

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

_____)	
J.C., Appellant)	
)	
and)	Docket No. 18-1474
)	Issued: March 20, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Minneapolis, MN, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 23, 2018¹ appellant filed a timely appeal from a January 23, 2018 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.³

¹ Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from January 23, 2018, the date of OWCP's last decision, was July 22, 2018, which is a Sunday. Pursuant to 20 C.F.R. § 501.3(f)(2), when the last day of the period so computed is a Saturday, Sunday, or Federal holiday, the period runs to the close of the next business day, which would be Monday, July 23, 2018. The appeal was received on Monday, July 23, 2018, rendering it timely.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence following the January 23, 2018 OWCP decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional condition of bilateral carpal tunnel syndrome causally related to the accepted employment injury; and (2) whether appellant has met her burden of proof to establish total disability for the period May 13 to June 23, 2017, causally related to her authorized surgeries for her bilateral thumb condition.

FACTUAL HISTORY

On December 15, 2000 appellant, then a 34-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed pain, cramping, and stiffness in both her hands due to repetitive grabbing and sorting mail. She noted that she first became aware of her condition on November 1, 2000 and realized that it resulted from her federal employment on December 11, 2000. Appellant worked modified duty.

By decision dated March 20, 2001, OWCP expanded the acceptance of the claim to include the right fourth trigger finger. By decision dated March 20, 2006, it again expanded the accepted conditions to include bilateral trigger finger.

On March 28, 2001 and February 20, 2002 appellant underwent authorized right ring finger trigger release and authorized trigger release of the right small and index fingers, respectively. On September 14, 2006 she underwent right long finger trigger release surgery. Appellant was periodically disabled from work and received wage-loss compensation from OWCP for intermittent periods of disability.

On November 5, 2012 appellant accepted a position as a modified clerk. By decision dated March 14, 2013, OWCP reduced her wage-loss compensation benefits to zero based on her actual wages as a modified clerk.⁴

Appellant continued to receive medical treatment. In a November 7, 2016 report, Dr. Stephen Olmsted, a Board-certified orthopedic surgeon, evaluated her for treatment of bilateral wrist and hand pain. Upon physical examination of appellant's bilateral upper extremities, he observed "a little bit of fullness" along the distal forearm and increasing numbness with nerve compression. Phalen's test was positive for numbness and tingling, more in the median nerve distribution. Dr. Olmsted diagnosed bilateral carpal tunnel syndrome. He continued to provide treatment for bilateral carpal tunnel syndrome and submitted a report and again diagnosed bilateral carpal tunnel syndrome and bilateral trigger thumb.

A December 19, 2016 electromyography (EMG) and nerve conduction velocity (NCV) study was consistent with bilateral mild carpal tunnel syndrome.

On March 30 and April 28, 2017 appellant requested authorization for carpal tunnel and trigger finger release surgeries. OWCP authorized the requested trigger finger release surgery. In

⁴ On April 1, 2015 OWCP granted appellant a schedule award for one percent permanent impairment of the left hand. The award ran for 2.44 weeks from May 7 to 24, 2014.

a May 15, 2017 operative report, Dr. Olmsted noted that appellant underwent bilateral trigger thumb release surgery.

In a May 24, 2017 report, Dr. Olmsted related that appellant was nine days post bilateral trigger thumb release surgery and was doing well. He noted active problems of flexor tenosynovitis of finger and numbness and tingling of the hand. Dr. Olmsted further reported that appellant had been diagnosed with carpal tunnel syndrome. He opined: “the same pathophysiology resulting in trigger finger also contributes to developing carpal tunnel syndrome. In my opinion, [appellant’s] work activities and employment conditions are a substantial contributing factor to developing the carpal tunnel syndrome, just as they have contributed to developing trigger fingers.” Regarding appellant’s work status, Dr. Olmsted reported a diagnosis of status post bilateral trigger thumb releases. He indicated that she was unable to work from May 15 to June 26, 2017.

On June 1, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for total disability for the period May 13 to 26, 2017. In a Form CA-7a, she noted that the reason for using leave was “surgery both thumbs.” Appellant filed additional wage-loss compensation claims (Forms CA-7) for continuing disability until June 23, 2017. On the CA-7a forms, she indicated that the reason for leave use was “surgery both hand trigger thumbs.”

