

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

L.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Colorado Springs, CO, Employer**

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**Docket No. 06-770
Issued: August 4, 2006**

Appearances:
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On February 21, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated September 6, 2005 and February 2, 2006, denying her entitlement to wage-loss benefits from April 2 through August 19, 2005 and its September 6, 2005 merit decision denying her request to expand her claim to include the condition of depression. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant is entitled to wage-loss benefits for total disability from April 2 through August 19, 2005; and (2) whether appellant sustained depression as a consequence of her accepted condition.

FACTUAL HISTORY

On May 19, 2003 appellant, then a 43-year-old window clerk, filed an occupational injury claim (Form CA-2), alleging that she developed bilateral soreness in both thumbs, as well as swelling and numbness of both hands, as a result of duties relating to her federal employment.

Her claim was accepted for bilateral carpal tunnel syndrome (CTS) and tendinitis of the right thumb on August 26, 2003. The Office subsequently approved right thumb ligament reconstruction, which was performed on May 24, 2004. Appellant returned to work full time on or about September 1, 2004.

A September 11, 2004 duty status report bearing an illegible signature reflected that appellant had sought treatment at an urgent care facility for “shooting pain” in her right hand. In unsigned notes dated September 13, 2004, appellant’s treating physician, Dr. Patrick D. Devanny, a Board-certified orthopedic surgeon, noted that appellant had recently experienced a sharp pain in her right hand while sorting mail. He recommended that she refrain from doing any repetitive work with her right upper extremity or lift greater than one pound for the next two months. In unsigned notes dated October 6, 2004, Dr. Devanny indicated that the “suspension [had] failed.” He observed that appellant had tenderness at the carpal metacarpal (CMC) joint; positive Tinel’s sign and Phalen’s at both wrist levels; and positive grind and shift tests. He recommended no use of the right upper extremity; no repetitive use of the left upper extremity; and no lifting greater than one pound. In an October 6, 2004 duty status report, Dr. Devanny restricted appellant to working six hours per day. He recommended no use of the right upper extremity; no repetitive use of the left upper extremity; no lifting more than 1 pound; and 10 minute breaks every hour.

On October 20, 2004 appellant accepted a limited-duty position as a modified clerk, which encompassed Dr. Devanny’s restrictions.

Appellant submitted an October 19, 2004 report from Dr. Timothy V. Sandell, a Board-certified physiatrist, who stated that appellant’s electromyogram examination of the bilateral upper extremities suggested mild to moderate nerve entrapment at both wrists, consistent with mild to moderate CTS (demyelinating only, without evidence of axonal involvement).

In a November 22, 2004 report, Dr. Devanny indicated that on May 24, 2004 he had performed a “trapezium excision and tendon interposition for thumb CMC arthritis.” He stated that appellant’s preexisting arthritic condition had been aggravated by repetitive work activities. In unsigned notes dated January 4, 2005, Dr. Devanny provided an assessment of “right thumb symptomatic at work, status post LRTI with left thumb arthritis.” In an accompanying duty status report, Dr. Devanny diagnosed CTS and basal thumb arthritis. He noted that appellant could work with restrictions.

Appellant submitted a March 3, 2005 report from Dr. Julie L. Sanford, a Board-certified psychiatrist, who opined that appellant was “unable to work due to severe pain and severe depression.” Dr. Sanford indicated that she was unable to determine at that time the length of appellant’s disability.

Appellant submitted a March 16, 2005 report from Dr. Jack L. Rook, a Board-certified physiatrist, who diagnosed chronic right hand/thumb pain; left thumb pain; arthritis of the CMC joint; CTS; sleep disturbance; and reactive depression. His examination of appellant revealed positive Tinnel’s sign at both transverse carpal ligaments. Grip strength was weak on the right and functional on the left. Pinprick sensation was diminished at the tip of the right thumb. There

was tenderness of the metacarpophalangeal joint and the CMC joint on the right side. Dr. Rook opined that appellant's depression had "developed due to her chronic pain condition, her inability to work and stressors associated with her workplace."

By letter dated April 4, 2005, the employing establishment challenged any claim to benefits made by appellant, indicating that she had been AWOL since January 11, 2005.

Appellant submitted unsigned physicians' notes from February 16, 2004 through January 4, 2005. In a letter dated May 2, 2005, Dr. Devanny opined that appellant's repetitive work throughout the day for many years caused worsening of her bilateral thumb arthritis. He stated his belief that she had "an underlying condition that was aggravated by work."

