

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

L.T., Appellant	)	
	)	
and	)	Docket No. 22-0963
	)	Issued: November 14, 2022
U.S. POSTAL SERVICE, WITTENSVILLE	)	
POST OFFICE, Wittensville, KY, 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:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 9, 2022 appellant, through counsel, filed a timely appeal from a May 31, 2022 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 May 31, 2022 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 OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective June 20, 2021, pursuant to 20 C.F.R. § 10.500(a), based on her earnings had she accepted a temporary part-time limited-duty assignment.

## **FACTUAL HISTORY**

On April 14, 2020 appellant, then a 49-year-old sales and services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on April 11, 2020 she injured her right thumb when closing a safe while in the performance of duty. She stopped work on April 11, 2020. On April 11, 2020 appellant underwent a right partial amputation of the thumb tuft/distal phalanx, a right thumb irrigation and debridement, a right thumb nail bed repair, and a right thumb repair of the nail plate avulsion. OWCP accepted the claim for a partial traumatic metacarpophalangeal (MCP) amputation of the right thumb. It paid appellant wage-loss compensation on the supplemental rolls effective May 27, 2020, and on the periodic rolls effective July 19, 2020.

On June 23, 2020 the employing establishment advised that appellant had returned to work and was working full time.

A magnetic resonance imaging (MRI) scan of the right thumb, obtained on September 22, 2020, revealed a traumatic amputation involving the terminal tuft of the thumb, no osteoedema or evidence of acute osteomyelitis, no abnormal fluid, and a degenerative cyst formation in the proximal trapezial bone.

On November 20, 2020 OWCP referred appellant to Dr. Anbu K. Nadar, a Board-certified orthopedic surgeon, for a second opinion examination regarding the extent of her injury-related condition and disability.

In a report dated December 10, 2020, Dr. Nadar discussed appellant's history of an April 11, 2020 employment injury and subsequent medical treatment. He noted that she had continued symptoms of persistent pain and sensitive in the tip of the thumb with some stiffness. Dr. Nadar noted that OWCP had accepted a partial traumatic MCP amputation of the right thumb. He opined that appellant could not perform her date-of-injury position, but could work in a modified position with restrictions. Dr. Nadar noted that she continued to have symptoms from the April 11, 2020 employment injury, including pain in the fingertip periodically radiating into the hand that "may be the result of a neuroma or CRPS [complex regional pain syndrome]." He related that a neuroma had not been seen on diagnostic testing so "the possibility of CRPS may have to be entertained." In a December 9, 2020 work capacity evaluation (Form OWCP-5c), Dr. Nadar opined that appellant could perform sedentary or light work for 8 hours per day, including pushing, pulling, and lifting up to 20 pounds for 2 hours and 40 minutes per day. He further indicated that she should avoid hitting the top of her right thumb.

On February 10, 2021 the employing establishment advised OWCP that it had offered appellant a position as a modified sales and services distribution associate. The physical requirements of the position included sitting for 1 hour, standing for 3.5 hours, walking for 1 hour, and pushing, pulling, and lifting for 1 hour. The employing establishment advised that appellant was not to exceed her medical limitations, including lifting, pushing, and pulling up to 20 pounds

for 2 hours and 40 minutes a day and avoiding hitting the tip of her right thumb. The position was for 36.5 hours per week.

Appellant, on February 10, 2021, refused the position. She advised that she was unable to grip with her right hand, experienced constant pain, and had no protection for the tip of her thumb. Appellant noted that she was right-hand dominant.

In a report dated March 2, 2021, Dr. Devesh Sharma, a Board-certified surgeon, evaluated appellant for pain over the right thumb radiating into the proximal forearm with mild swelling and weakness. He noted that she had a history of an April 2020 amputation of the right thumb tip. Dr. Sharma indicated that appellant was concerned about returning to work as she was the only person at her work location. He diagnosed sequela from a partial traumatic transphalangeal amputation of the right thumb. Dr. Sharma advised that the origin of the pain was unclear and found no signs of CRPS. He indicated that appellant could perform light-duty work. In an unsigned note of even date, Dr. Sharma found that she could not work pending an evaluation with Dr. Robert Royalty, a Board-certified orthopedic surgeon.

