

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

L.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 15-1017
Issued: September 19, 2016**

Appearances:
*Thomas R. Uliase, Esq., for the appellant*¹
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 April 2, 2015 appellant, through counsel, filed a timely appeal from a December 5, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 that she sustained a recurrence of disability on January 6, 2014.

¹ 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

² 5 U.S.C. §§ 8101-8193.

On appeal counsel asserts that appellant sustained a recurrence of disability because the accepted conditions worsened and the employing establishment withdrew limited-duty work.

FACTUAL HISTORY

On September 5, 2013 appellant, then a 62-year-old mail handler, filed an occupational disease claim alleging that in July 2013 her duties aggravated bilateral arm and hand conditions. She did not stop work. OWCP adjudicated the claim under file number xxxxxx907.³ In an October 24, 2013 report, Dr. Scott M. Fried, a Board-certified osteopath specializing in orthopedic and hand surgery, referenced case number xxxxxx451. He stated that appellant's left wrist and hands continued to hurt, especially at work, where she was working full duty. Dr. Fried advised that left wrist physical examination demonstrated tenderness and a positive Phalen's test. Fisting was good. Dr. Fried diagnosed bilateral de Quervain's tenosynovitis; bilateral osteoarthritis of the carpometacarpal joint of the thumb, bilateral wrist TFCC wrist tears; radioulnar joint injury of the left wrist; lunotriquetral ligament injury of the right wrist; scapholunate ligament injury of the left wrist; status post bilateral median nerve carpal tunnel decompression with tenosynovectomy; overuse syndrome; and bilateral median, radial and carpal tunnel neuropathy, all of which were secondary to work activities. He advised that appellant could not perform regular work duties.

On December 2, 2013 OWCP accepted the present claim for bilateral radial styloid (de Quervain's) tenosynovitis and bilateral localized, primary osteoarthritis of the hand.

In a disability slip dated January 2, 2014, Dr. Fried advised that appellant was under his care for work-related injuries. He found that she could not perform repetitive grasping, gripping, keying, or machinery activities, and could not lift over four pounds. Dr. Fried referred her for a work capacity evaluation.⁴ On an appended handwritten note dated January 6, 2014, an employing establishment supervisor related that she met with appellant and a union representative. She informed appellant that there was no work available that met the physical limitations provided and that appellant could request light duty.

On January 17, 2014 appellant filed a recurrence claim (Form CA-2a), stating that she sustained a recurrence of disability on January 6, 2014 when she was told that the employing establishment had no work available within her restrictions.

In a report dated January 30, 2014, Dr. Fried noted appellant's complaint that her left wrist was worsening. He provided physical examination findings of swelling in the left ulnar wrist and provided left wrist range of motion findings. Dr. Fried reiterated his diagnoses, concluded that all conditions were work related, and advised that appellant could not return to regular work duties.

³ The record indicates that appellant has several other claims. Under file number xxxxxx600, OWCP accepted bilateral carpal tunnel syndrome and aggravation of a tear of the triangular fibrocartilage (TFCC) on the right. Under that claim, in a decision dated January 10, 2013, the Board found that a conflict in medical evidence existed regarding the degree of impairment of appellant's upper extremities and remanded the case to OWCP for referral to an impartial specialist. Docket No. 12-1270 (issued January 10, 2013). File number xxxxxx451 was accepted for a left wrist sprain that occurred on April 21, 2001. These other claims are not presently before the Board.

⁴ A work capacity evaluation dated January 2, 2014 is not found in the case record.

On March 19, 2014 OWCP informed appellant of the type of evidence needed to support her recurrence claim.

In treatment notes dated February 10, March 27, May 8, and June 30, 2014, Dr. Fried noted that appellant was not working and continued to have symptoms in both thumbs and radial wrist. He provided physical examination findings of left wrist dysesthesias, limited bilateral wrist and carpometacarpal (CMC) joint range of motion. Dr. Fried reiterated his diagnoses and advised that she remained disabled due to “noted and documented” injuries.

By decision dated June 4, 2014, OWCP denied appellant’s recurrence claim because the medical evidence of record was insufficient to establish how the accepted conditions had caused the claimed disability on January 6, 2014.

Appellant, through counsel, timely requested a hearing. In a June 30, 2014 report, Dr. Fried stated that appellant had continued symptoms in bilateral wrists and hands, more significant on the left. He noted negative Phalen’s and Tinel’s tests and good wrist range of motion. Dr. Fried reiterated his diagnoses and advised that appellant was treated with therapy and medication. He recommended a carpal tunnel help book and indicated that appellant continued to be disabled from work due to “noted and documented injuries.”

At the hearing, held on October 20, 2014, appellant testified that she had bilateral hand surgery in the past, but had returned to work. She described her job duties in 2013, stating that additional hand problems began that June. Appellant stated that she had to stop work in January 2014 because the employing establishment had no jobs available within the restrictions provided by Dr. Fried and had that she not returned to work. She stated that she had retired from the employing establishment and had a part-time job at Costco. Counsel noted that appellant had a separate claim, adjudicated under file number xxxxxx600, that was accepted for bilateral carpal tunnel syndrome and right TFCC tear.⁵ He asserted that because the employing establishment did not have work within her medical restrictions, a recurrence had clearly been established.

In an October 30, 2014 treatment note, Dr. Fried reported that appellant’s bilateral hand and wrist symptoms continued. He reiterated his diagnoses and indicated that appellant could not return to her usual job, noting that she had retired on October 1, 2014, and continued part-time work at Costco.

In a November 10, 2014 statement, appellant maintained that she could not think straight and had poor short-term memory due to an employment-related concussion that she had in 2007. She stated that she continued to work full duty because she needed the money and would not have continued working if she had known that it would injure her hands.

By decision dated December 5, 2014, an OWCP hearing representative affirmed the June 4, 2014 decision. He found the reports of Dr. Fried to be of insufficient rationale because the physician did not explain how the accepted conditions of thumb arthritis or radial styloid tenosynovitis worsened in January 2014 such that appellant could not perform regular duties.

⁵ *Supra* note 2.

LEGAL PRECEDENT

A recurrence of disability means “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁶ An individual person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁷ Where no such rationale is present, medical evidence is of diminished probative value.⁸

ANALYSIS

The Board finds that appellant has not established a recurrence of disability on January 6, 2014 under this claim, adjudicated by OWCP under file number xxxxxx907. Under this claim OWCP had accepted that appellant sustained bilateral radial styloid (de Quervain’s) tenosynovitis and bilateral localized, primary osteoarthritis of the hand.

In support of her recurrence claim, appellant submitted reports dated January 2 and 6, February 10, March 27, May 8, June 30, and October 30, 2014 in which Dr. Fried noted her complaints and described physical examination findings, especially with regard to her left wrist and hand. Dr. Fried listed numerous diagnoses which he advised were work-related and indicated that she was off work due to “noted and documented injuries.” However, he did not specifically relate appellant’s claimed recurrence of disability to the conditions accepted in this case.

A physician’s opinion on causal relationship between a claimant’s disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached.⁹ Without medical reasoning showing that the conclusion reached is sound, logical, and rational, a medical opinion is of diminished probative value.¹⁰ As Dr. Fried did not specifically discuss how the accepted conditions in this case caused appellant’s disability from work beginning January 6, 2014, his opinion is of insufficient probative value to meet her burden of proof.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the

⁶ 20 C.F.R. § 10.5(x); R.S., 58 ECAB 362 (2007).

⁷ S.S., 59 ECAB 315 (2008).

⁸ See *Ronald C. Hand*, 49 ECAB 113 (1997).

⁹ *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

¹⁰ See *E.A.*, 58 ECAB 677 (2007).

accepted injury.¹¹ In the case at hand, appellant did not submit sufficient evidence to show that the claimed recurrence and disability were causally related to the bilateral radial styloid tenosynovitis and bilateral localized primary osteoarthritis of the hand.

Counsel asserts that wage-loss compensation should be paid because the employing establishment withdrew limited-duty work. The record indicates that appellant did not stop work due to the accepted condition which is the subject of this claim and that the duty restrictions placed on her by Dr. Fried were not due to the accepted injury in the present claim.

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 failed to establish a recurrence of disability on January 6, 2014.

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 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

¹¹ *Supra* note 7.