By letter dated June 16, 2005, the Office authorized appellant to use Dr. Rook as her new treating physician.

In a letter dated June 15, 2005, Dr. Sanford stated that appellant continued to be unable to work due to severe pain and severe depression. She further indicated that appellant continued to require a medical leave of absence, although she was unable to determine the length of time required. A July 1, 2005 duty status report from Dr. Rook contained the notation, "Off work for one month. Patient to see hand surgeon." The report reflected diagnoses of tendinitis and bilateral hand/thumb pain and indicated that appellant was "unable to work."

On July 18, 2005 appellant filed a claim for compensation (Form CA-7) for the periods April 2 through June 10, 2005; June 11 through 24, 2005; June 25 through 30, 2005; and July 1 through 22, 2005. On July 27, 2005 the employing establishment challenged appellant's claim for benefits, contending that Dr. Rook failed to provide any objective medical evidence to establish appellant's inability to work and that sleep disturbance and reactive depression were not accepted conditions.

By letter dated July 13, 2005, Dr. Sanford stated that appellant had been under her psychiatric care since March 2, 2005. She opined that appellant's "severe major depression was the direct result of her severe pain from her thumb injuries and her inability to work."

On August 4, 2005 the Office notified appellant that the information submitted was insufficient to establish her disability from April 2 through July 25, 2005 and advised her that she had 30 days to provide contemporaneous medical evidence with detailed medical findings and a reasoned medical opinion supporting her disability for the dates claimed.

On August 18, 2005 appellant, by her representative, requested that the Office accept the condition of depression as a consequential injury, based on Dr. Sanford's opinion. He also asked the Office to accept the condition of CMC joint arthritis and to approve a surgical consultation.

In an August 29, 2005 report, Dr. Rook opined that appellant was not capable of working at that time. He stated that appellant had limited use of her right upper extremity; decreased sensation in her right thumb; limited range of motion and crepitations with range of motion of the right thumb. He noted positive Tinnel's sign and bilateral transverse carpal ligaments; significant deformity at the base of the right thumb and involving the metacarpophalangeal and

the CMC joints. Grip strength was markedly decreased on the right and sensation was decreased in the right thumb.

On August 24, 2005 appellant submitted a claim for compensation CA-7 form for the period July 23 through August 19, 2005.

By letter dated August 30, 2005, the Office informed appellant that it was deferring a decision on her claim for benefits until September 4, 2005, because the evidence submitted was insufficient to issue payment. By letter dated August 29, 2005, the employing establishment challenged appellant's claim for benefits, on the grounds that she had not submitted sufficient medical evidence to establish disability for the claimed period.

By decision dated September 6, 2005, the Office denied appellant's claim for compensation for the period from April 2 through August 19, 2005, on the grounds that she had failed to submit contemporaneous medical evidence establishing that she was disabled during the claimed period.

In a separate opinion dated September 6, 2005, the Office denied appellant's request to expand her accepted condition to include depression, finding that the medical evidence failed to demonstrate that her claimed depression was causally related to her accepted condition.¹

On September 7, 2005 appellant submitted a claim for benefits CA-7 form for the period August 20 through September 3, 2005.²

On September 13, 2005 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Hendrick J. Arnold, III, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated October 7, 2005, he opined that appellant was capable of performing the duties of a job that required no use of her hands. Dr. Arnold provided diagnoses of bilateral CMC and bilateral metacarpal arthritis; mild bilateral CTS; and subluxation of the right thumb. He observed abnormal ranges of motion in the right hand: position of rest +20 degrees extension; IP flexion 40 degrees; MP extension -40 degrees, a subluxed position. He found nerve root irritation with positive Tinel's testing and tender scars. Motor strength could not be determined due to pain. Dr. Arnold concluded that appellant's current arthritic symptoms were due to work-related aggravation of a preexisting arthritic condition and that her CTS was causally related directly to employment.

On November 2, 2005 appellant, by her representative, requested that her claim be accepted for bilateral thumb carpal middle carpal arthritis. By letter dated November 2, 2005, appellant requested reconsideration of the Office's September 6, 2005 decision, based on the second opinion evaluation of Dr. Arnold. By letter dated November 8, 2005, the Office asked

¹ There is no evidence of record reflecting that the Office issued a final decision regarding appellant's request to accept the condition of CMC joint arthritis. As this matter is in an interlocutory posture, it is not before the Board on this appeal. *See* 20 C.F.R. § 501.2(c).

