



## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish intermittent disability from work, commencing March 10, 2018, causally related to her June 12, 2017 accepted employment injury; and (2) whether OWCP properly denied authorization for left carpal tunnel release surgery.

## **FACTUAL HISTORY**

On June 12, 2017 appellant, then a 45-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she smashed her left index finger while trying to close the stuck door of her mail truck while in the performance of duty. She stopped work and received stitches on her left index finger. OWCP accepted the claim for a displaced fracture of the distal phalanx of her left index finger and a laceration to the left index finger without damage to nail.

Appellant returned to work on August 5, 2017 in a limited-duty position, working six hours per day, with simple grasping and fine manipulation up to six hours a day. OWCP paid her wage-loss compensation on the supplemental rolls from August 5, 2017 through March 2, 2018.

OWCP, by letter dated January 4, 2018, referred appellant to Dr. Angela Jones, a Board-certified orthopedic surgeon and orthopedic hand specialist, for a second opinion examination.

In a January 25, 2018 report, Dr. Jones noted the history of injury, appellant's medical treatment, and presented examination findings. She indicated that appellant's x-rays showed a healed middle phalanx fracture, with some shortening and widening of the phalanx, but no residual angulation or displacement. The finger was sitting in a mallet posture, visible both on film and clinically. Dr. Jones opined that appellant had a crush injury of the left index finger, a middle phalanx fracture of the left index finger, mallet deformity of the digit which affected the left index finger, and ankyloses of the finger, all of which were directly caused and/or aggravated by the employment injury. She indicated that appellant's joints were very stiff, which could represent aggravation of preexisting arthritis and post-traumatic stiffness. Dr. Jones also indicated that appellant had very minimal range of motion at the proximal interphalangeal (PIP) and the distal interphalangeal (DIP) joints related to the employment injury. Appellant also had discomfort and pain, which worsened with repetitive use or coldness and which were related to the crush aspect of her injury. Dr. Jones noted that this could improve up to two years after an injury, but oftentimes becomes an ongoing problem. She indicated that appellant had limitations of fine motor, pinch, and grasp, with the left hand and significant ankyloses of her finger. Dr. Jones suggested that appellant would benefit from seeing a trained hand surgeon and a certified hand therapist. She opined that appellant could not perform her full job without restrictions because of the problems with pinch, fine motor, and grasp of the left hand. In her report and an accompanying work capacity evaluation form (Form OWCP-5c), Dr. Jones opined that appellant could work full time with restrictions for approximately 12 weeks. The restrictions were no lifting more than 20 pounds up to 2 hours, with 5-minute breaks every hour and 10-minute breaks every 3 hours.

In a March 8, 2018 Form OWCP-5c, Dr. Ali Hashemi, a Board-certified orthopedic hand surgeon, opined that appellant could work eight hours per day in a light-duty position with restrictions for three weeks or until her next appointment. His assigned restrictions included no more than four hours of repetitive movements of appellant's wrist and elbow, and no more than one hour of pushing, pulling, and lifting up to 15 pounds. In his March 8, 2018 report, Dr. Hashemi

recounted the history of appellant's employment injury, noted her examination findings, and administered an injection to her left index finger due to stiffness and intrinsic contracture of the left index finger status post laceration. He noted that appellant's treatment plan was to start hand therapy, continue with light duty, and return for reevaluation in three weeks.

On March 12, 2018 the employing establishment offered appellant a temporary full-time light-duty assignment as a modified rural carrier for 10 hours per day, 4 days per week. The duties required an average of 8.6 hours in a case carry route and other duties as assigned within restrictions. The physical requirements of the assignment included lifting up to 10 pounds and simple grasping and holding mail in two-hour increments. Appellant refused the modified assignment on March 14, 2018, claiming that the duties were not in accordance with her repetitive movement restrictions.

In a March 14, 2018 note, received by OWCP on April 2, 2018, Dr. Hashemi advised that appellant could use her left hand for only one hour of grasping, pulling, lifting, casing, and pushing. In his March 14, 2018 report, he indicated that appellant had again strained her left index finger when she went back to work. Dr. Hashemi indicated that appellant could flex her metacarpophalangeal (MP) joint to approximately 90 degrees and PIP joint to approximately 70 degrees and that she was unchanged neurovascularly. He recommended additional nerve testing and physical therapy.

On March 26, 2018 appellant filed claims for wage-loss compensation (Form CA-7) for intermittent periods of disability, commencing February 17, 2018.<sup>4</sup> For the period March 3 through 16, 2018, she claimed a total of 32 hours of leave without pay (LWOP).

