

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

J.K., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, West Palm Beach, FL,
Employer**

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**Docket No. 14-171
Issued: April 7, 2014**

Appearances:
Lenin V. Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 30, 2013 appellant, through his representative, filed a timely appeal from an August 13, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an employment-related recurrence of disability beginning July 25, 2012.

FACTUAL HISTORY

On July 29, 2009 appellant, then a 54-year-old mail handler, filed a traumatic injury claim alleging that on July 22, 2009 he sustained an injury to his left hand when it got caught

¹ 5 U.S.C. § 8101 *et seq.*

between a dumper and a pallet, File No. xxxxxx969. OWCP accepted the claim for a crush injury to the left hand. Appellant stopped work on July 23, 2009 and returned to work for four hours per day on August 21, 2009. He resumed his regular employment duties on September 11, 2009.

On July 9, 2012 appellant filed an occupational disease claim alleging that he sustained carpal tunnel syndrome causally related to factors of his federal employment. OWCP accepted the claim, assigned subsidiary File No. xxxxxx018, for left carpal tunnel syndrome.

In a work restriction evaluation dated July 25, 2012, Dr. Ramon A. Berenguer, an internist, diagnosed a crush injury to the left hand and a collateral ligament injury. He advised that appellant should remain off work for five weeks.

An August 8, 2012 nerve conduction velocity (NCV) study revealed bilateral carpal tunnel syndrome, C8 to T1 radiculopathy and double crush syndrome.

On August 15, 2012 appellant filed a claim for compensation from July 25 to August 10, 2012 under File No. xxxxxx969.

By letter dated August 21, 2012, OWCP requested additional factual and medical information regarding appellant's alleged disability beginning July 25, 2012.

In a narrative report dated July 25, 2012, received by OWCP on August 21, 2012, Dr. Berenguer discussed appellant's history of a crush injury to his left hand on July 22, 2009 when it was "pinned between the pallet, dumper and conveyor belt. It took a forklift to remove the pressure so his hand could be released. Following the accident, [he] experienced excruciating pain, swelling and numbness in the left hand." Dr. Berenguer diagnosed a left hand crush injury and left ring and middle finger proximal interphalangeal (PIP) joint and collateral ligament injuries.

In a report dated August 17, 2012, Dr. Berenguer noted that appellant was status post a left hand crush injury with continued "weakness of the hand and fingers with a 'clicking' of the wrist when he flexes and extends it. [Appellant] continues to have almost constant pain of the hand and fingers."² On examination, Dr. Berenguer found muscle atrophy of the hand and digits with pain in the PIP area of the third and fourth fingers and decreased sensation of the dorsum, palm and fingers. He diagnosed a left hand crush injury, left ring and middle finger PIP collateral ligament injury, possible nerve damage of the left hand and carpal tunnel syndrome. Dr. Berenguer found that appellant should remain off work and referred him for a magnetic resonance imaging (MRI) scan study.³

² In a form report dated August 17, 2012, Dr. Berenguer diagnosed a left hand crush injury and a PIP joint collateral injury. He found that appellant should remain off work for five weeks. In another form report dated August 17, 2012, Dr. Berenguer diagnosed a left hand crush injury and left middle and ring finger collateral ligament injury. He checked "yes" that the condition was caused or aggravated by employment and found that appellant was totally disabled from July 24 to September 21, 2012.

³ A September 10, 2012 MRI scan study of the left wrist showed a possible bone contusion of the ulnar styloid tip.

On September 24, 2012 appellant filed a recurrence of disability claim beginning July 24, 2012 causally related to his July 22, 2009 employment injury. He related that he had sought medical treatment and physical therapy intermittently since 2009.

In a report dated September 12, 2012, Dr. Berenguer discussed appellant's history of a left hand crush injury on July 22, 2009 when his hand was pinned between a mail dumper and a pallet.⁴ He related that a July 27, 2012 NCV study revealed carpal tunnel syndrome, a crush injury and C8-T1 radiculopathy. Dr. Berenguer diagnosed a left hand crush injury and left middle and ring finger PIP from a collateral ligament injury. He stated, "The event of injury is well documented and corresponds to the complaints by [appellant] and the physical findings. [Appellant] exhibits the inability to use his left hand to a capacity which would be needed in a position requiring grasping or gripping any object."

On October 3, 2012 OWCP referred appellant to Dr. David B. Lotman, a Board-certified orthopedic surgeon, for a second opinion examination regarding the extent of his current condition.

On September 20, 2012 Dr. Samy F. Bishai, a Board-certified orthopedic surgeon, discussed appellant's history of a July 22, 2009 crush injury to his left hand. He noted that appellant "subsequently recovered well enough to work and he worked for some time until recently on July 24, 2012 he was unable to work due to an increase in the amount of pain that he experiences in his left hand, weakness of the hand and numbness of the left hand." Dr. Bishai determined that an NCV study revealed bilateral carpal tunnel syndrome. He diagnosed a crush injury to the left hand and a PIP collateral ligament injury to the left ring and long finger.

By decision dated October 12, 2012, OWCP found that appellant had not established that he sustained a recurrence of disability beginning July 25, 2012 causally related to his July 22, 2009 employment injury.

