

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

A.M., Appellant	)	
	)	
and	)	Docket No. 19-0138
	)	Issued: October 2, 2019
U.S. POSTAL SERVICE, POST OFFICE,	)	
Chula Vista, CA, Employer	)	
	)	

*Appearances:*  
Max Guest, 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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 24, 2018 appellant, through counsel, filed a timely appeal from a July 2, 2018 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.<sup>3</sup>

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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.*

<sup>3</sup> The Board notes that following the July 2, 2018 decision, OWCP received additional evidence. 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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish total disability for the periods December 2 to 6, 2016 and February 9 to March 3, 2017 causally related to her accepted employment injuries.

## FACTUAL HISTORY

On December 19, 2016 appellant, then a 41-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained injury due to factors of her federal employment including engaging in repetitive upper extremity motion.<sup>4</sup> She indicated that she first became aware of her claimed injury on December 2, 2016 and first realized its relation to factors of her federal employment on December 9, 2016. Appellant stopped work on December 2, 2016.

In January 2017 OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral shoulder joint sprains (unspecified).

On February 17, 2017 appellant filed a claim for compensation (Form CA-7) seeking wage-loss compensation for total disability from work for the period December 2, 2016 to March 3, 2017.

In support of her disability claim, appellant submitted a December 7, 2016 report from Dr. Payam Emdad, a Board-certified physical medicine and rehabilitation physician, who advised that appellant could perform modified work duties from December 7, 2016 to January 11, 2017 with restrictions on lifting, carrying, pushing, and pulling more than 20 pounds.

Appellant also submitted reports dated December 9, 2016 and January 6 and 20, and February 3, 2017 from Dr. Waldo Ferrer, a Board-certified internist and family practitioner, who indicated that appellant could perform modified work with restrictions on lifting, carrying, pushing, and pulling more than 10 pounds for the period December 9, 2016 to February 3, 2017. For this same period, Dr. Ferrer also noted, "No casing mail" and "No sorting [through] parcels."<sup>5</sup>

On February 8, 2017 the employing establishing offered appellant a limited-duty position as a modified rural carrier. The position involved casing and pulling down mail for up to two hours per day, and delivering mail (within a 10 pound limitation) for up to five hours per day. The position description indicated that appellant would case mail on her own route or other available assignments.<sup>6</sup> The position description further noted that appellant would also deliver Express Mail within weight limitations. The physical requirements of the position included lifting,

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<sup>4</sup> Appellant's rural carrier job required such duties as casing mail, loading mail tubs into a postal vehicle, and delivering mail.

<sup>5</sup> The respective periods that the reports imposed these restrictions were as follows: December 9, 2016 report (covering the period December 9, 2016 to January 6, 2017); January 6, 2017 report (January 6 to 20, 2017); January 20, 2017 report (January 20 to February 3, 2017); and February 3, 2017 report (February 3 to March 3, 2017).

<sup>6</sup> The position description further advised that appellant would self-manage the weight of mail trays or, if needed, request assistance to comply within her work limitations.

carrying, pushing, and pulling up to 10 pounds; engaging in simple grasping/fine manipulation for up to 5 hours per day; and standing, walking, twisting, and bending for up to 5 hours per day.

In a February 23, 2017 letter, a personnel officer for the employing establishment indicated that appellant had not contacted the manager of the employing establishment after he left a voice mail for her on February 8, 2017 instructing her to report to work on February 9, 2017.<sup>7</sup> She reported that appellant also had not contacted the manager after he sent her a letter on February 13, 2017 instructing her to report to work on February 14, 2017. The personnel officer asserted that appellant should not be compensated for the period commencing February 9, 2017 because work was available to her within the bio-mechanical restrictions delineated in the February 3, 2017 medical report of Dr. Ferrer.

On May 26, 2017 OWCP paid appellant wage-loss compensation for total disability for the period December 19, 2016 to February 8, 2017.

By decision dated May 26, 2017, OWCP found that appellant had not established disability for the periods December 2 to 18, 2016 and February 9 to March 3, 2017 due to her accepted employment injuries. With respect to the period February 9 to March 3, 2017, it advised that appellant's disability claim was denied because she refused the offered modified position for this period which was within her medical restrictions. OWCP asserted that the denial for this period was justified by OWCP's regulations at 20 C.F.R. § 10.500.<sup>8</sup>

On May 17, 2018 appellant, through counsel, requested reconsideration of the May 26, 2017 decision. Counsel argued that appellant established disability for the period December 2 to 18, 2016 because the medical evidence showed that she could only perform modified work and no modified work was available during this period. He also argued that appellant established disability for the period February 9 to March 3, 2017 because the modified work which was available to her commencing February 9, 2017 was not within her medical restrictions.

