

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

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**P.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Brooklyn, NY, Employer**

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**Docket No. 13-1998  
Issued: April 14, 2014**

*Appearances:*  
*Paul Kalker, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 29, 2013 appellant, through her attorney, filed a timely appeal from a June 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 OWCP met its burden of proof to terminate appellant's eligibility for wage-loss compensation benefits on the grounds that she no longer had any disability causally related to her accepted employment-related injury; and (2) whether appellant has established that she is entitled to disability compensation for the period June 18 to July 27, 2012.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 3, 2012 appellant, then a 41-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained an injury when she missed a step while delivering mail and fell on her right hand. She notified her supervisor, first sought medical treatment and stopped work on that same date. On May 9, 2012 by Form CA-16, OWCP authorized Dr. Leon Bernstein, Board-certified in orthopedic surgery, to treat appellant's right wrist condition for up to 60 days. The Form CA-16 noted that there were limited-duty assignments available.

By decision dated June 1, 2012, OWCP accepted the claim for right hand sprain. It noted that the claim had initially been accepted as a minor injury with minimal or no time lost from work. OWCP advised appellant to submit a Form CA-1 for any time lost from work.

On July 27, 2012 OWCP referred appellant, the case record, a series of questions and a statement of accepted facts to Dr. Philip D'Ambrosio, a Board-certified orthopedic surgeon, for a second opinion examination. On July 30, 2012 appellant filed a claim for compensation (Form CA-7) for leave without pay for the period June 18 to July 27, 2012.

In an August 10, 2012 report, Dr. D'Ambrosio reported that appellant was a right-handed woman who was employed as a letter carrier for the postal service and he related her history of injury. He noted that she complained of pain in the right hand. In particular, appellant complained of a sharp stabbing pain at the lateral aspect, fifth metacarpal. She sought physical therapy treatment three times a week. Dr. D'Ambrosio reviewed Dr. Bernstein's handwritten notes and noted no prior history of injury to the right hand. Upon physical examination, he reported that the right hand revealed slight swelling over the lateral aspect, fifth metacarpal. Dr. D'Ambrosio further noted range of motion of the right wrist at 80 degrees of dorsiflexion, 80 degrees of palmar flexion with full pronation and supination, good grip and pinch strength and intact right hand neurovascular. He diagnosed contusion of the right hand and opined that the condition had resolved. Dr. D'Ambrosio reported that appellant required no further treatment and could return to full-duty work without restrictions.

By letter dated August 13, 2012, OWCP informed appellant that the evidence of record was insufficient to establish her claim for compensation for the period June 18 to July 27, 2012. Appellant was advised of the medical evidence needed and provided 30 days to submit additional information.

In treatment notes dated July 3 to August 16, 2012, Dr. Bernstein noted some swelling of the right hand and reported that appellant complained of pain with activities of daily living. In an August 16, 2012 Form CA-17, he reported that she was totally disabled as a result of her right hand sprain and could not return to work.

By decision dated September 4, 2012, OWCP terminated appellant's entitlement to wage-loss compensation benefits effective that same date based on Dr. D'Ambrosio's opinion that her right hand sprain had resolved and she could resume full-duty work. It noted that the weight of

the medical evidence rested with Dr. D'Ambrosio who established that appellant no longer had any disability or residuals due to her accepted work-related condition.<sup>2</sup>

In a September 6, 2012 note and Form CA-17, Dr. Bernstein reported that appellant could return to work on September 10, 2012 with restrictions.

By decision dated September 14, 2012, OWCP denied appellant's disability compensation for the period June 18 to July 27, 2012.

By letter dated March 18, 2013, appellant, through counsel, requested reconsideration of the September 4, 2012 decision terminating entitlement to wage-loss compensation and the September 14, 2012 decision denying disability compensation for the period June 18 to July 27, 2012. Counsel argued that Dr. D'Ambrosio's examination revealed swelling which was inconsistent with his findings that appellant's condition had resolved. He further stated that further diagnostic testing should have been ordered. Counsel stated that he was submitting medical evidence from appellant's physicians which established that her injury was more severe than a right hand sprain. He noted that the physicians provided a diagnosis of median nerve neuropathy at or distal to the wrist, right hand.

In an August 22, 2012 report, Dr. Bernstein reported that he last examined appellant on August 6, 2012. The examination revealed swelling and stiffness along the ulnar border of the right hand. Range of motion of the fingers was good and neurovascular findings were grossly normal. A repeated x-ray of the right hand revealed normal bone structures. Dr. Bernstein opined that appellant's current condition was consistent with her initial May 3, 2012 trauma. Appellant remained on total disability because her occupation required constant manual handling. She was impaired from performing such an activity because she reported that there was no activity at her employment that would basically eliminate the need to use the right hand repetitively. Dr. Bernstein opined with reasonable medical certainty that appellant was totally disabled from her regular gainful employment based on her history and physical findings which showed continued swelling. He found her current status to be consistent with her original injury.

