

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

D.G., Appellant	)	
	)	
and	)	<b>Docket No. 18-0597</b>
	)	<b>Issued: October 3, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Cleveland Heights, OH, 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 January 26, 2018 appellant, through counsel, filed a timely appeal from a December 11, 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 intermittent total disability commencing December 14, 2016 causally related to the accepted January 6, 2014 employment injury.

## FACTUAL HISTORY

On January 21, 2014 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured both hands, including her fingers, when delivering mail in cold weather on January 6, 2014. On April 22, 2014 OWCP accepted the claim for frostbite, bilateral hands. Appellant received continuation of pay from January 7 to February 20, 2014, and OWCP paid wage-loss compensation on the supplemental compensation rolls from February 21 to June 15, 2014. She returned to full-duty work on June 16, 2014.

On January 9, 2017 appellant filed a claim for compensation (Form CA-7) for intermittent disability beginning December 31, 2016. In support of her claim, she submitted a December 15, 2016 treatment note in which Dr. Daniel A. Breitenbach, an internist, noted complaints of a tingling, stinging sensation in all fingers that began on December 14, 2016. Dr. Breitenbach indicated that appellant's frostbite that occurred on January 6, 2014 was exacerbated on December 14, 2016. He noted that digits 2 through 5 of both hands blanched with pressure at the tips. Dr. Breitenbach diagnosed superficial frostbite with pain. On an attending physician's report (Form CA-20) also dated December 15, 2016, he indicated by checking a box with an "x" that the diagnosed condition was employment related due to delivering mail in the cold. On a duty status report (Form CA-17) also dated December 15, 2016, Dr. Breitenbach advised that appellant could not be outside in temperatures below 30 degrees.

By development letter dated January 17, 2017, OWCP indicated that it had received a time analysis form (Form CA-7a) noting that appellant lost six hours on January 5, 2017. It noted that appellant had been released from care in June 2014 and that to establish her current claim, she must provide evidence to support a worsening of the accepted condition without intervening cause. OWCP advised that, if appellant believed her current condition was due to a new work incident or incidents, she should file an applicable traumatic injury claim (Form CA-1) or occupational disease claim (Form CA-2). It afforded appellant 30 days to submit the necessary evidence.

In reports dated January 16, February 17, and March 23, 2017, Dr. Breitenbach noted appellant's continued complaints of tingling and pain in her fingertips and that she did not go outside if the temperature was below 30 degrees. He diagnosed superficial frostbite, subsequent encounter, and reiterated that she could not be outside in temperatures below 30 degrees.

Appellant also filed additional claims (Form CA-7) for compensation. Accompanying time analysis forms indicated that she claimed intermittent disability compensation from December 15, 2016 through March 14, 2017.

By decision dated April 24, 2017, OWCP denied the instant claim. It noted that, following her frostbite injury on January 6, 2014, appellant had returned to regular-duty work on June 6, 2014 and continued regular duty "for almost 18 months [sic] prior to her resumption of medical

care on December 15, 2016 with Dr. Breitenbach.<sup>3</sup> OWCP indicated that, based on the record, her current frostbite condition was due to new and intervening circumstances, either to a specific work event or incident during a single day or work shift, or to continued or repeated exposure to elements of the work environment over a period longer than one workday or shift. It recommended that she file a new claim for compensation.

On May 4, 2017 appellant, through counsel, timely requested a hearing before an OWCP hearing representative.

Dr. J. Robert Anderson, Board-certified in orthopedic and hand surgery, provided a May 12, 2017 report.<sup>4</sup> He noted that appellant returned almost three years after her last visit for follow-up of a severe frostbite injury to all fingers. Dr. Anderson indicated that all wounds had ultimately healed, and that on December 15, 2016 she delivered mail in the cold and developed significant sharp pain in her fingers. Hand examination demonstrated that skin of both hands was intact with no erythema, ecchymosis, or diffuse swelling, and no gross tissue loss. Fingernails were in place. Composite flexion was full with some subjective stiffness. There was full extension and tendons were intact by individual testing. Wrist and forearm motion was symmetric with no pain. There was no triggering, and Watson's and midcarpal shift tests were negative. Distal radial ulnar joint was stable. Sensation was intact to light touch in all distributions. Dr. Anderson diagnosed frostbite with tissue necrosis of both hands. He indicated that it was typical to have pain with cold exposure that would be more severe in people who had a past frostbite injury and agreed that the restrictions provided by Dr. Breitenbach were reasonable.

In April 26 and May 30, 2017 reports, Dr. Breitenbach reiterated his findings and conclusions. In an August 1, 2017 report, he noted that appellant had a new complaint of cramping in her foot, fingers, neck, and side of the abdomen that occurred the previous day at the end of her route and continued at home. Following physical examination, Dr. Breitenbach diagnosed strains of the right and left hands, left thumb, right and left ankles and foot, and neck.

