

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

K.B., Appellant	)	
	)	
and	)	<b>Docket No. 18-0226</b>
	)	<b>Issued: August 6, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Port Huron, MI, 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:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 13, 2017 appellant, through counsel, filed a timely appeal from a September 27, 2017 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.

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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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish total disability from work for the period January 23, 2013 to February 7, 2014 causally related to her accepted employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the prior Board decision are incorporated herein by reference. The relevant facts are set forth below.

On January 29, 2013 appellant, then a 45-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that on January 23, 2013 she first became aware of her injury and realized its relationship to her federal employment as she had the same symptoms as a result of a previous injury.<sup>4</sup> In a January 30, 2013 narrative statement, she claimed that she was awakened by pain running from her left shoulder to her left fingertips. Appellant claimed that she experienced tingling in her hand which she attributed to overreaching while casing mail at work.

OWCP initially denied the claim by decision dated April 2, 2013, finding that the evidence of record was insufficient to establish the claimed events.

Appellant, through counsel, requested a telephone hearing before an OWCP hearing representative and by decision dated November 6, 2013, the hearing representative modified the prior decision to reflect that the evidence of record was sufficient to establish that she performed the alleged work duties. Subsequently, OWCP accepted her claim for left carpal tunnel syndrome and authorized left carpal tunnel release performed on April 18, 2014.

On January 22 and 29, 2014 appellant filed claims for compensation, CA-7 forms, requesting compensation for leave without pay from January 23, 2013 to February 7, 2014. On the reverse side of the claim form, the employing establishment noted that she had stopped work on January 25, 2013. It also noted that it had removed appellant from employment effective April 15, 2013 due to her lack of attendance.

In a letter dated March 17, 2014, Dr. Antonio Colombo, an attending Board-certified internist, noted that appellant had a history of left hand carpal tunnel and left hand pain due to work. He also noted her current medical treatment, which included wearing a brace as often as possible and taking pain medication, and resultant restrictions and side effects. Dr. Colombo maintained that appellant's medications caused her incapacity for work.

By decision dated April 23, 2014, OWCP denied appellant's claim for a recurrence of disability from January 23, 2013 to February 7, 2014. It found that the medical evidence of record failed to establish that she was disabled from work during the claimed period as a result of her

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<sup>3</sup> Docket No. 16-1880 (issued July 24, 2017).

<sup>4</sup> The record indicates that, on the filing date of her occupational disease claim, appellant was performing light-duty work with no use of her left hand and wrist. The record reflects that OWCP has not combined the current claim with any prior claim.

accepted employment injury. OWCP further found that the evidence of record was insufficient to establish that appellant's claimed disability was due to a change or withdrawal of her light-duty assignment. Appellant, through counsel, requested a telephone hearing before an OWCP hearing representative and by decision dated January 30, 2015, a second OWCP hearing representative set aside the April 23, 2014 decision and remanded the case to OWCP for further development of the medical evidence. She found that while the medical opinion of Dr. Colombo regarding the cause of appellant's disability for work was insufficient to discharge appellant's burden of proof to establish total disability during the claimed period, it was sufficient to require referral to a second opinion physician.

On remand, OWCP, referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, for a second opinion examination. In a May 15, 2015 report, Dr. Obianwu reviewed her medical record, the SOAF, and provided a history of the accepted employment injury. He noted appellant's current complaints of bilateral hand, elbow, wrist, and neck pain. Dr. Obianwu reported normal findings on examination of the left hand, left wrist, neck, and bilateral shoulders and elbows. He diagnosed resolved carpal tunnel syndrome of the left wrist and hand, normal shoulder, and normal cervical spine. Dr. Obianwu reasoned that the left carpal tunnel syndrome had resolved as none of the provocative tests for making such a diagnosis was positive in the left hand. More importantly, he reasoned that there was no atrophy of the thenar eminence. Dr. Obianwu maintained that there was no single objective finding that would lead any examiner to consider the presence of this entity. He advised that there was no medical evidence to indicate that appellant was totally disabled from January 2013 to February 2014. Appellant had left carpal tunnel syndrome, but could work with restrictions. She had the same problem on the right side in 2011 and worked with restrictions until her surgery. Dr. Obianwu noted talk about dizziness and difficulty controlling her steering, but found it difficult to see how carpal tunnel syndrome in one hand could be manifested by such a wide range in symptomatology as described by appellant. He concluded that she could perform her duties as a rural carrier without restrictions. Dr. Obianwu recommended that appellant wear wrist/forearm braces at night due to her surgery on both hands. He also recommended that she discontinue use of the pain killer Norco as he did not find anything on her musculoskeletal examination to justify the use of this potent narcotic analgesic agent.