In a September 10, 2012 medical report, Dr. Abraham Glasman, a Board-certified neurologist, related appellant's history of injury. He noted her complaints of tingling and sharp pains in the hand and was previously diagnosed with right hand sprain. Dr. Glasman recommended a magnetic resonance imaging (MRI) scan of the right hand and electrodiagnostic (EMG) study of the right upper extremity.

In an October 6, 2012 diagnostic report, Dr. Richard Silvergleid, a Board-certified diagnostic radiologist, reported that an MRI scan of the right hand was within normal limits.

In an October 11, 2012 diagnostic report, Dr. Glasman reported that an EMG study of the right upper extremity revealed findings consistent with right median neuropathy at or distal to the

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<sup>2</sup> On September 4, 2012 OWCP notified appellant of a proposal to terminate her medical benefits based on Dr. D'Ambrosio's opinion that she could resume full-duty work because her right hand sprain had resolved. It provided him 30 days to submit additional information. The Board notes that no final termination decision has been issued with respect to the September 4, 2012 proposed termination of medical benefits.

wrist. In a November 6, 2012 report, he reported that physical examination revealed slight warmth and swelling of the right hand compared to left, as well as positive Tinel's sign at the right wrist with weakness of hand grasp. Dr. Glasman diagnosed hand injury with subsequent median neuropathy and possible reflex sympathetic dystrophy/complex regional pain syndrome. He stated: "It appears [appellant] is unable to work subsequent to this injury."

In a January 18, 2013 medical report, Dr. Yardley P. Shoulton, a treating physician, reported that appellant sustained a work-related right hand injury on May 3, 2012 when she was climbing a flight of stairs and fell on her hand. He first treated her on September 10, 2012 and noted right hand swelling with complaints of numbness and pain upon examination. Dr. Shoulton reviewed the prior medical reports and provided summarized findings based on the reports of Dr. Bernstein and Dr. D'Ambrosio. He noted that, at the time of appellant's injury, only an x-ray of the right hand was completed and she was not referred for a neurological evaluation or an MRI scan to determine her injury and limitations in her ability to perform her work duties. Dr. Shoulton found that the prior physicians failed to exhaust clinical measures to appropriately diagnose her injury. He stated that appellant's case could not be conclusive without adequate diagnostic testing. Dr. Shoulton stated that he did not believe that her right hand contusion had resolved given that Dr. D'Ambrosio's examination found "slight swelling over the lateral aspect fifth metacarpal" over three months after the initial injury. He stated that appellant should have been referred to a hand surgeon for diagnostic testing given that Dr. D'Ambrosio's physical examination revealed problems of pain, swelling and numbness.

Dr. Shoulton disagreed with Dr. D'Ambrosio's findings and found that appellant could not have returned to work full duty as she had limited use of her right hand. He noted that the swelling in her right hand was still evident from the May 3, 2012 injury. Dr. Shoulton reported that, while appellant's right hand x-ray excluded fracture, it could not determine nerve damage. Appellant's MRI scan was used to evaluate structural damage which also revealed negative. The EMG study was performed to rule out focal neuropathy or neuropathic injury due to trauma of her fall. Dr. Shoulton found that appellant's EMG findings were consistent with a right median neuropathy at or distal to the wrist which he opined was due to her May 3, 2012 work injury. He reported that she was totally disabled and could not return to regular duty since she continued to have swelling of her hand eight months after the injury with limited use of the right hand. Dr. Shoulton concluded that appellant's neuropathic injury was a result of her May 3, 2012 fall, that her injury was permanent and that she could no longer perform her job as a letter carrier.

In a May 6, 2013 medical report, Dr. Ignatius Daniel Roger, a Board-certified plastic surgeon and subspecialty Board-certified hand surgeon, reported that he first began treating appellant on November 26, 2012. He noted that she injured her right hand when she fell while ascending a flight of stairs. Dr. Roger provided a summary of his examination findings for the dates he treated appellant. He reviewed her prior medical reports and provided findings regarding her diagnostic studies. Dr. Roger diagnosed right hand contusion and right median neuropathy (carpal tunnel syndrome). He opined that appellant's conditions were causally related to the May 3, 2012 work injury because she struck her right hand at the level of the metacarpal accounting for the pathology present at the right hand and wrist. Dr. Roger further stated that there were persistent ongoing impairments arising from the May 3, 2012 accident which included restrictions of manipulative activities with the dominant right hand as well as deficient sensations and wrist motions which prevented her from performing the full scope of her

employment duties. He noted that he disagreed with Dr. D'Ambrosio's report which failed to describe any testing specifically pertinent to her neurological complaints. Dr. Roger further stated that Dr. D'Ambrosio reported wrist motion in excess of that seen in his own clinical examinations, as well as those performed by other physicians. He stated that repeated clinical examinations and objective testing confirmed the defects associated with appellant's right median neuropathy. Dr. Roger recommended surgical neurolysis of the right median nerve and stated that he could not ascertain the level of permanency as surgery could improve her condition.

