

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

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**D.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Detroit, MI, Employer**

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**Docket No. 17-0625  
Issued: December 7, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On January 26, 2017 appellant filed a timely appeal from an October 27, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</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 has established total disability on October 3, 2015 and from October 23, 2015 through April 10, 2016 causally related to her accepted employment injury.

**FACTUAL HISTORY**

On May 27, 2015 appellant, then a 60-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 26, 2015 while delivering mail she sustained a right

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

wrist fracture when her knee gave out and she fell while descending the stairs of a porch. She stopped work on the date of injury.

Appellant sought medical treatment with Dr. Paul J. Drouillard, a Board-certified orthopedic surgeon. On June 8, 2015 Dr. Drouillard performed open reduction and internal fixation of the distal right radius. He restricted appellant from returning to work.

By letter dated June 10, 2015, OWCP informed appellant that initially her claim appeared to be for a minor injury and therefore had been administratively handled. However, as expenses had exceeded \$1,500.00, further evidence was necessary to establish her claim. Appellant was afforded 30 days to submit additional factual and medical evidence.

By decision dated July 15, 2015, OWCP denied appellant's traumatic injury claim finding that the evidence of record failed to establish that the May 26, 2015 employment incident occurred as alleged. It noted that she failed to respond to OWCP's development letter.

On October 13, 2015 appellant requested reconsideration of OWCP's decision and submitted additional factual and medical evidence in support of her claim.

By decision dated January 13, 2016, OWCP accepted the claim for nondisplaced fracture of right ulna styloid process, fracture of unspecified carpal bone right wrist, unspecified fracture of lower end of right radius, and closed fracture lower end of radius with ulna.<sup>2</sup>

Beginning January 27, 2016, appellant filed claim for compensation forms (Form CA-7) for leave without pay for intermittent periods of wage loss from July 11, 2015 through April 30, 2016.<sup>3</sup>

In support of her claim, appellant submitted medical reports from Dr. Drouillard, her treating physician. In an August 25, 2015 report, Dr. Drouillard reported that appellant complained of numbness in the right little and ring finger. He noted a history of thoracic outlet syndrome of the right upper extremity secondary to cervical rim. Findings on physical examination revealed tenderness over the ulnar nerve of the right elbow and positive Tinel's sign. Dr. Drouillard reported that x-rays revealed the fracture to be healed in satisfactory position and alignment. He recommended an electromyogram (EMG) and nerve conduction velocity (NCV) study of the right upper extremity to rule out ulnar nerve entrapment of the right elbow.

In a September 15, 2015 medical report, Dr. Drouillard provided examination findings pertaining to appellant's right wrist and restricted appellant from working.

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<sup>2</sup> The Board notes that appellant has five other traumatic injury claims and one prior occupational disease claim with dates of injury ranging from July 7, 1997 through September 15, 2014. The record before the Board contains no other information pertaining to appellant's prior claims.

<sup>3</sup> The record reflects that appellant requested wage-loss compensation for the period of July 11 through 23, September 26, October 3, and 23, 2015 and continuing. The Board notes that on February 8, 2015 OWCP approved wage-loss compensation for the period July 11 through 23, and September 26, 2015. It subsequently approved wage-loss compensation for the period April 11 through 30, 2016. Appellant retired on April 30, 2016.

In an October 1, 2015 medical report, Dr. Drouillard reported that appellant's September 21, 2015 EMG revealed evidence of a severe brachial plexopathy in the right upper extremity and mild bilateral carpal tunnel syndrome. He noted that a September 15, 2015 magnetic resonance imaging (MRI) scan of the cervical spine revealed disc osteophyte complexes at C4-C5, mild stenosis at C5-C6, and a disc osteophytes complex with a disc herniation on the right at C6-C7 pressing on the nerve root. Dr. Drouillard reported that this was likely the etiology of the pain in her ring and little finger. He diagnosed herniated nucleus pulposus C6-C7 on the right and status post open reduction and internal fixation of the distal right radius June 8, 2015. Dr. Drouillard provided work restrictions of lifting no more than five pounds.

In an October 29, 2015 report, Dr. Drouillard related that examination of appellant's right wrist revealed full range of motion. He noted that she was five months postsurgery and appeared to be making good progress. Dr. Drouillard noted that Dr. Walkiewicz had scheduled appellant for right knee replacement on November 17, 2015. He instructed her that she should continue with her right wrist therapy. Appellant informed him that she had decided not to go back to work and would be retiring from her job as a letter carrier.

In a January 21, 2016 medical report, Dr. Drouillard reported that appellant informed him that she had done well after her knee replacement, and she was two months postsurgery. Appellant complained of decreased strength in the right hand. Examination revealed full range of motion, but decreased grip strength on the right compared to the left. Dr. Drouillard requested that appellant restart physical therapy and follow up in six weeks. He restricted her from work and noted that she was considering retirement.