² There is no evidence of record reflecting that the Office issued a final decision regarding appellant's claim for benefits for the period from August 20 through September 2, 2005. As this matter is in an interlocutory posture, it is not before the Board on this appeal. *See* 20 C.F.R. § 501.2(c).

Dr. Arnold to clarify his second opinion report. Specifically, the Office asked whether the aggravation of appellant's bilateral metacarpal arthritis and bilateral CMC arthritis was permanent or temporary and, if temporary, when the aggravation ceased. By letter dated November 8, 2005, the Office informed appellant that further development of her claim would be required before a decision could be made regarding expanding her claim to include bilateral thumb carpal arthritis.

In a supplemental report dated November 21, 2005, Dr. Arnold opined that appellant's right thumb condition was permanent, in that the CMC joint was subluxed and would never return to a normal position. He also opined that the aggravation of appellant's preexisting condition on the left would have ceased within six months of termination of employment.

On December 5, 2005 appellant requested reconsideration of the Office's September 6, 2005 decision denying wage-loss benefits for the period April 2 through August 19, 2005. In support of her request, appellant submitted radiology reports dated December 15, 2005.

By decision dated February 2, 2006, the Office denied modification of its September 6, 2005 decision denying appellant's claim for wage-loss benefits, on the grounds that appellant had provided no rationalized medical opinion establishing that she was disabled from work from April 2 through August 19, 2005.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Compensation Act,³ the term disability means incapacity, because of an employment injury, to earn wages that the employee was receiving at the time of the injury.⁴ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁵ An employee who has had a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.⁶ When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁷

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury.⁸ Whether a particular injury causes an employee to be

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Lyle E. Dayberry*, 49 ECAB 369 (1998); see also *Frazier V. Nichol*, 37 ECAB 528 (1986).

⁵ See *Lyle E. Dayberry*, *supra* note 4.

⁶ *Id.* See also *Gary L. Loser*, 38 ECAB 673 (1987).

⁷ See *Lyle E. Dayberry*, *supra* note 4; see also *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁸ *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *David H. Goss*, 32 ECAB 24 (1980).

disabled for employment and the duration of that disability are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁹ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁰

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving she was disabled on particular dates requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.¹¹ Where no such rationale is present, the medical evidence is of diminished probative value.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to establish that she was totally disabled due to an employment-related condition from April 2 through August 19, 2005 entitling her to monetary compensation. Her claim was accepted for bilateral CTS and tendinitis of the right thumb. Appellant filed claims for compensation for the period from April 2 through August 19, 2005. However, she did not submit any probative medical evidence demonstrating total disability for this period of time due to her accepted condition.

Dr. Devanny's reports are of diminished probative value for several reasons. September, October and November 2004 reports cannot, by virtue of their dates, address appellant's physical condition from April 2 through August 18, 2005 and are, therefore, not relevant to her claim. His unsigned treatment notes from February 16, 2004 through January 4, 2005, dated prior to the period at issue and lacking proper identification, cannot be considered as probative medical evidence.¹³ In his May 2, 2005 report, Dr. Devanny opined that appellant's repetitive work throughout the day for many years caused worsening of her bilateral thumb arthritis and that she had "an underlying condition that was aggravated by work." However, the report did not address whether or not appellant was totally disabled from performing the specific requirements of her job, due to her work-related condition during the period in question. Moreover, her claim was accepted for bilateral CTS and tendinitis of the right thumb only. Appellant had the burden of proving that she was disabled for work as a result of her employment injury.¹⁴ Dr. Devanny's reference to appellant's arthritis is not relevant to her present claim for compensation, as this condition has not been established as causally related to her employment injury.

⁹ *Fereidoon Kharabi*, *supra* note 8; *see also Edward H. Horton*, 41 ECAB 301 (1989).

¹⁰ *Fereidoon Kharabi*, *supra* note 8.

¹¹ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹² *Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

¹³ *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁴ *Supra* note 8.

On March 16, June 15 and July 13, 2005 Dr. Sanford opined that appellant was unable to work due to severe pain and severe depression. However, Dr. Sanford failed to provide any objective medical evidence to establish appellant's inability to work. Moreover, in that she is a psychiatrist and admittedly treated appellant for psychiatric issues only, appellant's physical condition relating to the accepted bilateral CTS and tendinitis of the right thumb is outside of Dr. Sanford's area of expertise. She failed to provide a rationalized explanation as to how appellant's current disabling condition, depression, was causally related to the accepted employment injury. Her blanket statement that appellant was disabled due to her "thumb injuries and her inability to work" is insufficient to establish appellant's claim. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.¹⁵

