



work but began limited duty. OWCP accepted appellant's claim for tenosynovitis (de Quervain's disease) of the left wrist.

Appellant claimed wage-loss compensation beginning September 28, 2010 on the grounds that the employing establishment withdrew her limited duty under the NRP. A supervisor confirmed that appellant was sent home on that date under the NRP.

On December 7, 2010 OWCP denied appellant's claim for wage-loss compensation on the grounds that the evidence did not establish that the claimed disability resulted from the accepted left wrist tenosynovitis. An OWCP hearing representative reviewed the written record on April 26, 2011 and affirmed. She noted that it was only after appellant's medical limitations were changed without explanation that the employing establishment advised that work was no longer available. The hearing representative found no objective evidence to support any need for a change in limitations causally related to the accepted claim.

Dr. Rebecca Gliksman, a Board-certified internist, related appellant's history and noted that appellant showed new clinical symptoms and signs, for which new restrictions were appropriate. An imaging study showed degenerative joint disease at the C5-6 level with abutment onto the cord, which, according to the study, "could be the etiology of her worsening symptomatology ... and was the basis of the additional restrictions in her workplace." Dr. Gliksman found that the C5-6 radiculopathy findings could explain appellant's deltoid pain as well as her arm pain, pain in the ulnar distribution and cuboid pain. She felt that appellant's new neck pain and distal arm strain was related to the repetitive strain and sprain of pushing and pulling that occurred in her position as a postal case, even though she had a 10-pound weight limitation.

Dr. Gliksman stated, however, that appellant had a long-standing wrist tenosynovitis "which was an accepted claim and that did account for the majority of her restrictions." She stated that the tenosynovitis was still present and still causing problems, and asked that appellant be allowed to return to work with the restrictions she had prior to 2009.

Appellant, through her representative, requested reconsideration. She argued that the employing establishment's withdrawal of restricted duty entitled her to compensation since September 28, 2010. Appellant argued, and offered evidence to support, that her condition did not significantly change since 2006. She stated that she could have continued working under her restrictions.

In a July 29, 2011 decision, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision. It found no evidence to corroborate the alleged recurrence of disability.

On appeal, appellant's representative argues that appellant was performing limited-duty work for quite some time as a result of her work-related condition, and then the employing establishment withdrew the limited duty.

## LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>3</sup>

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 injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to her work-related injury or illness is withdrawn, except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force.<sup>4</sup>

FECA Bulletin No. 09-05 outlines procedures when light-duty positions are withdrawn under the NRP. If the claimant has been on light duty due to an injury-related condition without an LWEC rating, or OWCP has set aside the LWEC rating, payment for total wage loss should be made based on the Form CA-7 as long as the following criteria are met: (1) the current medical evidence in the file (within the last 6 months) establishes that the injury-related residuals continue; (2) the evidence of file supports that light duty is no longer available; and (3) there is no indication that a retroactive LWEC determination should be made. Retroactive LWEC determinations should not be made in NRP cases without approval from the district Director. FECA Bulletin No. 09-05 states that if the medical evidence is not sufficient, OWCP should request current medical evidence from the employing establishment and the claimant.<sup>5</sup>

## ANALYSIS

The record supports that the employing establishment withdrew appellant’s limited duty under the NRP effective September 28, 2010. Appellant filed a claim for wage loss beginning that date. OWCP denied this claim but did not discuss FECA Bulletin No. 09-05 or properly consider the evidence in light of the guidelines provided.

Generally, a withdrawal of limited duty constitutes a recurrence of disability under OWCP regulations. As there is no LWEC in place, OWCP should consider whether the medical evidence established that appellant had continuing injury-related residuals at the time of the withdrawal. If it finds the medical evidence insufficient, OWCP should request additional

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> 20 C.F.R. § 10.5(f).

<sup>4</sup> *Id.* at § 10.5(x).

<sup>5</sup> FECA Bulletin No. 09-05 (issued August 18, 2009).

evidence or refer appellant to an appropriate specialist to address residuals due to the accepted condition.<sup>6</sup>

Accordingly, the Board will set aside OWCP's July 29, 2011 decision and remand the case to OWCP for further consideration. After such further development as may be necessary, OWCP shall issue an appropriate final decision on appellant's claim for wage-loss compensation beginning September 28, 2010.<sup>7</sup>

### **CONCLUSION**

The Board finds that this case is not in posture for decision on whether appellant is entitled to wage-loss compensation beginning September 28, 2010, when the employing establishment withdrew her limited duty under the NRP.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 29, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: July 3, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> OWCP would have the burden of proof to show that injury-related residuals had ceased. *J.A.*, Docket No. 11-1592 (issued February 13, 2012).

<sup>7</sup> *J.A.*, *id.*; *H.S.*, Docket No. 11-1593 (issued May 3, 2012) (setting aside OWCP's denial and remanding for further consideration in light of FECA Bulletin No. 09-05).