On an April 11, 2018 Form OWCP-5c, Dr. Hashemi diagnosed left index finger strain and left hand weakness. He indicated that appellant could work six hours per day with restrictions of no more than three hours of simple grasping and no more than four hours of fine manipulation, reaching above shoulder, and driving a vehicle. In another report of even date, Dr. Hashemi indicated that appellant could flex her PIP joint to approximately 70 degrees and that she had mild signs of carpal tunnel syndrome. He ordered additional electrodiagnostic testing to determine if appellant had developed carpal tunnel syndrome. Dr. Hashemi advised that she would be kept on partial light duty.

In an April 25, 2018 letter, appellant noted her medical treatment by Dr. Hashemi and the diagnostic testing performed. She indicated that the employing establishment placed her on LWOP status after she refused the March 12, 2018 assignment and she had not received another job offer.

In an April 25, 2018 letter, OWCP advised appellant that the March 12, 2018 temporary light-duty job offer was medically suitable in accordance with the medical limitations provided by Dr. Jones and that the position remained available. It advised her that, under the provisions of 20 C.F.R. § 10.500(a), she would not be entitled to compensation for total wage loss for the duration of the temporary light-duty assignment if she failed to report for work, which had been deemed appropriate by OWCP. OWCP afforded appellant 30 days to either accept the assignment and

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<sup>4</sup> Wage-loss compensation benefits claimed for dates prior to March 3, 2018 have been paid and are not at issue in this appeal.

report to duty or submit evidence that the assignment was no longer available or no longer accommodated her medical work restrictions as provided by Dr. Jones.

In response, OWCP received an April 11, 2018 note from Dr. Hashemi, which diagnosed laceration of left index finger, carpal tunnel syndrome of left wrist, and cubital tunnel syndrome on left. It also received physical therapy and occupational therapy reports dated March 20 through May 15, 2018.

In a May 18, 2018 duty status report (Form CA-17), Dr. Hashemi indicated that appellant had left index finger stiffness and left carpal tunnel syndrome. He also indicated that she could work six hours per day with restrictions.

On June 8, 2018 OWCP received a June 1, 2018 note from Dr. Hashemi, wherein he recommended left carpal tunnel release surgery. Dr. Hashemi opined that appellant's carpal tunnel syndrome was due to the accepted employment injury. He noted that she did not have carpal tunnel syndrome prior to the work injury. Dr. Hashemi explained that "because of compensation and a lack of nerve gliding, carpal tunnel developed in her hand and her wrist as a result of the injury." He further noted that "[h]er stiffness is only going to get worse if she does not have carpal tunnel release." Attached were electromyogram and nerve conduction velocity (EMG/NCV) study results, which included his impression of moderate-to-severe carpal tunnel syndrome.

OWCP referred the medical record, along with a statement of accepted facts (SOAF), to a DMA for an opinion on the medical necessity of the requested left carpal tunnel release surgery.

By decision dated June 19, 2018, OWCP denied appellant's claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from the temporary light-duty assignment during the claimed period due to her accepted injury.

In a report dated July 2, 2018, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP DMA, noted his review of the SOAF and the medical record. He opined that the proposed left carpal tunnel release surgery was medically necessary as it was likely to decrease pain and increase function. However, the DMA further found that the requested surgery is not intended to treat or otherwise causally related to the accepted medical conditions of laceration without foreign body of left index finger without damage to nail and displaced fracture of distal phalanx of left index finger, initial encounter for closed fracture. He explained that "there is no evidence that the work injury has had any impact on the development of the carpal tunnel syndrome."

OWCP received additional Form CA-7 wage-loss compensation claims for disability from work during the period March 17 through June 8, 2018.<sup>5</sup> Also received were physical therapy and occupational therapy notes.

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<sup>5</sup> Appellant claimed 80 hours of LWOP for the periods March 17 through 30, 2018, April 14 through 27, 2018, April 28 through May 11, 2018, and May 12 through 25, 2018. She claimed 72 hours LWOP for the period May 26 through June 8, 2018.

Medical notes from Dr. Hashemi dated May 18 and June 1, 2018 continued to recommend surgical correction of appellant's left carpal tunnel syndrome, which was confirmed by a May 4, 2018 EMG.

By decision dated July 6, 2018, OWCP denied authorization for left carpal tunnel syndrome release surgery based on the opinion of the DMA.