By development letter dated June 19, 2017, OWCP advised appellant that the evidence of record was insufficient to support her claim for wage-loss compensation. It informed her of the factual and medical evidence necessary to establish total disability for the dates claimed and also provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.⁵

In a June 26, 2017 report, Dr. Olmsted indicated that appellant was doing well six weeks after bilateral trigger thumb release surgeries. He also noted that she still had carpal tunnel symptoms. Dr. Olmsted provided examination findings and noted a diagnosis of status post bilateral trigger thumb releases. He authorized appellant to work with restrictions beginning June 27, 2017.

On July 18, 2017, in response to a development letter, appellant related that on September 1, 2016 she began to experience severe pain and numbness in both hands and thumbs. She described the work activities, which she believed contributed to her consequential condition. Appellant asserted that the repeated use of her hands caused increasing pain and trigger symptoms in her thumb.

OWCP received several examination and operative reports from Dr. Olmsted dated December 15, 2000 to May 7, 2014. Dr. Olmsted reviewed appellant’s history and provided examination findings. He reported diagnoses of multiple digits trigger finger, bilateral hand flexor tenosynovitis, medial epicondylitis, and probable right carpal tunnel syndrome.

⁵ On June 16, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging that on September 1, 2016 she sustained a recurrence of her original November 1, 2000 employment injury. She submitted medical reports from Dr. Olmsted dated May 9 and November 27, 2013, and May 7, 2014. By decision dated July 10, 2017, OWCP accepted appellant’s recurrence claim for bilateral trigger finger.

By decision dated August 18, 2017, OWCP denied the expansion of the acceptance of appellant's claim to include the additional condition of bilateral carpal tunnel syndrome. It determined that the medical evidence of record was insufficient to establish that her bilateral carpal tunnel syndrome was causally related to her employment injury. OWCP also denied appellant's wage-loss compensation claim for total disability for the period May 13 to June 23, 2017. It found that the medical evidence submitted demonstrated that her total disability from work resulted from an unaccepted condition of bilateral trigger thumb.

On September 19, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a September 12, 2017 report, Dr. Olmsted related that appellant continued to have carpal tunnel syndrome and was symptomatic. He advised that "work activities aggravate [appellant's] carpal tunnel." Dr. Olmsted indicated that holding objects, scanning, and holding mail or packages for any length of time provoked numbness and tingling in her hand. Upon examination of appellant's bilateral hands, he observed that percussion over the carpal tunnel provoked paresthesia and that nerve compression test increased numbness and tingling. Dr. Olmsted diagnosed ongoing carpal tunnel syndrome symptoms. He related that, although appellant's carpal tunnel claim was denied, his opinion was that her work activities "have contributed, based on the repetitive nature of [appellant's] work and use with gripping, grasping, and lifting over time has been a contributing factor to developing the carpal tunnel syndrome and trigger thumbs."

OWCP also received December 15, 2000 and January 19, 2001 reports by Dr. Olmsted who diagnosed right ring finger trigger finger and probable right carpal tunnel syndrome.

By decision dated January 23, 2018, an OWCP hearing representative affirmed the August 18, 2017 decision. She found that the medical evidence of record was insufficient to establish causal relationship between appellant's employment and the diagnosed bilateral carpal tunnel condition. The hearing representative also denied appellant's wage-loss compensation claim for the period May 13 to June 13, 2017 finding that appellant's inability to work during the claimed period was not causally related to her accepted bilateral trigger finger condition.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁷ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁸

The medical evidence required to establish causal relationship between a claimed specific condition or period of disability and an employment injury is rationalized medical opinion

⁶ *Supra* note 1.

⁷ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁸ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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.¹⁰

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional condition of bilateral carpal tunnel syndrome causally related to the accepted employment injury due to factors of her federal employment.