By decision dated June 25, 2013, OWCP affirmed both the September 4, 2012 decision terminating entitlement to wage-loss compensation benefits and the September 14, 2012 decision denying disability compensation for the period June 18 to July 27, 2012. It reviewed the additional evidence and stated, "A conclusory statement attributing the swelling to an incident that occurred months earlier and that the condition was so severe that it was permanently disabling was insufficient to establish that the median nerve neuropathy and disability were causally related to the May 3, 2012 fall." OWCP found Dr. Roger's opinion insufficient to establish causal relationship because he failed to explain how he arrived at his conclusion which was based on EMG studies obtained six months postinjury.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted appellant's claim for right hand sprain as a result of the May 3, 2012 employment incident. By decision dated June 25, 2013, it affirmed its September 4, 2012 decision terminating her entitlement to wage-loss compensation on the grounds that the accepted right hand sprain had resolved. The Board finds that OWCP failed to meet its burden of proof to terminate appellant's entitlement to wage-loss benefits effective September 4, 2012.

The Board notes that appellant continued to submit treatment notes from her treating physician, Dr. Bernstein from July 3 to August 16, 2012 wherein he noted the continued swelling of her right hand and continued to report that she remained totally disabled. In its September 4, 2012 and June 25, 2013 decisions, OWCP determined that appellant no longer experienced disability from her May 3, 2012 injury finding that the weight of the medical

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<sup>3</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>4</sup> *Id.*

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

evidence rested with Dr. D'Ambrosio, the second opinion physician. The Board finds, however, that Dr. D'Ambrosio's opinion is insufficient to resolve the question of whether appellant continued to suffer from disability causally related to the accepted May 3, 2012 injury.

In his August 10, 2012 report, Dr. D'Ambrosio reported that on May 3, 2012, appellant slipped on steps and struck the lateral aspect of her right hand. Upon physical examination, he found that the right hand revealed slight swelling over the lateral aspect, fifth metacarpal. Dr. D'Ambrosio diagnosed contusion of right hand which had resolved. He further stated that appellant required no further treatment and could return to full-duty work.

The Board finds that the opinion of Dr. D'Ambrosio is not well rationalized. Dr. D'Ambrosio opinion that appellant's right hand contusion had resolved contradicted his examination findings which revealed slight swelling over the lateral aspect. He provided no opinion regarding why she could return to work full duty, which required repetitive handling of mail, despite evidence of continued swelling more than three months after the date of injury. Dr. D'Ambrosio opinion is not sufficiently rationalized to establish that appellant's condition ceased with no residuals of her employment-related injury.<sup>6</sup> His opinion was vague and speculative, failing to provide any explanation regarding why her right hand contusion had resolved with no further disability. The Board has consistently held that a medical opinion not fortified by rationale is of limited probative value.<sup>7</sup> Given the deficiencies in Dr. D'Ambrosio's report, OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation benefits effective September 4, 2012.<sup>8</sup> The termination decision will be reversed.<sup>9</sup>

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

Under FECA,<sup>10</sup> the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>11</sup> Disability is not synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.<sup>12</sup>

Whether a particular injury causes an employee to be disabled and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative

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<sup>6</sup> V.C., Docket No. 11-1561 (issued February 15, 2012).

<sup>7</sup> A.D., 58 ECAB 149 (2006).

<sup>8</sup> J.K., Docket No. 13-327 (issued August 7, 2013).

<sup>9</sup> D.H., Docket No. 12-1975 (issued June 5, 2013).

<sup>10</sup> 5 U.S.C. §§ 8101-8193.

<sup>11</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>12</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

and substantial medical evidence.<sup>13</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>14</sup> The Board will not require OWCP to pay compensation for disability without any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>15</sup>

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

In its June 25, 2013 decision, OWCP denied appellant's claim for disability compensation for the period June 18 to July 27, 2012. The Board further notes that it has yet to issue a decision regarding whether any additional conditions should be accepted as employment related. The Board finds that appellant has not established that she was disabled from June 18 to July 27, 2012 due to her accepted right wrist strain.

The only physician of record who evaluated appellant during the time period in question was Dr. Bernstein. While Dr. Bernstein submitted handwritten progress notes dated July 3 and 26, 2012, which continued to note swelling of appellant's right hand and to report that she was totally disabled, his reports are of limited probative value. He offered no medical explanation as to why she would be unable to perform her job duties. In his August 22, 2012 narrative report, Dr. Bernstein noted that he had examined appellant on August 6, 2012. Upon examination, appellant's range of motion of the fingers was good, neurovascular findings were grossly normal and repeat x-ray of the right hand revealed normal bone structures. Dr. Bernstein did not provide objective medical findings and medical rationale which would substantiate her inability to work during the period June 18 to July 27, 2012, based upon her accepted condition of right wrist strain.

### **CONCLUSION**

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss benefits on September 4, 2012. It further finds that appellant has not established that she is entitled to wage-loss benefits for the period June 18 to July 27, 2012.

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<sup>13</sup> See *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

<sup>14</sup> *G.T.*, 59 ECAB 447 (2008); see *Huie Lee Goal*, 1 ECAB 180, 182 (1948).

<sup>15</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2013 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: April 14, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board