In an October 10, 2018 report, Dr. Hashemi noted that appellant still had stiffness in her left index finger, but neurovascularly she was improved and that the x-ray of the index finger showed no significant increase in arthritis of the joints. He opined that the fact she had stiffness in that index finger for so many months and had not improved, more strain was placed on the other tendons in her other fingers, which all intersected across the wrist and caused irritation of the median nerve. Dr. Hashemi further explained that this caused appellant to compensate with her wrist and her other fingers. As a result, appellant developed inflammation around her nerve. Dr. Hashemi noted that the fact that she had improved following her carpal tunnel release indicated that the carpal tunnel diagnosis was part of, and the result of, the employment injury. He recommended a functional capacity evaluation (FCE) and that appellant continue her current work restrictions.

On February 18, 2019 appellant, through counsel, requested reconsideration of OWCP's June 19, 2018 denial of wage-loss compensation.

Also on February 18, 2019 appellant, through counsel, requested reconsideration of OWCP's July 6, 2018 denial of authorization for left carpal tunnel release surgery.

OWCP subsequently received additional physical therapy/occupational therapy reports; a January 9, 2019 FCE report; and a January 25, 2018 Form OWCP-5c.

In a July 19, 2018 note, Dr. Hashemi noted that appellant was scheduled for carpal tunnel release surgery on July 31, 2018 and that she would be off work until further notice. In an August 15, 2018 note, he indicated that she would remain off work until her September 12, 2018 follow-up appointment. Dr. Hashemi placed her on light duty on September 12, 2018.

In a January 23, 2019 report, Dr. Hashemi indicated that appellant had reached maximum medical improvement. He agreed with the FCE, which determined that she was able to perform sedentary, light-duty work.

In a January 23, 2019 report, Dr. Andre Eglevsky, a Board-certified orthopedic surgeon, indicated that he initially saw appellant on July 11, 2017, following her employment injury. He related appellant's progress through her last visit of November 27, 2017, during which he indicated that she was referred to a hand specialist.

By decision dated March 26, 2019, OWCP denied modification of its June 19, 2018 decision regarding appellant's claim for wage-loss compensation.

By separate decision dated March 26, 2019, OWCP denied modification of its July 6, 2018 decision regarding authorization for surgery.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>7</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>8</sup> Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>9</sup>

Section 10.500 (a) of OWCP's regulations provides in relevant part:

“(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any 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 any 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 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. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work-related injury if the evidence establishes that the employing [establishment] had offered, in accordance with OWCP procedures, a temporary light-duty assignment within the employee's work restrictions.”<sup>10</sup>

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>11</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>12</sup> For a conflict to arise the opposing physicians' viewpoints must be of “virtually equal weight and rationale.”<sup>13</sup>

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *M.D.*, Docket No. 18-0474 (issued October 3, 2018); *see Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

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

<sup>9</sup> *M.D.*, *supra* note 7; *see also Edward H. Horton*, 41 ECAB 301 (1989).

<sup>10</sup> 20 C.F.R. § 10.500(a).

<sup>11</sup> 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>12</sup> 20 C.F.R. § 10.321.

<sup>13</sup> *R.P.*, Docket No. 17-0428 (issued April 19, 2018); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

## ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision with regard to whether appellant was intermittently disabled from work commencing March 10, 2018 causally related to the accepted employment injury.

Following appellant's June 12, 2017 employment injury, she returned to work on August 5, 2017 in a limited-duty position, working six hours per day, with simple grasping and fine manipulation required up to six hours a day.

On January 4, 2018 OWCP referred appellant to Dr. Jones for a second opinion evaluation regarding the status of her accepted conditions and work capacity. In her January 25, 2018 report, Dr. Jones did not limit the number of hours a day appellant could work. The only restrictions that Dr. Jones noted were that appellant was not to lift no more than 20 pounds for 2 hours, and that she should be allowed a 5-minute break every hour, and a 10-minute break every 3 hours. However, OWCP continued to receive medical reports from appellant's treating physician, Dr. Hashemi, in his March 8, 2018 Form OWCP-5(c), assigned more restrictive limitations. He limited appellant to an eight-hour workday, with no more than four hours a day of repetitive wrist motion, and lifting no more than 15 pounds in one hour.

The Board, therefore, finds that a conflict in medical opinion exists with regard to appellant's work restrictions. Appellant had been working in a modified position for six hours a day, with simple grasping and fine manipulation required up to six hours a day, but a conflict existed in the medical evidence as to whether she could work unlimited hours, with only a lifting weight restriction, or eight hours a day, with only four hours of repetitive wrist motion.

Pursuant to 5 U.S.C. § 8123(a), OWCP should have referred the case record and a statement of accepted facts to an impartial medical examiner to resolve the conflict in medical opinion between Dr. Jones and Dr. Hashemi regarding the issue of appellant's capacity to work commencing March 10, 2018.