Appellant submitted various medical reports by Dr. Olmsted. In a May 24, 2017 report, Dr. Olmsted related her complaints of numbness and tingling of the hand. He diagnosed bilateral carpal tunnel syndrome. Dr. Olmsted opined: “the same pathophysiology resulting in trigger finger also contributes to developing carpal tunnel syndrome ... [appellant’s] work activities and employment conditions are a substantial contributing factor to developing the carpal tunnel syndrome.” He further indicated in a September 12, 2017 report that holding objects, scanning, holding mail or packages for any length of time provoked numbness, and tingling in appellant’s hand. Dr. Olmsted further elaborated that “based on the repetitive nature of [appellant’s] work and use with gripping, grasping, and lifting over time has been a contributing factor to developing the carpal tunnel syndrome and trigger thumbs.” Although he described appellant’s repetitive employment duties and provided an affirmative opinion on causal relationship, his report does not contain sufficient explanation, based on medical rationale, of how any of her duties caused or contributed to her various medical conditions.¹² Dr. Olmsted did not explain the pathophysiological process of how repetitively gripping, grasping, and lifting over time caused or contributed to her bilateral carpal tunnel syndrome.

The December 19, 2016 EMG/NCV study is also insufficient to establish causal relationship as it contained no opinion on the cause of appellant’s carpal tunnel syndrome.¹³

⁹ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *Id.*

¹² *See M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

¹³ Reports of diagnostic tests lack probative value as they fail to provide an opinion on the causal relationship between a claimant’s employment and any diagnosed conditions. *See A.B.*, Docket No. 17-0301 (issued May 19, 2017).

As noted above, the medical evidence required to establish causal relationship between a claimed specific condition and an employment injury is rationalized medical opinion evidence.¹⁴ The Board finds that in this case appellant has not submitted sufficient rationalized medical evidence to establish causal relationship between her employment duties and her bilateral carpal tunnel syndrome.

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.

LEGAL PRECEDENT -- ISSUE 2

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹⁵ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹⁶ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.¹⁷

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁸ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.¹⁹

The Board has interpreted section 8103, which requires payment of expenses incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services.²⁰ An employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment. The rationale for this entitlement is that, during such required examinations and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.²¹

¹⁴ *Supra* note 8.

¹⁵ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁶ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁷ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁸ *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

¹⁹ *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

²⁰ *Y.H.*, Docket No. 17-1303 (issued March 13, 2018).

²¹ *Sean O'Connell*, 56 ECAB 195 (2004).

ANALYSIS -- ISSUE 2

The Board finds that appellant has met her burden of proof to establish total disability for the period May 13 to June 23, 2017, causally related to her authorized surgeries for her bilateral thumb condition.

Appellant filed several claims for wage-loss compensation for total disability during the period May 13 to June 23, 2017. She noted on the Forms CA-7a that she was unable to work because of “surgery both hand trigger thumbs.” OWCP denied appellant’s wage-loss compensation finding that her inability to work during the claimed period was for a new medical condition and for thumb surgery that was not causally related to her employment.

The Board finds, however, that the medical evidence of record has established that appellant was unable to work from May 13 to June 23, 2017 due to surgery performed on May 15, 2017 that was authorized by OWCP. On March 30 and April 28, 2017 appellant requested authorization for trigger finger release surgeries. The record contains documentation from OWCP indicating that on May 3 and 11, 2017 surgery was authorized for her bilateral trigger thumb condition. According to a May 15, 2017 operative report by Dr. Olmsted appellant underwent bilateral trigger thumb release surgery for a preoperative diagnosis of bilateral trigger thumbs.

As noted above, an employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment.²² In this case, appellant underwent authorized bilateral trigger thumb surgery on May 15, 2017. In a May 24, 2017 report, Dr. Olmsted evaluated her for post bilateral trigger thumb release surgery. He diagnosed status post bilateral trigger thumb releases and indicated that appellant was unable to work from May 15 to June 26, 2017 due to the authorized surgical procedures. The Board finds this medical evidence is sufficient to establish that she was entitled to wage-loss compensation for a period of temporary total disability incidental to the authorized May 15, 2017 surgery.²³ The case will be remanded for payment of wage-loss compensation for total disability during the period May 13 to June 23, 2017.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include the additional condition of bilateral carpal tunnel syndrome due to factors of her federal employment. The Board also finds that she has met her burden of proof to establish total disability for the period May 13 to June 23, 2017 causally related to her accepted bilateral trigger finger condition.

²² *Id.*

²³ *P.W. Docket 15-0716* (issued June 21, 2016); *Rose M. Thompson*, 33 ECAB 1947 (1982) (holding that any disability resulting from surgery authorized by OWCP is compensable).

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further development consistent with this decision of the Board.

Issued: March 20, 2019
Washington, DC

Christopher J. Godfrey, 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