

FEDERAL WORKPLACE TRAINING & EXPO

April 23 - 25, 2014
Capital Hilton • Washington, D.C.



Catching Up with the ECAB

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

Alan Shapiro, Attorney, Shapiro, Shapiro and Shapiro

Thursday April 24, 2014

10:45 a.m. – 12 p.m.

Presentation Overview

- Review cases issued by ECAB from January to December 2013
- Selected 18 cases of interest
- For each case we will:
 - Review Factual History
 - Identify Issues
 - Discuss the Board's Decision

All of the cases decided by ECAB were important to the parties.
This presentation is only a highlight of the vast number of cases decided by ECAB in 2013.

Jan 18

113 LRP 6179

N.W., Appellant and U.S. POSTAL SERVICE, STATISTICAL PROGRAMS, Pittsburgh, PA, Employer

12-1618

January 18, 2013

Factual History

- The claim was approved for lumbar strain, L3-L4 herniated disc, and enthesopathy of the hip region.
- The IME physician found that the claimant could perform work for four hours a day.
- The employer then offered the claimant a four hour per day job that was on an interim basis and when available.
- OWCP ruled that the job was suitable. The claimant refused the job offer and compensation was terminated.



Jan 18

113 LRP 6179

N.W., Appellant and U.S. POSTAL SERVICE, STATISTICAL PROGRAMS, Pittsburgh, PA, Employer

12-1618

January 18, 2013

Issue

What is a valid job offer?



Decision

What is the board's ruling?

Feb 7

113 LRP 7763

W.S., Appellant and DEPARTMENT OF VETERANS AFFAIRS, RALPH H. JOHNSON MEDICAL CENTER, Charleston, SC, Employer

12-992

February 7, 2013



U.S. Department
of Veterans Affairs

Factual History

- The claimant contended that actions of his employer caused him to have a psychiatric injury.
- The claim was denied on two grounds. Factors of employment as to discrimination were not established. The medical evidence did not establish causal relationship.
- The claimant prevailed before EEOC at a time after the decision of OWCP and BHR. He attempted to obtain a new review, even though it was more than one year from the last merit decision.

Feb 7

113 LRP 7763

W.S., Appellant and DEPARTMENT OF VETERANS AFFAIRS, RALPH H. JOHNSON MEDICAL CENTER, Charleston, SC, Employer

12-992

February 7, 2013



U.S. Department
of Veterans Affairs

Issue

What constitutes new evidence?

Decision

What was the Board's ruling?

Feb 25

113 LRP 11226

***R.B., Appellant and DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION,
RECORDS MANAGEMENT DIVISION, Winchester, VA, Employer***

12-455P

February 25, 2013

Factual History

- A stuffed toy monkey hanging from a noose was placed on the bulletin board in the work place. Claimant was the only black person in this area
- The claimant contends that as a result, he sustained a psychiatric injury.
- OIG investigated the incident. The report was sent to OWCP. The documents were heavily redacted. The witness statements verified the claimants account. Several of the witnesses indicated that they were offended by the “monkey”. OWCP denied the claim

Feb 25

113 LRP 11226

*R.B., Appellant and DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION,
RECORDS MANAGEMENT DIVISION, Winchester, VA, Employer*

12-455P

February 25, 2013

Issue

What facts constitute a psychological injury?

Decision

What was the Board's ruling?

Mar 11

113 LRP 12207

R.B., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Austin, TX, Employer

12-1881

March 11, 2013

Factual History

- The claimant was paid on 18% scheduled award.
- He subsequently filed for an additional award.
- He was granted a 7% additional award.
- Claimant filed a third request for scheduled award.
- This time, the IME said claimant only had a 1% impairment.
- OWCP agreed, and declared an overpayment.



Mar 11

113 LRP 12207

R.B., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Austin, TX, Employer

12-1881

March 11, 2013

Issue

When is enough enough?



Decision

What was the Board's ruling?