In a statement dated October 1, 2012, received by OWCP on February 13, 2013, appellant described his work injury. He related that, after the pallet pinned his hand between the dumper and belt, he hit the emergency stop and screamed in pain. It required a forklift to "take the weight off of the dumper so the pallet could be loosened and my hand removed." Appellant was taken by ambulance to the hospital.

On October 17, 2012 appellant requested a telephone hearing before an OWCP hearing representative.

In a report dated November 1, 2012, Dr. Lotman diagnosed a resolved crush injury to the left hand and wrist and left carpal tunnel syndrome. He found that appellant had no "significant work-related disability other than some restricted wrist motion" due to the July 22, 2009 injury.

⁴ In form reports dated August 29, 2012, Dr. Berenguer diagnosed a left hand crush injury and collateral ligament injury of the left middle and ring finger at the PIP joint. He checked "yes" that the condition was employment related and found that appellant was totally disabled from July 24 to September 21, 2012.

A telephone hearing was held on February 13, 2013. Appellant related that after he returned to work in 2009 following his injury, he performed his usual work duties until July 2012. He experienced continual pain and developed left carpal tunnel syndrome. Appellant stopped work due to both his crush injury and left carpal tunnel syndrome and requested compensation under both file numbers.

On March 13, 2013 Dr. Bishai reviewed Dr. Lotman's report and disagreed with his findings. Contrary to Dr. Lotman, Dr. Bishai stated that appellant's injury was not minor but instead a significant crush injury with a collateral ligament injury of the left ring and long finger at the PIP joint. He stated, "[Dr. Lotman] is even questioning the value of the electrodiagnostic nerve condition studies that [appellant] has that showed positive findings." Dr. Bishai opined that appellant was "indeed disabled and he has difficulty using his hands the crush injury of his left hand left him with residual findings and being that it is the dominant hand, this makes it very difficult for him to use his hand...."

On May 15, 2013 Dr. Berenguer concurred with Dr. Bishai's determination that appellant sustained a serious crush injury. He found that appellant was unable to perform his employment duties.

In a decision dated June 3, 2013, an OWCP hearing representative vacated the October 12, 2012 decision. He determined that OWCP should double File No. xxxxxx018, accepted for left carpal tunnel syndrome, into the current file number. The hearing representative instructed OWCP to refer appellant for another second opinion examination to determine if he was disabled due to either accepted employment injury beginning July 24, 2012.

On June 18, 2013 OWCP referred appellant to Dr. Peter J. Millheiser, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated July 22, 2013, Dr. Millheiser reviewed the evidence of record and diagnosed post left hand contusion and crush injury. On examination he found no left hand atrophy but left hand numbness. Dr. Millheiser stated, "Tinel's sign is equivocal. On doing Phalen's test there is pain throughout the entire anterior wrist." He found that there was "no organic basis for the sensory findings and they do not bear any relation to reality. Testing for carpal tunnel syndrome was equivocal. It is to be noted that this was a mild contusion/crush injury of the hand and [appellant] was able to work for a number of years following the incident." Dr. Millheiser concluded that appellant could work without restrictions.⁵

By decision dated August 13, 2013, OWCP determined that appellant had not established a recurrence of disability beginning July 25, 2012 causally related to his July 22, 2009 work injury.

On appeal appellant, through his representative, asserts that he continued to experience problems due to his accepted employment injury.

⁵ The record contains progress reports dated July 17, 2013 from Dr. Berenguer and July 30, 2013 from Dr. Bishai.

LEGAL PRECEDENT

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.⁶

A claimant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁷ This burden includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.⁸

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁹ The implementing regulations state that, if a conflict exists between the medical opinion of the employee’s physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. 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.¹⁰

ANALYSIS

OWCP accepted that appellant sustained a crush injury to his left hand on July 22, 2009. It further accepted that he sustained left carpal tunnel syndrome due to factors of his federal employment under File No. xxxxxx018. Following his July 22, 2009 employment injury, appellant returned to work for four hours per day on August 21, 2009 and to his regular full-time employment on September 11, 2009. He stopped work on July 25, 2012 and filed a claim for compensation.

The Board finds that the case is not in posture for decision due to a conflict in medical opinion. Dr. Berenguer and Dr. Bishai, appellant’s attending physicians, diagnosed a significant crush injury to the left hand and a PIP collateral ligament injury of the left middle and ring finger. The physicians opined that he was unable to work beginning July 25, 2012 due to residuals of his employment injuries. Dr. Lotman, an OWCP referral physician, however, found that appellant had no disability due to his July 22, 2009 work injury. Dr. Millheiser, another

⁶ 20 C.F.R. § 10.5(x).

⁷ *Carmen Gould*, 50 ECAB 504 (1999).

⁸ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁹ 5 U.S.C. § 8123(a).

¹⁰ 20 C.F.R. § 10.321.

OWCP referral physician, found that appellant had no work restrictions as a result of either his carpal tunnel syndrome or his left crush injury.

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹¹ As a conflict exists between appellant's physicians, Dr. Berenguer and Bishai and OWCP referral physicians Dr. Lotman and Dr. Millheiser, the case will be remanded for OWCP to refer him for an impartial medical examination to determine whether he sustained a recurrence of disability beginning July 25, 2012 due to either his July 22, 2009 employment injury or his accepted left carpal tunnel syndrome. Following such development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹¹ 5 U.S.C. § 8123(a); *see also* R.C., 58 ECAB 238 (2006).