During the hearing, held on October 11, 2017, appellant testified that in December 2016, when she delivered mail in the cold, her fingers became numb, even though she had on gloves. She maintained that this was due to frostbite, and that she missed intermittent periods of work when the temperature fell below 30 degrees.

Following the hearing, appellant submitted a November 20, 2017 treatment note in which Dr. Breitenbach noted that appellant again had irritation and tingling in both hands. Hand examination demonstrated redness of digits 2 through 5 in both hands distally on the volar surfaces. Dr. Breitenbach diagnosed superficial frostbite and recommended that she wear gloves. In a duty

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<sup>3</sup> June 2014 to December 2016 is a 30-month period.

<sup>4</sup> Dr. Anderson initially saw appellant on January 24, 2014 when he diagnosed frostbite, bilateral hands. He recommended that appellant wear gloves when outdoors. On February 14, 2014 Dr. Anderson indicated that extreme finger sensitivity could continue for several months. On February 28, 2014 he noted continued significant pain. On March 28 and April 25, 2014 Dr. Anderson indicated that appellant had been referred to pain management for continued pain. Appellant began pain management on May 23, 2014 and hand therapy on July 2, 2014. In the last report, dated August 8, 2014, Dr. Salim Hayek, Board-certified in anesthesiology and pain medicine, noted diagnoses of hand pain, frostbite, and sensory neuritis.

status report also dated November 20, 2017, he advised that appellant could not be outside if the temperature was below 30 degrees.

By decision dated December 11, 2017, an OWCP hearing representative denied appellant's claim for compensation for intermittent disability beginning December 14, 2016. She noted that there was no medical evidence for the period between a report dated August 8, 2014 and that of Dr. Breitenbach dated December 15, 2016, and concluded that the medical evidence of record, including Dr. Breitenbach's monthly reports and the May 12, 2017 report from Dr. Anderson, were devoid of any rationalized medical opinion indicating that appellant became unable to work in December 2016 due to the effects of the accepted January 6, 2014 employment-related frostbite injury.

### **LEGAL PRECEDENT**

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>5</sup> Furthermore, whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.<sup>6</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>7</sup> 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 employee.<sup>8</sup> Neither the mere 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>9</sup>

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<sup>5</sup> See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>6</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent total disability beginning December 14, 2016 causally related to the accepted January 6, 2014 employment injury.

Appellant submitted a number of reports from Dr. Breitenbach, an attending internist, dated December 15, 2015 to November 20, 2017 who noted appellant's complaint of tingling, numbness, and pain in her fingers. Dr. Breitenbach diagnosed frostbite and advised that appellant could not work in temperatures below 30 degrees. On a December 20, 2016 attending physician's report he indicated by checking a box marked "x" that the diagnosed condition was employment related due to delivering mail in the cold. Dr. Breitenbach, however, included no explanation of how this recurrence of symptoms was caused by the January 6, 2014 employment injury, which occurred almost three years prior.

Likewise, in his report dated May 12, 2017, Dr. Anderson merely described appellant's current complaints and indicated that it was typical to have pain with cold exposure. While he indicated that Dr. Breitenbach's restrictions were reasonable, neither physician indicated that appellant's finger symptoms rendered her totally disabled.

Medical evidence must be 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 which, in this case was the January 6, 2014 employment injury.<sup>10</sup> To establish that a claimed recurrence of a condition was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of causal relationship.<sup>11</sup> There is no medical evidence of record dated between August 8, 2014 and December 15, 2016.<sup>12</sup>

As noted by OWCP, in its April 24, 2017 decision, since there was a 30-month interval between appellant's return to full-duty work in June 2014 and her claim for compensation in December 2016, it would be reasonable to assume that her condition in December 2016 was caused by a new exposure. OWCP recommended that appellant file a new claim. The record before the Board does not indicate that this was done.

The Board notes that counsel's assertions on appeal regarding causal relationship are without merit and finds that the medical evidence of record is insufficient to meet appellant's burden of proof to establish her disability claim.

As appellant has not submitted sufficient rationalized medical opinion evidence to establish that she was disabled to work for intermittent periods beginning December 15, 2016 due to the January 6, 2014 employment injury, she has failed to establish that the claimed disability was

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<sup>10</sup> See *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

<sup>11</sup> *C.W.*, Docket No. 07-1816 (issued January 16, 2009).

<sup>12</sup> See *C.S.*, Docket No. 17-1345 (issued May 24, 2018).

employment related. She was thus not entitled to wage-loss compensation for the claimed periods.<sup>13</sup>

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 met her burden of proof to establish intermittent total disability commencing December 14, 2016 causally related to the accepted January 6, 2014 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 11, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2018  
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>13</sup> *N.R.*, Docket No. 14-114 (issued April 28, 2014).