On March 12, 2021 OWCP confirmed that the offered position remained available and that appellant would work 36.5 hours weekly.

In a March 17, 2021 report, Dr. Joseph R. Owens, a Board-certified neurologist, evaluated appellant for pain in the tip of her right thumb that occasionally radiated into her forearm, pain in the right hand and wrist joints, and weakness and occasional numbness of the right hand. He diagnosed pain and the sequela of a partial traumatic transphalangeal right thumb amputation.

On March 19, 2021 OWCP notified appellant of its proposed termination of her wage-loss compensation in accordance with 20 C.F.R. § 10.500(a) based on her refusal of the temporary light-duty assignment. It advised that it had reviewed the work restrictions provided by Dr. Nadar and found that his opinion represented the weight of the medical evidence. OWCP further determined that the offered position was within appellant's restrictions and remained available. It informed her that any claimant who declined a temporary light-duty assignment deemed appropriate by OWCP was not entitled to compensation for total wage loss. OWCP noted that the actual earnings in the offered temporary light-duty assignment met or exceeded the wages of the position appellant had held when injured. It afforded her 30 days to accept the assignment and report to duty or demonstrate that her refusal was justified.

In an April 8, 2021 medical evaluation form, Dr. Royalty diagnosed reflex sympathetic dystrophy syndrome. He found that appellant could work with no use of the right hand.

In a report dated April 20, 2021, Dr. Rick Pellant, an osteopath, discussed appellant's history of an April 11, 2020 injury at work and current symptoms of severe thumb pain and tingling radiating to the thumb, index, and middle finger. He noted that appellant had neuropathic pain and traumatic amputation of the thumb.

On June 10, 2021 the employing establishment confirmed that the job offer remained available at the same hours and salary as her date-of-injury position.

By decision dated June 10, 2021, OWCP terminated appellant's wage-loss compensation, effective that date, because she failed to accept the February 10, 2021 temporary light-duty

assignment in accordance with 20 C.F.R. § 10.500(a). It found that if she had accepted the position she would have had no wage loss.

In a progress report dated June 16, 2021, Dr. Pellant evaluated appellant for right thumb pain and noted that she was not working.

On June 22, 2021 Dr. Royalty diagnosed a partial traumatic MCP amputation of the right thumb. He advised that appellant was unable to work for an indefinite period.

On September 14, 2021 Dr. Owens referred appellant for pain management at a CRPS clinic.

In an October 4, 2021 report, Dr. Justin M. Craig, a Board-certified anesthesiologist, obtained a history of appellant's right distal thumb amputation. He diagnosed neuropathic right-hand pain after an amputation of the right distal first digit, phantom limb syndrome, and possible type 1 CRPS of the right upper extremity. Dr. Craig indicated that appellant met the criteria for CRPS, noting that she had allodynia, swelling, and loss of motion. In an unsigned note dated October 26, 2021, he excused appellant for work on that date for a ganglion nerve block. Dr. Craig indicated that she was being treated for CRPS.

On November 8, 2021 appellant, through counsel, requested that OWCP expand the acceptance of her claim to include CRPS. In support of his request, he submitted an October 6, 2021 report from Mark A. Etscheidt, Ph.D., a clinical psychologist. Dr. Etscheidt discussed appellant's work injury and current complaints of burning pain that radiated from her thumb into her arm. He diagnosed neuropathy and CRPS type 1 of the right upper extremity and advised that she was a good candidate for a neurostimulator to control pain.

On December 6, 2021 OWCP expanded its acceptance of appellant's claim to include CRPS of the right upper extremity.

In an unsigned note dated January 19, 2022, Dr. Craig advised that appellant was "being treated for neuropathic pain in her right hand due to traumatic amputation. This pain is debilitating which makes working difficult." He recommended a functional capacity evaluation (FCE). In a work status report dated February 11, 2022, Dr. Craig indicated that appellant was unable to work. In a March 17, 2022 report, he provided pain management.

On March 3, 2022 appellant, through counsel, requested reconsideration.

In a report dated March 22, 2022, Dr. Owens discussed appellant's history of injury and medical treatment received. He indicated that he would provide a work excuse, pending follow-up with the CRPS clinic, who would "have the final opinion in regards to her return to work." On March 22, 2022 Dr. Owens found that appellant could not work until May 18, 2022.