Mar 22

113 LRP 15462

T.S., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer

13-281

March 22, 2013



Factual History

- The claim was approved for a below the knee amputation. Claimant was first awarded a 28% impairment. Subsequently, it was raised to 70%.
- The claimant requested that he be paid for 100% loss of leg. OWCP refused to raise the award based on the 6th edition of the AMA Guide.

Mar 22

113 LRP 15462

T.S., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer

13-281

March 22, 2013

Issue

Whether statute or rule governs

Decision

What was the Board's ruling?



April and May 2013

No cases selected

June 19

113 LRP 28512

L.B., Appellant and DEPARTMENT OF THE NAVY, NAVY PUBLIC WORKS DEPARTMENT, San Diego, CA, Employer

13-448

June 19, 2013

Factual History

- Claim was approved for:
 - Open right wrist distal radial distal fracture.
 - Aggravation of herniated disc at L4-L5.
 - Left sided sciatica.
 - Internal complication of an orthopedic right wrist implant.
 - Traumatic tenosynovitis of the right wrist.
 - Left wrist osteoarthritis.
- He was awarded temporary total disability. However, he filed for and received an increase in his Veterans Administrative Service Connected Disability.
- OWCP when notified by the claimant of this fact, immediately required claimant to elect between the two benefits. However, claimant did not make an election and OWCP determined that he elected VA benefits and declared an overpayment of \$220,155.28.
- OWCP refused to waive the overpayment, although it did admit that the claimant was without fault.
- The VA notified OWCP that the increase in benefits was not based on the OWCP case. The service connected injury was to the left wrist and left leg injury. The injury of the left wrist and left leg were never approved by OWCP.



June 19

113 LRP 28512

L.B., Appellant and DEPARTMENT OF THE NAVY, NAVY PUBLIC WORKS DEPARTMENT, San Diego, CA, Employer

13-448

June 19, 2013



Issue

What constitutes dual benefits?

Decision

What was the Board's ruling?

June 26

113 LRP 27963

***C.S., Appellant and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION
MEDICAL CENTER, Reno, NV, Employer***

13-624

June 26, 2013



U.S. Department
of Veterans Affairs

Factual History

- The claim was accepted for nasal bone fracture, contusion of right elbow and forearm, lumbar sprain, displacement of lumbar intervertebral disc without myelopathy, and aggravation of degenerative disc disease.
- Dr. Swartz, the IME, second opinion, said claimant could return to work for 4 hours a day with restrictions.
- The claimant returned to work from October 11, 2011 through October 21, 2011. She then said that work was beyond her restrictions and that she could not work. The attending physician disagreed with the second opinion physician.
- OWCP denied further TT on the basis that the medical established that she could perform work.

June 26

113 LRP 27963

***C.S., Appellant and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION
MEDICAL CENTER, Reno, NV, Employer***

13-624

June 26, 2013



U.S. Department
of Veterans Affairs

Issue

Does a second opinion require a third opinion?

Decision

What was the Board's ruling?

July 8

113 LRP 30514

S.C., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Albemarle, NC, Employer

13-738

July 8, 2013

Factual History

- The claimant was injured by a metal box. The claim was denied.
- The claimant did not file an appeal.
- The claimant in fact did not know that the claim was denied.
- Counsel filed a letter with new medical evidence.
- Counsel contended that the original denial was on the basis that additional medical evidence was needed. Therefore, no appeal was in fact required.
- The only thing needed was new evidence.

July 8

113 LRP 30514

S.C., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Albemarle, NC, Employer

13-738

July 8, 2013

Issue

Which is more important; form or substance?

Decision

What was the Board's ruling?

Aug 23

113 LRP 37542

B.C., Appellant and DEPARTMENT OF THE ARMY, U.S. ARMY MEDICAL RESEARCH INSTITUTE OF INFECTIOUS DISEASES, Fort Detrick, MD, Employer

13-81

August 23, 2013



Factual History

- The claimant alleged that he contracted a parasitic infection in the performance of duty.
- Claimant was an animal caretaker.
- He alleged that he was exposed to fecal matter while cleaning cages.
- OWCP did agree that claimant was exposed to the infectious agent.
- OWCP denied the claim on the basis of causal relationship.

