

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

E.B., Appellant)	
)	
and)	Docket No. 17-1467
)	Issued: July 26, 2018
U.S. POSTAL SERVICE, BULK MAIL)	
CENTER, Richmond, CA, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 21, 2017 appellant, through counsel, filed a timely appeal from a May 4, 2017 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 the claim.³

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 *et seq.*

³ The record provided to the Board includes evidence received after OWCP issued its May 4, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of total disability during the period November 21, 2015 through March 8, 2016 causally related to her accepted December 6, 2006 employment injury.

FACTUAL HISTORY

On December 6, 2006 appellant, then a 48-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging left thumb and wrist injury caused by pulling mail down and keying sacks of mail weighing 70 pounds.

By letter dated December 21, 2006, OWCP advised that the claim would be developed as an occupational disease claim as the work factors cited were repetitive in nature. It accepted the claim for left wrist/hand tendinitis/radial styloid tenosynovitis. Appellant worked in a full-time modified work capacity from December 1, 2006 until November 16, 2009, when the employing establishment could no longer accommodate her restrictions. OWCP paid her wage-loss compensation benefits on the periodic rolls, effective December 20, 2009. Appellant returned to modified work for eight hours per day on February 9, 2015.

In a March 19, 2015 report, Dr. Michael Hebrard, a Board-certified physical medicine and rehabilitation specialist, diagnosed de Quervain's tenosynovitis. He advised that appellant was to remain on modified duty with restrictions.

In an April 30, 2015 report, Dr. Hebrard indicated that appellant's functional deficits in her left wrist were consistent with the ongoing underlying degenerative changes in the first carpometacarpal (CMC) joint. He continued to restrict her to sedentary work with limitations related to the left upper extremity.

On May 15, 2015 Dr. Hebrard saw appellant for an "urgent unscheduled appointment." He opined that the significant flare up of her left shoulder, elbow, forearm, wrist, and finger swelling and inflammation was an ongoing functional impairment due to her underlying preexisting condition. There was no intervening cause; rather, it was a natural progression of the disease pathology. Dr. Hebrard noted that results seen on the February 2015 left wrist magnetic resonance imaging (MRI) scan were consistent with the acute exacerbation of appellant's condition. He noted that she was disabled for a few days as she had residual functional deficits with restricted range of motion of the left shoulder, left elbow, and left wrist. Dr. Hebrard released appellant to return to work on May 18, 2015 with her previous restrictions.

In an October 30, 2015 work restriction note, Dr. Hebrard assigned permanent work restrictions for use of the left arm.

In a November 20, 2015 progress note, Dr. Hebrard indicated that on November 13, 2015, appellant was sitting at her desk at work and suffered direct trauma to her left elbow and wrist. He diagnosed ulnar neuritis of the left elbow, aggravation of the left wrist de Quervain's tenosynovitis, and carpal tunnel syndrome. Dr. Hebrard noted that appellant suffered blunt trauma to the elbow which caused subsequent compression against the ulnar nerve. In an attempt to brace herself,

appellant had also sprained her wrist with the extension action of the left wrist, which was previously injured. She had ongoing issues with nerve root entrapment of the elbow and the left wrist and the November 13, 2015 trauma caused a significant amount of swelling of the left wrist. Dr. Hebrard ordered an x-ray and MRI scan of the left elbow. He opined that appellant would remain temporarily totally disabled until she underwent the MRI scan due to the increased pain and swelling. In a November 20, 2015 work restriction note, Dr. Hebrard indicated that she was temporarily totally disabled until the next appointment due to right wrist and elbow exacerbated flare up. In a November 20, 2015 work excuse note, he noted that appellant was temporarily totally disabled from November 20, 2015 to January 6, 2016.

In a January 6, 2016 report, Dr. Hebrard diagnosed radial styloid tenosynovitis (de Quervain). He indicated that appellant had a significant chronic disabling condition of the abductor pollicis longus and extensor pollicis brevis tendon of the left wrist versus the radial styloid tenosynovitis which was a chronic condition. Dr. Hebrard opined that her condition was causally related to the factors of her occupational injury which were still present and disabling.

In a February 17, 2016 report, Dr. Hebrard diagnosed radial styloid tenosynovitis (de Quervain). He opined that appellant's condition was still present and medically disabling. Dr. Hebrard indicated that there had been a material change in her grip strength, increased swelling, and stiffness in the left wrist. He also indicated that appellant was developing complex regional pain syndrome (CRPS).