In an unsigned report dated May 19, 2022, Dr. Maureen A. O'Shaughnessy, an orthopedic surgeon, found that appellant should remain off work pending an FCE.

By decision dated May 31, 2022, OWCP denied modification of its June 10, 2021 decision.

## LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of compensation benefits.<sup>4</sup>

OWCP's regulations at section 10.500(a) provide 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>5</sup>

When it is determined that an employee is no longer totally disabled from work and is on the periodic rolls, OWCP's procedures provide that the claims examiner should evaluate whether the evidence of record establishes that light-duty work was available within his or her restrictions. The claims examiner should provide a pretermination or prereduction notice if appellant is being removed from the periodic rolls.<sup>6</sup> OWCP's procedures require that, if an employee declines an offered appropriate assignment, it shall issue “a notice of proposed termination or reduction of compensation for the duration of the temporary assignment, whether specified or indefinite, and provide the claimant with 30 days to respond.”<sup>7</sup> The notice should advise the claimant of the requirements of section 10.500, and identify the light-duty assignment by its name and/or date.<sup>8</sup> When the light-duty assignment either ends or is no longer available, the claimant should be returned to the periodic rolls if medical evidence supports continued disability.<sup>9</sup>

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<sup>4</sup> *K.S.*, Docket No. 21-1207 (issued July 22, 2022); *C.G.*, Docket No. 21-0171 (issued November 29, 2021); *D.K.*, Docket No. 19-1178 (issued July 29, 2020); *S.F.*, 59 ECAB 642 (2008).

<sup>5</sup> 20 C.F.R. § 10.500(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9c(1) (June 2013).

<sup>7</sup> *Id.* at Chapter 2.814.9c(5).

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

<sup>9</sup> *Id.*

## ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation effective June 20, 2021, pursuant to 20 C.F.R. § 10.500(a), based on her earnings had she accepted a temporary part-time limited-duty assignment.

OWCP referred appellant to Dr. Nadar for a second opinion examination. Dr. Nadar reviewed appellant's history of an April 11, 2020 employment injury, accepted for a partial traumatic MCP amputation of the right thumb and noted that appellant had continued pain and sensitivity in the thumb tip with some stiffness and occasional pain radiating into her hand. He advised that she continued to have symptoms from the April 11, 2020 employment injury, including pain in the fingertip periodically radiating into the hand that "may be the result of a neuroma or CRPS." Dr. Nadar related that a neuroma had not been seen on diagnostic testing so "the possibility of CRPS may have to be entertained." He opined that appellant could not perform her date-of-injury position, but could work in a modified position with restrictions. Instead of conducting additional development on whether the acceptance of appellant's claim should be expanded to include a neuroma or CRPS conditions, however, OWCP terminated her wage-loss compensation based on Dr. Nadar's opinion.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.<sup>10</sup> The Board has found that, once OWCP undertakes development of the record, it must do so in a manner that will resolve the relevant issues in the case.<sup>11</sup>

Consequently, the Board finds that OWCP failed to adequately develop the medical evidence prior to terminating appellant's wage-loss compensation under 20 C.F.R. § 10.500(a). OWCP should have obtained a supplemental report from Dr. Nadar clarifying his opinion as to whether the acceptance of appellant's claim should be expanded prior to determining her work restrictions.<sup>12</sup> As OWCP failed to resolve the issue of claim expansion prior to its decision terminating appellant's wage-loss compensation under section 10.500(a), it improperly terminated appellant's wage-loss compensation effective June 20, 2021.

## CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation effective June 20, 2021, pursuant to 20 C.F.R. § 10.500(a), based on her earnings had she accepted a temporary part-time limited-duty assignment.

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<sup>10</sup> See *D.O.*, Docket No. 21-0525 (issued July 8, 2022); *L.F.*, Docket No. 20-0549 (issued January 27, 2021); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>11</sup> *Id.*; see also *R.H.*, Docket No. 15-1696 (issued April 7, 2016).

<sup>12</sup> See *K.W.*, Docket No. 20-1591 (issued February 11, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 31, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 14, 2022  
Washington, DC

Alec J. Koromilas, 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