Aug 23

113 LRP 37542

***B.C., Appellant and DEPARTMENT OF THE ARMY, U.S. ARMY MEDICAL RESEARCH
INSTITUTE OF INFECTIOUS DISEASES, Fort Detrick, MD, Employer***

13-81

August 23, 2013



Issue

What really is causal relationship?

Decision

What was the Board's ruling?

Aug 28

113 LRP 37509

A.L., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Bethpage, NY, Employer

12-1839

August 28, 2013

Factual History

- The claim was approved for lumbar strain and subluxation of lumbar vertebrae. The claimants attending physician returned him to work with the following limitations:
 - Work for eight hours per day.
 - No lifting over fifty pounds intermittently.
 - No pulling or pushing or simple grasping for more than five to six hours per day.
- The employer offered claimant a modified job that appeared to meet the restrictions, but in fact, was the same job as the claimant was performing before becoming disabled.
- The employer failed to explain how it was to accommodate the work restrictions.
- OWCP found that the job offer was suitable.
- The claimant refused the job offer, and benefits were terminated.

Aug 28

113 LRP 37509

A.L., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Bethpage, NY, Employer

12-1839

August 28, 2013

Issue

Must a suitable job offer be very specific?

Decision

What was the Board's ruling?

113 LRP 42342

C.M., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Aurora, IL, Employer

13-22

September 6, 2013

Factual History

- The claim was accepted for bilateral carpal tunnel syndrome. Claimant filed for scheduled award. A 6% award was issued.
- Claimant filed for an additional award stating there was a 19% impairment of right arm and 9% of left arm.
- OWCP never adjudicated the left arm request.
- The claim was reviewed by the District Medical Director, David Garelick.
- Dr. Garelick never examined the claimant.
- He stated that a 2009 report from the attending physician prevailed over a later report from an examining physician.
- He criticized the report on the basis that the doctor was an internist and was selected by the claimant's attorney.

113 LRP 42342

C.M., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Aurora, IL, Employer

13-22

September 6, 2013

Issue

Is the Office Medical Advisor a decision maker or an advisor?

Decision

What was the Board's ruling?

113 LRP 42731

R.R., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer

13-851

September 9, 2013

Factual History

- The claim was accepted for bilateral carpal tunnel syndrome.
- The claimant could not be accommodated by the Federal Employer.
- A vocational rehab counselor said claimant could earn \$481.00 a week as an appointment clerk.

113 LRP 42731

R.R., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer

13-851

September 9, 2013

Issue

Must a “constructive job offer” be specific?

Decision

What was the Board’s ruling?

113 LRP 44121

***C.B., Appellant and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION
MEDICAL CENTER, Syracuse, NY, Employer***

13-1091

September 16, 2013



U.S. Department
of Veterans Affairs

Factual History

- The claimant alleged that as a result of a foot drop due to a 2004 work related back injury, she tripped on a curb while in the course of her employment causing injury to her left knee.
- The claim was denied on causation grounds.
- Claimant re-filed the claim as a consequential condition.
- OWCP denied the new claim on fact of injury and causal relationship.

113 LRP 44121

***C.B., Appellant and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION
MEDICAL CENTER, Syracuse, NY, Employer***

13-1091

September 16, 2013



U.S. Department
of Veterans Affairs

Issue

When is the evidence sufficient to establish causal relationship?

Decision

What was the Board's ruling?