In a January 22, 2016 attending physician's report (Form CA-20), Dr. Drouillard diagnosed "closed distal radius fracture and ulnar of right wrist" as a result of the May 26, 2015 employment incident. Appellant was treated with surgery to stabilize the fractured wrist and occupational therapy once immobilization of the right wrist by short arm cast was discontinued. Dr. Drouillard noted her period of disability from May 26 through October 1, 2015 and January 21 through March 3, 2016. He explained that appellant was initially off work from May 26 through October 1, 2015 and then released to work with restrictions. At her January 21, 2016 follow-up appointment, appellant was restricted from returning to work due to her need for occupational therapy.

By letter dated February 9, 2016, OWCP informed appellant that the medical evidence of record was insufficient to support her claim for compensation for October 3, 2015 and ongoing compensation commencing October 23, 2015. Appellant was advised of the evidence needed to support her claim and was afforded 30 days to respond.

By letter dated March 9, 2016, appellant reported that Dr. Drouillard provided her work restrictions which she submitted to her supervisor. However, she remained off work because no work was available within her restrictions. At her next appointment on January 21, 2016, appellant complained of right arm weakness and Dr. Drouillard restricted her from returning to work. A subsequent x-ray was taken and the physician suggested that the hardware which was placed in her right wrist at the time of surgery needed to be removed.

In support of her claim, appellant submitted a March 3, 2016 medical report, duty status report (Form CA-17), and a disability statement from Dr. Drouillard. Dr. Drouillard reported that she complained of continued right wrist pain, numbness in the right ring and little finger, and neck pain. Physical examination findings revealed that appellant could extend the right wrist about 30 degrees compared to 45 on the left, decreased grip strength on the right compared to the left, and positive Tinel's sign in the right elbow consistent with cubital tunnel syndrome. Dr. Drouillard reported that x-rays of the right wrist demonstrated the fracture to be healed. However, he noted that the distal screws were closer to the joint than he would like and in this regard, was concerned that they could be causing her difficulty. As appellant still had right wrist discomfort, he recommended the hardware be removed. Dr. Drouillard further noted that prior September 21, 2015 EMG/NCV studies showed evidence of thoracic outlet syndrome on the right, ulnar neuropathy right elbow, and bilateral mild carpal tunnel syndrome. He diagnosed status post open reduction internal fixation of right wrist with persistent pain; ulnar neuropathy of the right elbow (cubital tunnel syndrome); thoracic outlet syndrome right upper extremity; mild bilateral carpal tunnel syndrome; history of cervical spine and chronic low back pain; status post right total knee arthroplasty November 17, 2015; and status post right shoulder rotator cuff repair. Dr. Drouillard noted that he would proceed with hardware removal of the right wrist and restricted appellant from work for six weeks. On the Form CA-17 he noted clinical findings of decreased range of motion and strength of the right upper extremity. Dr. Drouillard diagnosed healed fracture with irritating hardware and restricted appellant from returning to work for six weeks due to surgery for removal of hardware.

By letter dated March 22, 2016, OWCP requested the employing establishment advise whether appellant was provided with restrictions of lifting no more than five pounds, as noted on Dr. Drouillard's October 1, 2015 medical report, and whether it was able to honor these restrictions. It also requested that the employing establishment advise regarding whether it had any other restrictions on file for the period after October 1, 2015.

On April 1, 2016 OWCP received October 1 and 29, 2015 disability statements from Dr. Drouillard providing work restrictions. The October 1, 2015 note provided work restrictions of no lifting over five pounds and no overhead work. In an October 1, 2015 Form CA-17, Dr. Drouillard provided work restrictions of no lifting over five pounds and no overhead work due to fractured distal radius of the right wrist. The October 29, 2015 note provided work restrictions of no lifting over five pounds and no over shoulder lifting using the right upper extremity through November 17, 2015. The disability statements noted that, if the restricted job was not available, appellant must be placed on disability until her next appointment.

In an April 5, 2016 e-mail correspondence, L.H., appellant's supervisor, responded to OWCP's development letter and reported that when documentation for an on-the-job injury is received, it is mailed to injury compensation in Detroit. Due to privacy laws, no medical documentation is kept in the office and, as such, she had no medical documentation in appellant's file for the time period requested. In a supplemental e-mail, L.H. reported that when appellant's claim was denied, she elected to use sick leave and leave without pay. The documentation appellant provided noted that she was to be off work.

On April 11, 2016 Dr. Drouillard performed right wrist hardware removal and release of right wrist tenolysis flexor carpi radialis tendon. The surgery was approved by OWCP.

In an April 12, 2016 medical report, Dr. Drouillard reported that appellant was one day postsurgery from her right wrist hardware removal and should return for follow-up in two weeks. He noted that she was off work from May 26 through October 1, 2015. At that point, Dr. Drouillard released appellant to work with restrictions, but no work was available for her within her restrictions. As such, appellant was taken completely off work and rendered disabled. She failed to improve with conservative care and for this reason, underwent hardware removal with a tenolysis of the flexor capri radialis tendon on April 11, 2016.