The Board further notes that on March 12, 2018 the employing establishment offered appellant a temporary, full-time modified employment position, which OWCP found medically suitable on April 25, 2018 based on Dr. Jones' January 25, 2018 second opinion report. The temporary position, which the employing establishment offered to appellant on March 12, 2018, required 10 hours of work a day, four days a week, with casing for 8.6 hours a day. The physical requirements of the position indicated that lifting was to be performed up to 10 pounds, and simple grasping and holding mail was to be performed in two-hour increments.

The issue of whether an employee has the physical ability to perform a modified position offered by the employing establishment is a medical question that must be resolved by medical evidence.<sup>14</sup> While this temporary job offer was within Dr. Jones' medical restrictions, as previously discussed, a conflict existed in the medical evidence as to appellant's ability to perform more than four hours of repetitive wrist motion a day, following the receipt of Dr. Hashimi's March 8, 2018 Form OWCP-5(c).

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<sup>14</sup> See *D.L.*, Docket No. 18-0862 (issued October 12, 2018); *Kathy E. Murray*, 55 ECAB 288 (2004).

Because there remains an unresolved conflict in medical opinion regarding appellant's work capacity commencing March 10, 2018, the case shall be remanded to OWCP for referral to an impartial medical examiner pursuant to section 8123(a) of FECA.<sup>15</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's wage-loss compensation claim.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician who OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.<sup>16</sup> In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.<sup>17</sup>

OWCP has administrative discretion in choosing the means to achieve the goal of recovery from a work-related injury and the only limitation on OWCP's authority is that of reasonableness.<sup>18</sup>

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

The Board further finds that OWCP properly denied authorization for surgery.

In the present case, OWCP accepted that appellant sustained a displaced fracture of the distal phalanx of her left index finger and a laceration to the left index finger without damage to the nail. Appellant seeks authorization for a proposed left carpal tunnel release surgery. She must submit, as discussed above, rationalized medical evidence establishing that the requested surgery is causally related to the employment injury.

On June 8, 2018 OWCP received a June 1, 2018 note from Dr. Hashemi, wherein he recommended left carpal tunnel release surgery. Dr. Hashemi opined that appellant's carpal tunnel syndrome was due to the accepted employment injury. He noted that she did not have carpal tunnel syndrome prior to the work injury. Dr. Hashemi explained that "because of compensation and a lack of nerve gliding, carpal tunnel developed in her hand and her wrist as a result of the injury."

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<sup>15</sup> See *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

<sup>16</sup> 5 U.S.C. § 8103(a).

<sup>17</sup> See *Dale E. Jones*, 48 ECAB 648, 649 (1997).

<sup>18</sup> See *H.L.* 16-0920 (issued January 9, 2017); *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions which are contrary to both logic and probable deductions from established facts).

<sup>19</sup> See *H.L., id.*; *Minnie B. Lewis*, 53 ECAB 606 (2002).

He further noted that “[h]er stiffness is only going to get worse if she does not have carpal tunnel release.” Attached were EMG/NCV study results, which included his impression of moderate-to-severe carpal tunnel syndrome. While he opined that appellant would benefit from the proposed surgery, Dr. Hashemi failed to provide a reasoned explanation for his opinion and, thus, it is of limited probative value.<sup>20</sup>

In a report dated July 2, 2018, Dr. Hammel, the DMA, noted his review of the SOAF and the medical record. He opined that the proposed left carpal tunnel release surgery was medically necessary as it was likely to decrease pain and increase function. However, the DMA further found that the requested surgery is not intended to treat or otherwise causally related to the accepted medical conditions of laceration without foreign body of left index finger without damage to the nail and displaced fracture of distal phalanx of left index finger, initial encounter for closed fracture. He explained that “there is no evidence that the work injury has had any impact on the development of the carpal tunnel syndrome.”

OWCP has discretion under 5 U.S.C. § 8103 regarding authorization of medical treatment. As Dr. Hashemi did not provide a rationalized opinion on causal relationship between the requested surgery and the accepted employment incident, the Board finds that OWCP did not abuse its discretion in denying authorization for surgery based on the report of the DMA.

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 this case is not in posture for decision with regard to whether appellant has established intermittent disability from work, commencing March 10, 2018, causally related to her June 12, 2017 accepted employment injury. The Board further finds that OWCP properly denied authorization for left carpal tunnel release surgery.

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<sup>20</sup> See *J.L.*, Docket No. 18-0503 (issued October 16, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2019 decision of the Office of Workers' Compensation Programs regarding the denial of wage-loss compensation is set aside and the case is remanded for further action consistent with this decision of the Board. The March 26, 2019 decision of the Office of Workers' Compensation Programs regarding the denial of authorization for left carpal tunnel release surgery is affirmed.

Issued: June 27, 2022  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board