a September 4, 2013 report, he described his treatment of appellant. Dr. Wolf advised that her work restrictions included no prolonged pulling, pushing, or lifting over 10 pounds continuously or 30 pounds intermittently. Carrying was restricted to four hours daily. Dr. Wolf advised that

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<sup>3</sup> The Board notes that appellant has a second claim, adjudicated by OWCP under File No. xxxxxx024, in which she alleged ongoing exposure to chemical irritants at work beginning in 2010. In an October 23, 2014 decision, the Board affirmed a November 7, 2013 OWCP decision, finding that appellant did not establish a medical condition caused or aggravated by workplace exposure. Docket No. 14-1178 (issued October 23, 2014). On September 3, 2015 the Board found that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a). Docket No. 15-1375 (issued September 3, 2015). File No. xxxxxx024 is not presently before the Board.

<sup>4</sup> A Form CA-7a documents the intermittent days claimed.

repetitive movements of fingers and wrists were painful, and would cause renewed disability due to right wrist and hand swelling, sensitivity, and pain. He concluded that he recommended disability retirement.

By letter dated January 10, 2014, OWCP informed appellant of the evidence needed to establish her claim. On January 13, 2014 Dr. Wolf prescribed physical therapy.<sup>5</sup>

In a March 14, 2014 decision, OWCP denied appellant's claim for compensation for the period August 26 to December 20, 2013. It noted that she had not submitted a response to the January 10, 2014 development letter, and the only evidence received was in regard to physical therapy.

Appellant, through counsel, timely requested a hearing with OWCP's Branch of Hearings and Review. She submitted a January 7, 2014 report in which Dr. Wolf advised that appellant had "been ill or injured and unable to work" on the following days: October 25, November 12, 13, 15, 30, and December 2, 5, 7, 9, 11, 14, 16, and 20, 2013, for a diagnosis of chronic right wrist tendinitis.

In a November 30, 2015 report, received by OWCP on January 7, 2016, Dr. Wolf reported that appellant had reached maximum medical improvement with regard to her right wrist condition and was under no active treatment. He advised that she could not return to work. On February 8, 2016 Dr. Wolf diagnosed chronic tenosynovitis of the right hand and wrist, overuse syndrome, and chronic anxiety. He advised that the conditions were still present, were not expected to resolve, and were disabling. Dr. Wolf continued that appellant could not return to her full-time, limited-duty job due to her inability for prolonged pushing/pulling, lifting over 10 pounds continuous or carrying over four hours per day during an eight-hour day, noting that repetitive movements of fingers and wrists were painful and limited her workplace functioning. He advised that current treatment included rest, stress avoidance, home exercise, wrist splint use, medication, and physical therapy when needed. Dr. Wolf concluded that appellant was permanently disabled for all work.

At the March 21, 2016 hearing, appellant testified that she stopped work and went on disability retirement in 2013 because her modified duties and activities of daily living caused right wrist pain. She also stated that she was forced to work outside her restrictions.

By decision dated June 1, 2016, an OWCP hearing representative found that appellant submitted insufficient medical evidence to establish her claim for disability compensation for the period August 26 to December 20, 2013 and affirmed the March 14, 2014 decision.

### **LEGAL PRECEDENT**

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 establishes that light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part

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<sup>5</sup> Appellant also submitted physical therapy treatment notes. The record also includes medical evidence regarding appellant's claim for exposure to chemical irritants, adjudicated by OWCP under File No. xxxxxx024. *Supra* note 3.

of this burden of proof, 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 light-duty requirements.<sup>6</sup>

### ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she was totally disabled for intermittent periods between August 26 and December 20, 2013 caused by the accepted right wrist tendinitis. OWCP accepted the right wrist claim on April 25, 1996. Appellant performed modified work and missed intermittent periods until she claimed additional total disability compensation beginning August 26, 2013.

Medical opinion evidence submitted by appellant, to support her claim for compensation, should reflect a correct history and offer a medically-sound explanation by the physician of how the modified duties she was performing when she stopped work and physiologically caused or aggravated the accepted right wrist tendinitis.<sup>7</sup> Appellant submitted insufficient evidence in this case.

The record indicates that appellant began treatment with Dr. Wolf in September 2002. In a November 10, 2012 report, Dr. Wolf advised that her condition had slowly worsened over the past year. He diagnosed right wrist chronic tendinitis and overuse syndrome. Dr. Wolf provided restrictions of no pushing and pulling, and no lifting over 10 pounds regularly or 30 pounds intermittently. Casing of mail was restricted to four hours in an eight-hour shift. On August 29, 2013 Dr. Wolf advised that appellant was unable to perform modified work duties involving hand and wrist movement for periods from July 15 to August 18, 2013. He also reported that she had a recent motor vehicle accident with a neck and head injury, from which she had recovered, and concluded that she should continue to follow her work restrictions.

On September 4, 2013 Dr. Wolf described work restrictions of no prolonged pulling, pushing, or lifting over 10 pounds continuously or 30 pounds intermittently. Carrying was restricted to four hours daily. Dr. Wolf advised that repetitive movements of fingers and wrists would cause renewed disability due to right wrist and hand swelling, sensitivity, and pain. He recommended disability retirement. In a January 7, 2014 report, Dr. Wolf merely advised that appellant had “been ill or injured and unable to work” on the following days: October 25, November 12, 13, 15, 30, and December 2, 5, 7, 9, 11, 14, 16, and 20, 2013, for a diagnoses of chronic right wrist tendinitis.

The medical reports of Dr. Wolf do not exhibit specific knowledge of the modified duties appellant was performing prior to the period of claimed disability. He did not provide an explanation regarding why her restrictions changed between October 2012 and August 2013. Dr. Wolf also did not discuss with any detail appellant’s motor vehicle accident in the summer of 2013. While he later advised on November 30, 2015 and February 8, 2016 that appellant could not return to work at that time, he did not discuss the period of claimed disability that ended on December 20, 2013 when appellant retired on disability. To meet her burden of proof, the

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<sup>6</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>7</sup> *Id.*

medical evidence submitted should reflect a correct history, and the physician should offer a medically-sound explanation of how the specific duties appellant performed in her modified position caused or aggravated the claimed condition such that she became totally disabled.<sup>8</sup>

The Board concludes that Dr. Wolf's opinion is of insufficient rationale to establish that appellant was totally disabled from her modified duties for intermittent periods from August 26, 2013 until she retired on December 20, 2013.

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 did not meet her burden of proof to establish total disability for intermittent dates during the period August 26 to December 20, 2013 causally related to her accepted right wrist tendinitis.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2016  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> See *id.*