By decision dated May 12, 2016, OWCP denied, in part, appellant's claim for wage-loss compensation for October 3, 2015 and ongoing compensation commencing October 23, 2015 and continuing, finding that the medical evidence of record failed to establish that she was disabled as a result of her accepted May 26, 2015 injury.<sup>4</sup>

By letter dated May 20, 2016, the employing establishment reported that appellant's application for retirement had been approved by the Office of Personnel Management effective April 30, 2016.

On June 8, 2016 appellant requested review of the written record before an OWCP hearing representative. In an accompanying narrative statement, she reported that she had provided her supervisor her work restrictions of no lifting over five pounds, but was informed by L.H. that no work was available for her. Appellant believed that this was because her claim had not yet been approved by OWCP in October 2015. She noted that she was already on limited duty for a prior workers' compensation claim from September 2014. Appellant explained that while she did have knee surgery when she was off work, it had nothing to do with why she was disabled as a result of her right wrist injury. She reported that when her claim was finally approved by OWCP, she sought a follow-up with Dr. Drouillard who placed her off work due to weakened grip strength. In March 2017, Dr. Drouillard decided that the hardware from her right wrist should be removed because it was causing problems with her healing process.

In support of her claim, appellant submitted a May 4, 2016 addendum to the April 11, 2016 operative report from Dr. Drouillard. Dr. Drouillard noted that at the time of removal of hardware from her right wrist, he encountered extensive scarring about the flexor capri radialis tendon. He opined that this was directly related to her initial injury and the required surgery. As such, Dr. Drouillard performed tenolysis of the flexor capri radialis tendon at the time of the hardware removal.

By decision dated October 27, 2016, OWCP's hearing representative affirmed the May 12, 2016 decision finding that the medical evidence of record failed to establish that appellant was disabled on October 3, 2015 and from October 23, 2015 through April 10, 2016 as a result of her accepted May 26, 2015 injury.

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<sup>4</sup> The Board notes that compensation filed for intermittent wage-loss prior to October 3, 2015 had been approved. It further approved wage-loss compensation for the period of April 11, 2016 through April 15, 2016 and subsequently approved wage-loss compensation for the period of April 16, 2016 through April 30, 2016.

## LEGAL PRECEDENT

Under FECA,<sup>5</sup> the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Whether a particular injury causes an employee to be disabled and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.<sup>7</sup>

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 resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>8</sup> This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations.<sup>9</sup>

OWCP is not a disinterested arbiter, but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation to see that its administrative processes are impartially and fairly conducted.<sup>10</sup> Although the employee has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>11</sup>

## ANALYSIS

The Board finds that the case is not in posture for decision.<sup>12</sup>

On May 26, 2015 appellant sustained a work-related right wrist fracture and stopped work immediately following the injury. On June 8, 2015 Dr. Drouillard performed an open reduction with internal fixation of the distal right radius and restricted appellant from returning to work. On October 1, 2015 he released her to work with restrictions of no lifting over five pounds.

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<sup>5</sup> *Supra* note 1.

<sup>6</sup> *See Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>7</sup> *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

<sup>8</sup> 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

<sup>9</sup> *Id.*

<sup>10</sup> *Richard F. Williams*, 55 ECAB 343, 346 (2004); *Thomas M. Lee*, 10 ECAB 175, 177 (1958).

<sup>11</sup> *D.N.*, Docket No. 07-1940 (issued June 17, 2008); *Mary A. Barnett*, 17 ECAB 187, 189-90 (1965).

<sup>12</sup> *T.B.*, Docket No. 13-1400 (issued June 19, 2014).

The record reflects that OWCP initially denied appellant's traumatic injury claim on July 15, 2015. It subsequently accepted the claim by decision dated January 13, 2016 for nondisplaced fracture of right ulna styloid process, fracture of unspecified carpal bone right wrist, unspecified fracture of lower end of right radius, and closed fracture lower end of radius with ulna.

Appellant alleged that she had submitted Dr. Drouillard's October 1, 2015 work restrictions to her supervisor and remained off work because no work was available within her restrictions. By letter dated March 22, 2016, OWCP requested that the employing establishment advise as to whether appellant had provided Dr. Drouillard's October 1, 2015 work restrictions of lifting no more than five pounds, and whether it was able to honor these restrictions.

The Board notes that, while OWCP attempted to develop the claim, it failed to obtain a response from the employing establishment as to whether appellant had provided her October 1, 2015 work restrictions and whether it was able to accommodate these restrictions. The record remains unclear regarding whether the employing establishment could accommodate appellant on or after October 1, 2015.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup> Because the record lacks sufficient evidence for the Board to render an informed decision, the case shall be remanded to OWCP for further development.

### **CONCLUSION**

The Board finds that this case is not in posture for decision regarding whether appellant's employment injury caused disability on October 3, 2015 and from October 23, 2015 through April 10, 2016.

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<sup>13</sup> A.A., 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 27, 2016 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision.

Issued: December 7, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board