By decision dated July 2, 2018, OWCP affirmed its May 26, 2017 decision in part, and modified it in part. It determined that appellant had not established disability for the periods December 2 to 6, 2016 and February 9 to March 3, 2017 causally related to her accepted employment injuries. However, OWCP found that she had established employment-related disability for the period December 7 to 18, 2016. With respect to the denied period December 2 to 6, 2016, it found that appellant had not submitted medical evidence delineating a lessened work capacity. Regarding the accepted period December 7 to 18, 2016, OWCP determined that appellant had in fact submitted medical evidence establishing a lessened work capacity during this period per Dr. Emdad's December 7, 2016 report, but that the employing establishment had not

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<sup>7</sup> The record contains a February 8, 2017 e-mail in which the manager of the employing establishment advised a colleague that he had left a voice mail for appellant on February 8, 2017 instructing her to report to work on February 9, 2017.

<sup>8</sup> Because OWCP compensated appellant for wage loss during the period December 19, 2016 to February 8, 2017, this period of appellant's original wage-loss claim was not addressed in its May 26, 2017 decision.

provided modified work within her work restrictions.<sup>9</sup> With respect to the denied period February 9 to March 3, 2017, it found that appellant had in fact submitted medical evidence delineating a lessened work capacity during this period per Dr. Ferrer's reports (dated between December 9, 2016 and February 3, 2017), but that she refused modified work available during this period which was within her medical restrictions.<sup>10</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>11</sup> In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.<sup>12</sup> This meaning, for brevity, is expressed as disability for work.<sup>13</sup>

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>14</sup> The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.<sup>15</sup>

Section 10.500(a) of OWCP's regulations provides that benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee

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<sup>9</sup> The case record reflects that OWCP paid appellant wage-loss compensation on the daily rolls for the period December 7 to 18, 2016.

<sup>10</sup> OWCP again noted that its denial of appellant's claim for wage-loss compensation for this period was justified by OWCP's regulations at 20 C.F.R. § 10.500.

<sup>11</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>12</sup> *See* 20 C.F.R. § 10.5(f).

<sup>13</sup> *See S.W., supra* note 11. *See also A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Roberta L. Kaamoana*, 54 ECAB 150 (2002).

<sup>14</sup> *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

<sup>15</sup> *Id.*

had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.<sup>16</sup>

OWCP's procedures provide that, when a claimant is not on the periodic rolls, a claim for wage-loss compensation may be received on a Form CA-7 where a temporary light-duty assignment has been provided by the employing establishment. These procedures further provide that, when a formal loss of wage-earning capacity has not been issued, OWCP's claims examiner should follow certain specified procedures. If the evidence establishes that injury-related residuals continue and result in work restrictions, that light duty within those work restrictions was available, and that the employee was notified in writing that such light duty was available, then wage-loss benefits (effective the date of the written notification of light duty availability) are not payable for the period covered by the available light-duty assignment. Such benefits are payable only for any periods during which an employee's work-related medical condition prevent him or her from earning the wages earned before the work-related injury.<sup>17</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability for the period December 2 to 6, 2016 causally related to her accepted employment injuries, but that she has established disability for the period February 9 to March 3, 2017 causally related to those same accepted injuries.

The Board finds that, with regard to the claim for the period December 2 to 6, 2016, appellant has not submitted medical evidence establishing that she could not work due to residuals of her accepted employment injuries.<sup>18</sup> As noted above, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting causal relationship between disability claimed and a given employment injury.<sup>19</sup>

With respect to the period February 9 to March 3, 2017, OWCP advised that appellant's disability claim was denied because she refused available modified work for this period which was within her medical restrictions. It concluded that the denial for this period was justified by OWCP's regulations at 20 C.F.R. § 10.500.<sup>20</sup>

However, the Board finds that OWCP's denial of wage-loss compensation for the period February 9 to March 3, 2017 was not supported by the provisions of 20 C.F.R. § 10.500(a) because the employing establishment had not provided work to appellant for the period February 9 to

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<sup>16</sup> 20 C.F.R. § 10.500(a); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9a (June 2013).

<sup>17</sup> *Id.* at Chapter 2.814.9b.

<sup>18</sup> The Board notes that the December 7, 2016 report of Dr. Emdad provided work restrictions for the period December 7, 2016 to January 11, 2017.

<sup>19</sup> *See supra* note 14. *See also S.J.*, Docket No. 17-0828 (issued December 20, 2017).

<sup>20</sup> *See supra* notes 16 and 17.

March 3, 2017 which was within her medical restrictions.<sup>21</sup> The modified position available to appellant commencing February 9, 2017 required the casing of mail for up to two hours per day. However, in reports dated in early-2017, Dr. Ferrer explicitly indicated that appellant could not engage in the casing of mail during this claimed period of disability, *i.e.*, the period February 9 to March 3, 2017. This evidence shows that, during this period, appellant could not perform the rural carrier job she held on the date of injury. Therefore, appellant has submitted medical evidence establishing that she had disability for the period February 9 to March 3, 2017 and she is entitled to wage-loss compensation for this period.<sup>22</sup>

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability for the period December 2 to 6, 2016 causally related to her accepted employment injuries, but that she has established disability for the period February 9 to March 3, 2017 causally related to those injuries.

### ORDER

**IT IS HEREBY ORDERED THAT** the July 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: October 2, 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

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<sup>21</sup> *See id.*

<sup>22</sup> *See* 20 C.F.R. § 10.5(f) (providing that the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury).