

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

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O.C., JR., Appellant	)	
	)	
and	)	<b>Docket No. 20-0514</b>
	)	<b>Issued: October 8, 2020</b>
U.S. POSTAL SERVICE, BURBANK POST	)	
OFFICE, Burbank, CA, Employer	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 6, 2020 appellant filed a timely appeal from an October 22, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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> Appellant indicated that he was appealing from a March 11, 2019 merit decision. The Board notes that for final adverse decisions of OWCP issued on or after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. See 20 C.F.R. § 501.3(e) (2009). As more than 180 days has elapsed from the date of issuance of the March 11, 2019 decision to the filing of the current appeal, the Board concludes that it has no jurisdiction to review it. However, as appellant has filed the appeal within 180 days of the issuance of OWCP's October 22, 2019 decision, the Board will exercise its jurisdiction to review it.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the October 22, 2019 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 his burden of proof to establish a recurrence of disability for the period December 8, 2018 to January 30, 2019, causally related to his accepted July 5, 2011 employment injuries.

## **FACTUAL HISTORY**

On July 11, 2011 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed carpal tunnel syndrome and osteoarthritis of the carpometacarpal joint of the thumb due to factors of his federal employment, including the repetitive movement of casing and delivering mail. On July 18, 2011 OWCP accepted the claim for bilateral tenosynovitis of the hands and wrists. On September 15, 2011 it expanded the acceptance of the claim to include bilateral carpal tunnel syndrome and osteoarthritis of the carpometacarpal joint (thumbs). Thereafter, OWCP paid appellant wage-loss compensation on the supplemental rolls commencing October 12, 2011, and on the periodic rolls commencing November 20, 2011.

On October 13, 2011 Dr. Adil Esmail, a Board-certified orthopedic surgeon, performed an OWCP-authorized left trapeziectomy and left carpal tunnel release. On April 18, 2012 he performed an OWCP-authorized right trapeziectomy, right carpal tunnel release, and right wrist release.

Appellant stopped work on October 12, 2011 to undergo surgery and returned to modified-duty work on September 27, 2012.

On March 4, 2013 appellant accepted an offer to work for the employing establishment as a customer care agent, effective March 10, 2013.<sup>4</sup>

By decision dated April 18, 2014, OWCP terminated appellant's wage-loss compensation, effective March 10, 2013. It found that he had been reemployed as a customer care agent, working 40 hours per week. OWCP determined that the position of customer care agent fairly and reasonably represented appellant's wage-earning capacity as he had been working in the position for two or more months. It further found that he was reemployed with no loss in earning capacity as his actual earnings in his accommodated position met or exceeded the current wages of the job he held when injured.

Subsequently, appellant stopped work on May 8, 2014 due to pain in the right trapeziometacarpal joint with bilateral nocturnal numbness and tingling. OWCP placed him on the supplemental rolls effective that date.

Appellant returned to full-time light-duty work on November 13, 2018, but stopped work on December 8, 2018.

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<sup>4</sup> On January 24, 2014 OWCP granted appellant a schedule award for two percent permanent impairment of the right upper extremity and an additional two percent permanent impairment of the left upper extremity. The period of the award ran for 12.48 weeks, from November 13, 2012 to February 8, 2013. OWCP noted that the schedule award was based on the August 17, 2013 report of Dr. Pichey, the DMA.

In a December 7, 2018 report, Dr. Sylvia de la Llana, a specialist in physical medicine and rehabilitation, indicated that appellant was totally, temporarily disabled from work from December 6, 2018 through January 20, 2019. She listed diagnoses of bilateral carpal tunnel syndrome, bilateral thumb arthrosis, right metacarpal joint osteoarthrosis, bilateral elbow sprain, left shoulder internal derangement, and bilateral stenosing tenosynovitis.<sup>5</sup>

In a January 21, 2019 work capacity evaluation (Form OWCP-5c), Dr. Lesin checked a box marked “No” to indicate that appellant was incapable of performing his usual job without restriction. He further checked a box marked “No” to indicate that appellant was unable to work for eight hours per day with physical restrictions. Dr. Lesin noted that appellant could only perform at a sedentary strength level.

On January 30, 2019 appellant filed a claim for compensation (Form CA-7) and requested leave without pay (LWOP) for disability from work for the period December 8, 2018 through January 30, 2019.

In a development letter dated February 7, 2019, OWCP advised appellant of the type of evidence needed to establish his disability claim. It particularly requested that he submit contemporaneous medical evidence of an increase in disability as demonstrated by objective findings and/or evidence of the employing establishment’s inability to provide work within the physical limitations related to the accepted employment injuries. OWCP afforded appellant 30 days to submit the necessary evidence.

An electromyography and nerve conduction velocity (EMG/NCV) study report, dated September 28, 2017, revealed bilateral cervical radiculopathy, bilateral carpal tunnel syndrome, and ulnar neuropathy across the left elbow.

An EMG/NCV study report, dated October 13, 2018, revealed bilateral carpal tunnel syndrome and early diffuse peripheral polyneuropathy. A follow-up EMG/NCV study report, dated December 15, 2018, revealed bilateral carpal tunnel syndrome and early diffuse peripheral polyneuropathy.

In a February 28, 2019 letter, appellant responded to OWCP’s development letter. He noted that he had returned to work as a customer care agent, which required answering calls using a computer, typing, and using a mouse, which caused pain in his hands. Appellant reported that although he was trained in voice-activated software, he was still experiencing problems. He requested a change in his primary treating physician.

By decision dated March 11, 2019, OWCP denied appellant’s claim for compensation commencing December 8, 2018 as the medical evidence of record was insufficient to establish disability as a result of the accepted employment injuries.

On April 3, 2019 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

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<sup>5</sup> On December 18, 2018 appellant requested authorization from OWCP to be seen by Dr. George Balfour, a Board-certified hand surgeon, because Dr. Lesin had retired. On January 10, 2019 OWCP authorized appellant to change his treating physician to Dr. Balfour.

OWCP subsequently received an April 5, 2017 progress report, wherein Dr. Lesin noted that appellant was experiencing continued soreness and triggering of his right thumb and ring finger and his left long and ring fingers. Dr. Lesin examined appellant and diagnosed right trigger thumb, right ring trigger finger, and left long and ring trigger fingers. He opined that appellant was totally, temporarily disabled from work.

In a March 23, 2019 report, Dr. de la Llana indicated that appellant was totally, temporarily disabled from March 23 through May 4, 2019. She listed diagnoses of bilateral carpal tunnel syndrome, bilateral thumb arthrosis, right metacarpal joint osteoarthrosis, bilateral elbow sprain, left shoulder internal derangement, and bilateral stenosing tenosynovitis.

In a May 4, 2019 report, Dr. de la Llana indicated that appellant was totally, temporarily disabled from May 4 through June 24, 2019. She listed diagnoses of bilateral carpal tunnel syndrome, bilateral thumb arthrosis, right metacarpal joint osteoarthrosis, bilateral elbow sprain, left shoulder internal derangement, and bilateral stenosing tenosynovitis.

In a May 23, 2019 letter, appellant requested authorization to be seen by another primary treating physician as Dr. de la Llana had retired. He also indicated that Dr. Balfour declined to see him for an appointment as the office was not paid for a September 7, 2016 OWCP-authorized surgical procedure.<sup>6</sup>

A telephonic hearing was held on August 15, 2019. Appellant testified that, after returning to work, he was given tasks which had previously aggravated his carpal tunnel syndrome. He stated that while OWCP authorized his change of physician, the physician would not schedule him for an appointment until his prior bills with the office were paid. The hearing representative advised appellant that he should file a new occupational disease claim related to his conditions associated with his light-duty work.

In a September 23, 2019 letter, the employing establishment noted that appellant's work duties were in strict compliance with his established work restrictions. It indicated that he was afforded the opportunity to assess and review the job duties of a call center agent and agreed to perform the modified duties. The employing establishment reported that appellant's position did not require continuous typing, and there was no speed requirement when using the keyboard. It further noted that there were no continuous computer mouse movement involved and that headsets were used to answer calls. The employing establishment also indicated that appellant was trained in interactive voice response system, which meant that he did not have to type customer information.

By decision dated October 22, 2019, OWCP denied appellant's claim for recurrence of disability commencing December 8, 2018, because the medical evidence of record was insufficient to establish that his total disability was causally related to his accepted injuries.

### **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 resulted from a previous

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<sup>6</sup> In a July 2, 2019 letter, appellant requested authorization to change his primary treating physician to Dr. Payam Vahedifar, a Board-certified specialist in physical medicine and rehabilitation.

compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>7</sup> This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and, which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.<sup>8</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>9</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>10</sup>

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability for the period from December 8, 2018 to January 30, 2019, causally related to his accepted July 5, 2011 employment injuries.

Appellant submitted an April 5, 2017 progress report from Dr. Lesin who diagnosed right trigger thumb, right ring trigger finger, and left long and ring trigger fingers. While Dr. Lesin opined that appellant was totally, temporarily disabled, his report lacks probative value as it predates the claimed period of disability commencing December 8, 2018 and does not specifically attribute the period of disability to the accepted employment injuries.<sup>12</sup> As such, it is insufficient to establish appellant's claim.

Appellant also submitted reports from Dr. de la Llana, dated December 7, 2018 through May 4, 2019 which indicated that appellant was totally, temporarily disabled from December 6,

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<sup>7</sup> 20 C.F.R. § 10.5(x); *see J.K.*, Docket No. 18-0854 (issued June 5, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> *K.E.*, Docket No. 19-1922 (issued July 10, 2020); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

<sup>10</sup> *Id.*

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *N.L.*, Docket No. 19-1456 (issued July 14, 2020).

<sup>12</sup> *W.C.*, Docket No. 19-1740 (issued June 4, 2020).

2018 through June 24, 2019. Dr. de la Llana diagnosed bilateral carpal tunnel syndrome, bilateral thumb arthrosis, right metacarpal joint osteoarthrosis, bilateral elbow sprain, left shoulder internal derangement, and bilateral stenosing tenosynovitis in her reports, but offered no rationalized medical opinion explaining why appellant could not work. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain adequate medical rationale explaining the relationship between a given condition/period of disability and the claimant's employment.<sup>13</sup> Therefore, these reports are insufficient to establish appellant's claim.

Appellant submitted a January 21, 2019 Form OWCP-5c report from Dr. Lesin. Dr. Lesin checked boxes marked "No" to indicate that appellant was incapable of performing his usual job without restriction and was unable to work for eight hours per day with physical restrictions. However, this report from Dr. Lesin is a mere form report that does not contain a clear opinion on whether the accepted employment injuries caused disability from employment for the claimed period. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>14</sup> Accordingly, this report is also insufficient to establish appellant's claim.

The record also contains EMG/NCV study reports, dated September 28, 2017 through December 15, 2018. However, the Board has held that diagnostic studies, standing alone, are of limited probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's period of disability on specific dates.<sup>15</sup>

As appellant has not submitted rationalized medical evidence establishing causal relationship between his accepted employment injuries and the claimed recurrence of disability, he has not met his burden of proof.

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 his burden of proof to establish a recurrence of disability for the period December 8, 2018 to January 30, 2019, causally related to his accepted July 5, 2011 employment injuries.

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<sup>13</sup> *J.K.*, *supra* note 7.

<sup>14</sup> *Id.*

<sup>15</sup> *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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