In a February 25, 2016 report, Dr. Mathias A. Masem, a Board-certified orthopedic surgeon, noted that appellant returned for a follow up of her right wrist tendinitis after not being seen since May 2012.⁴ He noted that, in November 2015, she sustained a direct trauma to her left elbow and wrist when she was hit by a mail cart. Dr. Masem diagnosed primary osteoarthritis of the first CMC joint of the left hand. Dr. Masem noted that, as appellant's symptoms appeared to be remarkably disproportionate to her physical findings, this suggested some type of pain syndrome or otherwise psychological factors affecting the physical illness.

On March 14, 2016 appellant filed a recurrence claim (Form CA-2a) alleging a recurrence of disability on November 13, 2015. She stated that on November 13, 2015, her left hand and elbow were struck by a coworker's mail cart and that her left wrist had continued to swell and throb constantly. Appellant stopped work November 21, 2015 and returned to work on March 8, 2016.

On March 16, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for the period November 21, 2015 to March 16, 2016. The employing establishment indicated that she had returned to work on March 8, 2016 and was working within her medical restrictions.⁵

By development letter dated April 13, 2016, OWCP noted that appellant returned to work on February 9, 2015 in a modified capacity until stopping work on November 21, 2015. It advised

⁴ This appears to be a typographical error as it should refer to left wrist tendinitis.

⁵ OWCP continued to receive medical reports which pertained to appellant's medical status after March 9, 2016.

her of the type of evidence needed to establish her recurrence of disability claim. Appellant was afforded 30 days to submit the necessary evidence.

In a response received April 25, 2016, appellant alleged that she was primarily disabled from her December 6, 2006 injury.⁶ She asserted that she was still disabled from her original work injury when she was hit in her left elbow and hand by the mail cart on November 13, 2015. Appellant indicated that she had filed a claim for the November 13, 2015 work injury under File No. xxxxxx425.⁷

By decision dated July 13, 2016, OWCP denied appellant's recurrence claim for the period November 21, 2015 to March 8, 2016 as the evidence of record failed to establish that she was disabled from work due to a material change/worsening of her accepted work-related conditions without an intervening injury. It found that Dr. Hebrard repeatedly acknowledged that appellant's disability from work for the period November 21, 2015 to March 8, 2016 was due to the November 13, 2015 work incident.

Appellant continued to submit Form CA-7 claims for compensation for intermittent time lost from March 9, 2016 forward as she was only working six hours per day.⁸

On July 25, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In an August 8, 2016 report, Dr. Hebrard noted that appellant had ongoing residuals and disability from her occupational injury and could only work six hours a day with restrictions. He noted that she had an accepted December 6, 2006 work-related claim under File No. xxxxxx171, for which she continued to have ongoing problems and weakness in the left wrist with grasping, pinching, pushing, pulling, and lifting. Dr. Hebrard indicated that appellant was involved in a subsequent injury on November 13, 2015 where there was a direct trauma to the left elbow and the left wrist. Appellant had increased swelling, stiffness, and weakness as a result of the direct trauma of November 13, 2015. Dr. Hebrard noted that this was a new injury and that it caused a material change in her condition with increased weakness, stiffness, muscle spasms, and numbness in the left upper extremity which precluded her from being able to perform her eight-hour a day modified position. He opined that a material change occurred as a direct result of the trauma to the preexisting left wrist condition and to the elbow, which created a new injury. Dr. Hebrard also indicated that there was an aggravation of new condition of the left wrist, which ultimately was a new injury. He explained that there was a material change and worsening of her condition, which precluded appellant from grasping, pinching, pushing, pulling, reaching, and lifting, which was required in the course of her employment and rescaled back her work level. As a result, appellant continued to have ongoing functional weakness, stiffness, muscle spasms, weakness, swelling of

⁶ On May 27, 2016 appellant submitted CA-7 forms for intermittent time lost from March 9, 2016 forward as she was only working six hours per day.

⁷ Under OWCP File No. xxxxxx425, OWCP accepted a November 13, 2015 traumatic injury for contusion of the left shoulder, contusion of the left upper arm/elbow, and contusion of the left wrist.

⁸ In work restriction notes and progress notes of August 8, 2016, Dr. Hebrard indicated appellant's work restrictions on a six-hour day.

the left elbow, and left wrist and had not completely recovered. Dr. Hebrard concluded that she had suffered a chronic irreversible permanent aggravation of that left wrist and a chronic disabling condition of the left elbow as a result of the November 13, 2015 direct trauma. He submitted work restriction notes indicating that appellant could only work six hours a day with restrictions.