Dr. Rook's reports are also insufficient to establish appellant's claim that she was disabled due to her work-related conditions during the period in question. On March 16, 2005 Dr. Rook diagnosed chronic right hand/thumb pain; left thumb pain; arthritis of the CMC joint; CTS; sleep disturbance; and reactive depression. However, he did not opine that appellant was totally disabled. A July 1, 2005 duty status report signed by Dr. Rook contained the notation "Off work for one month. Patient to see hand surgeon." The report reflected diagnoses of tendinitis and bilateral hand/thumb pain and indicated that appellant was "unable to work." However, the report did not provide objective medical evidence or a rationalized explanation as to how appellant's current disabling condition was causally related to the accepted employment injury. Therefore, it lacks probative value. In his August 29, 2005 report, Dr. Rook opined that appellant was not capable of working at that time. However, he did not address the period of claimed disability, namely April 2 through August 19, 2005. Therefore, his opinion is not relevant and cannot constitute probative medical evidence.

Dr. Arnold's October 7, 2005 second opinion report is not instructive on appellant's period of claimed disability. The Office did not request nor did he provide, an opinion as to whether appellant was disabled from April 2 through August 19, 2005. Therefore, his opinion is irrelevant to the issue at hand.

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that she was disabled for work as a result of her employment injury. For the reasons stated above, the Board finds that she failed to sustain her burden of proof in establishing that she was totally disabled due to her accepted employment condition from April 2 through August 19, 2005.¹⁶

¹⁵ See *Brenda L. DuBuque*, 55 ECAB ____ (Docket No. 03-2246, issued January 6, 2004); see also *David L. Scott*, 55 ECAB ____ (Docket No. 03-1822, issued February 20, 2004); *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

¹⁶ See *Fereidoon Kharabi*, *supra* note 8. (The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability, for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.)

LEGAL PRECEDENT -- ISSUE 2

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.¹⁷ The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.¹⁸ With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted insufficient medical evidence to establish a consequential relationship between her depression and the accepted conditions of CTS and tendinitis of the right thumb. The medical evidence of record relevant to her depression consists of a March 16, 2005 report from Dr. Rook and reports from Dr. Sanford dated March 3, June 15 and July 13, 2005. The Board finds that these reports lack probative value.

In his March 16, 2005 report, Dr. Rook diagnosed chronic right hand/thumb pain; left thumb pain; arthritis of the CMC joint; CTS; sleep disturbance; and reactive depression. He opined that appellant's depression had "developed due to her chronic pain condition, her inability to work and stressors associated with her workplace." Dr. Rook's opinion lacks probative value for several reasons. First, Dr. Rook is a physiatrist, not a psychiatrist. Therefore, a diagnosis of depression is outside the scope of his expertise. Moreover, Dr. Rook did not provide a rationalized opinion, based on objective findings, describing how appellant's depression developed as a result of her accepted employment conditions. Rather, in conclusory fashion, he attributed the newly diagnosed condition to three possible causes: a chronic pain condition; inability to work; and stressors in the workplace.

Dr. Sanford opined that appellant was unable to work due to her severe pain and severe depression and that the depression was a direct result of her work injuries and her inability to work. However, Dr. Sanford did not provide any medical rationale explaining how appellant's accepted condition caused or contributed to depression. Specifically, she failed to demonstrate how appellant's depression arose as a natural consequence of her accepted injury, rather than as a result of an intervening cause. Moreover, Dr. Sanford provided no objective findings or test results to support her opinion.²⁰ The Board finds the evidence of record is insufficient to

¹⁷ See *Debra L. Dillworth*, 57 ECAB ___ (Docket No. 05-159, issued March 17, 2006). See also *Albert F. Ranieri*, 55 ECAB ___ (Docket No. 04-22, issued July 6, 2004).

¹⁸ *Id.* See also *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

¹⁹ *Kathy A. Kelley*, 55 ECAB ___ (Docket No. 03-1660, issued January 5, 2004).

²⁰ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

discharge appellant's burden of establishing that her depression was a consequential injury of the accepted conditions of CTS and tendinitis of the right thumb.

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits for the period April 2 through August 19, 2005. The Board further finds that appellant did not meet her burden of proof in establishing that her depression was a consequence of her accepted conditions of bilateral CTS and tendinitis of the right thumb.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 2, 2006 and September 6, 2005 denying appellant's claim for wage-loss benefits are affirmed and the decision of the Office dated September 6, 2005 denying appellant's request to expand her claim for depression is affirmed.

Issued: August 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board