By decision dated June 5, 2015, OWCP denied appellant's claim for a recurrence of disability for the period January 23, 2013 to February 7, 2014 based on Dr. Obianwu's opinion. Counsel requested another telephone hearing before an OWCP hearing representative and by decision dated May 5, 2016, a third OWCP hearing representative affirmed the June 5, 2015 decision. She found that Dr. Obianwu's report was sufficiently rationalized to establish that appellant was not totally disabled from work during the claimed period due to her accepted work injury.

On May 16, 2016 appellant, through counsel, requested reconsideration and submitted an undated letter from Dr. Colombo. In the undated letter, Dr. Colombo noted a history of his treatment of appellant and referenced his prior letter of March 2014, maintaining that he had explained the reasons why he placed her off work for an extended period of time. He indicated that, postoperatively, she related that she had weakness and occasional numbness in her left hand. Dr. Colombo also indicated that appellant had weakness in her left hand on a Jamar dynamometer testing, which was normal for her current age. He also disagreed with Dr. Obianwu's finding that

she had no evidence of pathology. Dr. Colombo found that appellant still had weakness in her hand, which was one of her initial complaints, and her history was still positive for the condition. He maintained that the only objective proof of the condition would be another electromyogram (EMG). Dr. Colombo noted that appellant's job required her to lift boxes weighing 70 pounds and related that with her left hand strength being half of normal she should be restricted from performing such a task. He concluded that Dr. Obianwu was unaware of her other medical problems, and thus, his comment regarding her pain medicine use was unfortunate.

By decision dated August 12, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim. It found that her request for reconsideration neither raised substantive legal questions, nor included new and relevant evidence. Subsequently, on September 22, 2016 appellant appealed to the Board.

By decision dated July 24, 2017, the Board set aside the August 12, 2016 decision and remanded the case to OWCP for further merit review of appellant's claim for total disability wage-loss benefits for the period January 23, 2013 to February 7, 2014. The Board found that Dr. Colombo's undated report constituted relevant and pertinent new medical evidence.

On remand OWCP conducted a merit review of appellant's claim. By decision dated September 27, 2017, it denied modification of its prior decision. OWCP reviewed Dr. Colombo's undated report, which it had been directed to review by the Board, and found that it was insufficiently rationalized to establish that appellant was totally disabled from work for the period January 23, 2013 to February 7, 2014 due to her accepted employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury.<sup>7</sup>

Whether a particular injury causes an employee to be disabled from employment 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>8</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence addressing the specific dates of disability for which compensation is claimed.

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>8</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>10</sup> Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical 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 claimant.<sup>11</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she was totally disabled from work for the period January 23, 2013 to February 7, 2014 due to her accepted employment injury.

On July 24, 2017 the Board reviewed an undated report of Dr. Colombo. The Board found that his report constituted relevant and pertinent new evidence, and thus, set aside OWCP's August 12, 2016 decision which had denied appellant's request for reconsideration under 5 U.S.C. § 8128. The Board remanded the case for OWCP to conduct a merit review as to whether she had met her burden of proof to establish total disability from work for the period January 23, 2013 to February 7, 2014 causally related to the accepted employment injury.

After conducting a merit review, OWCP issued a September 27, 2017 decision, finding that appellant had not met her burden of proof to establish total disability from work for the period January 23, 2013 to February 7, 2014 due to the accepted employment-related left carpal tunnel syndrome. It determined that Dr. Colombo's report was insufficiently rationalized to outweigh the weight accorded to the May 15, 2015 report of Dr. Obianwu, an OWCP referral physician.

Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, causal relationship between her claimed disability for that period and the

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<sup>9</sup> *Amelia S. Jefferson, id.*

<sup>10</sup> *Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).*

<sup>11</sup> *Leslie C. Moore, 52 ECAB 132 (2000).*

<sup>12</sup> *Dennis M. Mascarenas, 49 ECAB 215 (1997).*

accepted conditions.<sup>13</sup> The Board finds that she has failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted injury.<sup>14</sup>

The Board finds that the opinion of Dr. Obianwu represents the weight of the medical evidence on whether appellant was totally disabled from January 23, 2013 to February 7, 2014 due to her accepted employment injury. In his May 15, 2015 report, Dr. Obianwu opined that her left wrist carpal tunnel syndrome had resolved and that there was no medical evidence to indicate that she was totally disabled from January 2013 to February 2014. He examined appellant and reported normal findings on examination of the left hand, left wrist, neck, and bilateral shoulders and elbows. Dr. Obianwu explained that none of the provocative tests for making a diagnosis of left wrist carpal tunnel syndrome was positive in the left hand. He related that, more importantly, there was no atrophy of the thenar eminence. Dr. Obianwu reasoned that there was no single objective finding that would lead any examiner to consider the presence of this entity. He concluded that appellant could perform her duties as a rural carrier without restrictions.

The Board finds that Dr. Obianwu's report represents the weight of the medical evidence and establishes that appellant was not totally disabled from work for the period January 23, 2013 to February 7, 2014. Dr. Obianwu's opinion is based on a proper factual and medical history as he reviewed the SOAF and medical record. He also related his comprehensive examination findings in support of his opinion that appellant could perform her usual job without restrictions.

Appellant relies upon the medical opinion of Dr. Colombo to establish that her disability from work during the claimed period was due to her accepted work injury. Dr. Colombo, attempted to explain in his undated report why she was totally disabled from January 2013 to February 2014 due to her accepted work-related left carpal tunnel syndrome. Dr. Colombo noted that, while Dr. Obianwu found no evidence of pathology, he found weakness in appellant's hand on testing with a Jamar dynamometer, noting that this was one of her initial complaints and it had not resolved postsurgery. He advised that her history was still positive for a carpal tunnel condition. Dr. Colombo recommended that appellant undergo another EMG as the only objective proof of her condition. He maintained that, since her left hand strength was only half of normal, she should be restricted from lifting 70-pound boxes at work. Dr. Colombo further maintained that, Dr. Obianwu's comment regarding her pain medicine use was unfortunate as he was not aware of her other medical problems. The Board finds that the opinion of Dr. Colombo is insufficiently rationalized. Dr. Colombo's finding of a continuing left carpal tunnel condition is speculative as he recommended additional diagnostic testing to substantiate this condition.<sup>15</sup> Moreover, he did not sufficiently explain how any continuing condition or disability and the lifting work restriction were causally related to the accepted employment injury. The Board has held that a medical opinion not supported by medical rationale is of little probative value.<sup>16</sup> Thus, for these reasons, Dr. Colombo's report is insufficient to meet appellant's burden of proof.

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<sup>13</sup> *Amelia S. Jefferson, supra* note 8.

<sup>14</sup> *Alfredo Rodriguez, 47 ECAB 437 (1996).*

<sup>15</sup> *Debra K. Orley, Docket No. 04-0350 (issued March 24, 2004).*

<sup>16</sup> *C.B., Docket No. 09-2027 (issued May 12, 2010); S.E., Docket No. 08-2214 (issued May 6, 2009).*

As noted, appellant must submit reasoned medical evidence directly addressing the specific dates of disability from work for which she claims compensation.<sup>17</sup> She did not provide medical evidence containing a rationalized opinion supporting that she could not work during the period January 23, 2013 to February 7, 2014 due to her accepted condition, and thus did not meet her burden of proof.

On appeal, counsel contends that OWCP failed to adjudicate the claim in accordance with the causation standard. He further contends that it also failed to give due deference to an attending physician's findings. Counsel requests that the Board take specific corrective action rather than simply remand the claim. However, as discussed above, Dr. Colombo, did not provide a rationalized opinion sufficient to show that appellant's disability during the claimed period was causally related to the accepted employment-related injury.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish total disability from work for the period January 23, 2013 to February 7, 2014 due to her accepted employment injury.

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<sup>17</sup> See *K.A.*, Docket No. 16-0592 (issued October 26, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2018  
Washington, DC

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

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

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