Evidence pertaining to appellant's November 13, 2015 claim, under File No. xxxxxx425, was received. In a November 13, 2015 report, Dr. Arnold Traynis reported that she was seen for pain of her left upper extremity after a cart was accidentally pushed into her by another coworker about an hour ago. Appellant was noted to have been seated and doing data entry. Dr. Traynis noted that she had a history of injury to the left upper extremity. Following the injury, appellant had swelling on the top of her wrist and she was unable to move her shoulder, elbow, or wrist due to pain. Dr. Traynis provided an assessment of contusion of left shoulder, contusion of left upper arm, and contusion of left wrist. He indicated that appellant had a flare up of prior injury from cart being pushed into her. Appellant was instructed to continue modified work. A November 13, 2015 duty status report was also provided. Other evidence pertaining to File No. xxxxxx425 included a November 16, 2016 report from Vila Phoulavan, PA, a physician assistant, which provided an assessment of left elbow contusion with forearm and a partial State of California report of occupational injury of illness.

In a November 10, 2016 report, Dr. Brendan Morley, a Board-certified anesthesiologist and interventional pain management specialist, noted that appellant had a cumulative trauma injury in 2006 and was diagnosed with left sided de Quervain tenosynovitis. Appellant was off work from 2010 through 2015 and returned to full duty in 2015. However, in November 2015, a coworker fell across her left arm, which caused left elbow pain and a worsening of the left wrist pain. Appellant was noted to be working six hours per day. Dr. Morley diagnosed lateral epicondylitis and de Quervain tenosynovitis. He noted that CMC arthralgia needed to be ruled out. From a pain management perspective, Dr. Morley indicated that he had nothing to offer. However, he felt that cognitive behavioral therapy may be beneficial.

In a December 9, 2016 report, Dr. Hebrard responded to appellant's recurrence claim. He noted that it was reasonable that her condition worsened due to an intervening cause. Dr. Hebrard also noted that appellant had continued to perform her work duties and that those duties contributed to the worsening. He explained that the performance of her duties led to increased stress which led to cumulative trauma to the tendons of the wrist. This process was consistent with a radial styloid tenosynovitis. Dr. Hebrard indicated that filing a claim for an occupational injury may be more appropriate than seeking a recurrence of disability.

By decision dated January 6, 2017, OWCP denied appellant's claim for a recurrence of disability for the period November 21, 2015 to March 8, 2016 as the evidence of record failed to establish that she was disabled from work due to a material change/worsening of her accepted work-related conditions without an intervening injury. It noted that she continued to submit CA-7 forms, even though a denial had been issued for recurrent disability from November 21, 2015 through March 8, 2016. OWCP indicated that it reviewed the claim and found that the medical evidence was insufficient to support a recurrence of disability as it suggested that the November 13, 2015 traumatic injury was a causative factor in appellant's condition and resultant disability.

On January 18, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

On January 26, 2017 the employing establishment offered appellant a modified position for six hours a day. Appellant refused the modified job offer. She began submitting Form CA-7 claims for compensation for total disability commencing January 23, 2017.

A telephonic hearing was held on March 15, 2017. Appellant was advised that only the recurrence claim for the period November 21, 2015 through March 8, 2016 would be addressed as she had returned to work for six hours per day on March 9, 2016. She was also advised that partial disability beginning March 9, 2016 was a separate issue from the recurrence claim.

By decision dated May 4, 2017, an OWCP hearing representative affirmed OWCP's January 6, 2017 and July 13, 2016 decisions. The hearing representative found that the medical evidence of record was insufficient to support that appellant's disability during the period November 21, 2015 through March 8, 2016, was a result of an objective worsening of her condition without intervening cause.⁹ The hearing representative noted that OWCP had not issued a formal decision regarding appellant's entitlement to wage-loss compensation for intermittent time lost beginning March 9, 2016 or for total disability commencing January 30, 2017.

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.¹⁰ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.¹¹

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 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.¹²

⁹ Appellant was advised to file CA-7 forms commencing November 21, 2015 under File No. xxxxxx425.

¹⁰ 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

¹¹ *Id.*

¹² *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

An employee who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is causally related to the accepted injury. This burden requires furnishing 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.¹³

ANALYSIS

The Board finds that appellant has not established a recurrence of total disability for the period November 21, 2015 through March 8, 2016 causally related to her accepted left hand/wrist tendinitis 2006 employment injury, without intervening cause.

A recurrence of a disability does not include a condition which results from a new injury, even if it involves the same part of the body previously injured or by renewed exposure to the causative agent of a previously sustained injury.¹⁴

In a November 13, 2015 report, Dr. Traynis provided an assessment of contusion of left shoulder, contusion of left upper arm, and contusion of left wrist after a cart pushed by a coworker accidentally struck appellant. He indicated that appellant had a flare up of her prior injury from the cart incident and instructed her to continue modified work. In a November 16, 2016 report, Vila Phoulavan, PA, a physician assistant, also noted the new injury of November 13, 2015 and instructed appellant to continue with her same restrictions.¹⁵ These reports do not establish that appellant sustained a spontaneous change in her medical condition, causing total disability as of November 21, 2016.

Dr. Hebrard evaluated appellant on November 20, 2015. He noted that she had sustained direct trauma to the left elbow and wrist on November 13, 2015 while at work. Dr. Hebrard noted that appellant suffered blunt trauma to the elbow where she was hit which caused subsequent compression against the ulnar nerve. Appellant had also sprained her wrist with the extension action of the left wrist, which was previously injured. Dr. Hebrard diagnosed ulnar neuritis of the left elbow, carpal tunnel syndrome, and an aggravation of left wrist de Quervain's tenosynovitis. He placed appellant off work due to pain and swelling. From the content of Dr. Hebrard's November 20, 2015 report, it appears that he was attributing appellant's disability to the November 13, 2015 new traumatic injury. This, by definition, is not a recurrence.¹⁶

¹³ S.S., 59 ECAB 315 (2008).

¹⁴ See P.C., Docket No. 11-112 (September 13, 2011).

¹⁵ See M.M., Docket No. 17-1641 (issued February 15, 2018); K.J., Docket No. 16-1805 (issued February 23, 2018); David P. Sawchuk, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

¹⁶ *Supra* note 14.

Dr. Hebrard continued to remove appellant from work in his January 6 and February 17, 2016 reports. In his February 17, 2016 report, he indicated that there had been a material change in her grip strength, increased swelling and stiffness in the left wrist, and that she was developing CRPS. However, Dr. Hebrard did not provide any opinion on the cause of appellant's current condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁷ A probative medical opinion from Dr. Hebrard is particularly warranted in this case since appellant had an intervening injury to the left elbow and wrist. He failed to provide any medical explanation, based on medical rationale, as to how her accepted condition had materially changed or how her disability arose without intervening injury.¹⁸

In his August 8, 2016 report, Dr. Hebrard opined that appellant's ongoing residuals and disability resulted from the November 13, 2015 new traumatic injury. He indicated that the November 13, 2015 traumatic injury had caused a material change in her condition with increased weakness, stiffness, muscle spasms, and numbness in the left upper extremity which precluded her from being able to perform her eight-hour a day modified position. Dr. Hebrard opined that a material change happened as a direct result of the trauma to the preexisting left wrist condition and to the elbow, which created a new injury. He indicated that there was an aggravation of new condition of the left wrist, which ultimately was a new injury. Dr. Hebrard explained that there was a material change and worsening of appellant's accepted condition which precluded appellant from grasping, pinching, pushing, pulling, reaching, and lifting, which was required in the course of her employment and rescaled back her work level. He concluded that she had suffered a chronic irreversible permanent aggravation of that left wrist and a chronic disabling condition of the left elbow as a result of the November 13, 2015 direct trauma and that appellant could only work six hours a day with restrictions. Dr. Hebrard, therefore, again supported a finding that appellant's condition after November 13, 2015 was not a spontaneous worsening of appellant's accepted 2006 injury, but was rather due to an intervening new event. As such he did not support appellant's recurrence claim.

In his February 25, 2016 report, Dr. Masem diagnosed primary osteoarthritis of the first CMC joint of the left hand. He noted the November 2015 traumatic injury. Dr. Masem also indicated that appellant's pain symptoms seemed out of proportion to her physical examination findings. However, he did not offer an opinion regarding disability commencing November 21, 2015 or why she was unable to work in any capacity due to her accepted condition as of that date.¹⁹ The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²⁰

On appeal, counsel argues that the decision is contrary to fact and law. In assessing medical evidence, the weight of a physician's opinion is determined by the opportunity for and

¹⁷ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁸ *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁹ *See Leslie C. Moore*, 52 ECAB 132 (2000).

²⁰ *Supra* note 17.

thoroughness of the examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale used to explain the conclusions reached.²¹ For the reasons given, none of the medical reports submitted in this case were of sufficient rationale to establish a recurrence of disability for the period November 21, 2015 through March 8, 2016 causally related to the accepted left hand/wrist tendinitis condition without intervening cause from the employment-related injury on November 13, 2015.

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 has not established a recurrence of total disability for the period November 21, 2015 through March 8, 2016 causally related to her accepted 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2018
Washington, DC

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

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

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

²¹ *L.G.*, Docket No. 09-1692 (issued August 11, 2010).