October 2013

No cases selected

113 LRP 48098

J.S., Appellant and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Columbia, SC, Employer

13-1288

November 12, 2013

Factual History

- The claim was accepted for lumbar sprain, right shoulder sprain, lumbo sacral spondylolysis without myelopathy and lumbar stenosis.
- IME said claimant could perform part-time sedentary employment.
- Claimant would have to use numerous mobility devices and be cautious in performing movement.
- The third opinion doctor agreed with the limitations, but said claimant could perform sedentary work 8 hours a day.
- Claimant could not operate motor vehicle at work. Could only bend, stoop and twist for half hour per-day. Could barely kneel and could not squat.
- The employer offered claimant a modified position. Claimant refused. OWCP found the job suitable and terminated benefits.

113 LRP 48098

J.S., Appellant and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Columbia, SC, Employer

13-1288

November 12, 2013

Issue

How disabled does a claimant really have to be?

Decision

What was the Board's ruling?

113 LRP 47911

A.L., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Hartford, CT, Employer

13-701

November 13, 2013

Factual History

- The claim accepted for back and neck strains, back contusion, post traumatic headaches, intervertebral disc disorder, and displacement of a cervical disc.
- The claimant underwent C5-C6 disc fusion, anterior arthrodesis at C4-C5.
- The claimant filed for scheduled award. Claimant's doctor said he had 8% whole body impairment.
- Christopher Brigham, MD, OMA, stated there was no ratable impairment following the guide lines of the July/August 2009 news letter, which he wrote.
- Claimant submitted another report from Dr. Garvey, an excellent impairment evaluator.
- She found that the claimant had 6% upper extremity impairment.
- Dr. Morley Slutsky, another OMA, rejected the objective findings of the examining physicians. He cited a report from 2003 to justify his opinion that there was no ratable impairment.
- OWCP denied an award.

113 LRP 47911

A.L., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Hartford, CT, Employer

13-701

November 13, 2013

Issue

Can the OMA resolve his own conflict?

Decision

What was the Board's ruling?

113 LRP 50037

C.P., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer

13-1293

November 20, 2013

Factual History

- The claimant sustained compensable bilateral carpal tunnel syndrome.
- Compensation for temporary total disability ceased.
- The IME said the condition resolved and claimant could return to work.
- Claimant filed for scheduled award.
- It was denied on the basis that the IME said condition had resolved and claimant was no longer temporarily and totally disabled.

113 LRP 50037

C.P., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer

13-1293

November 20, 2013

Issue

Does OWCP know the difference “disability” and “impairment”?

Decision

What was the Board’s ruling?

113 LRP 52857

M.R., Appellant and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Miami, FL, Employer

13-1279

December 5, 2013

Factual History

- The claim was accepted for left ankle sprain, left hip contusion, left shoulder sprain, concussion, aggravation of migraines, aggravation of lumbalsia and pelvic prolaspse.
- The claimant submitted a medical report evaluating her impairment as 3%.
- OWCP denied the request for scheduled award on the basis that the report did not establish a causal relationship between the medical conditions and the impairment.

113 LRP 52857

M.R., Appellant and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Miami, FL, Employer

13-1279

December 5, 2013

Issue

Does the claimant have to prove causal relationship between impairment and injury?

Decision

What was the Board's ruling?

114 LRP 5091

***B.H., Appellant and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE,
Richmond, VA, Employer***

13-1486

December 17, 2013

Factual History

- The claim was accepted for bilateral carpal tunnel syndrome.
- Claimant underwent surgery.
- OWCP placed a wage loss earning decision against her. Claimant claimed a recurrence of her conditions.
- It was denied on January 3, 2012. Reconsideration was filed on August 7, 2012.
- OWCP denied the request on the basis that it did not receive the request for reconsideration until February 14, 2013.
- However, OWCP had previously confirmed by letter that it had timely received the request.
- In fact, the request was in the file.



114 LRP 5091

***B.H., Appellant and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE,
Richmond, VA, Employer***

13-1486

December 17, 2013



Issue

Does OWCP have to read the documents in the file?

Decision

What was the Board's ruling?

Conclusion

- Why 2013 was different from other years
- Trends Identified
- What we learned

