

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCES P. LONERGAN and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

*Docket No. 95-2814; Submitted on the Record;
Issued September 17, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant's accepted January 16, 1990 right shoulder injury resulted in more than a six percent permanent impairment of her right upper extremity, for which she received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's claims for continuing compensation and for a schedule award for her accepted June 11, 1993 work-related wrist injury, on the grounds that all residuals from the injury had ceased.

The Board finds that this case is not in posture for a decision on the issue of whether appellant's January 16, 1990 accepted right shoulder injury resulted in more than a six percent permanent impairment of her right upper extremity, as appellant submitted relevant evidence, which was received but not reviewed by the Office prior to the issuance of its final decision.

On January 18, 1990 appellant, then a 52-year-old information specialist and data transcriber, filed a claim for a traumatic injury stating that on January 16, 1990, she injured her right shoulder and neck area due to lifting large binder books and pulling files all day. After a period of factual and medical development, on March 13, 1990, the Office accepted appellant's claim for temporary aggravation of a preexisting right shoulder/cervical strain and paid appropriate compensation benefits. On November 17, 1992 the Office accepted appellant's claim for a recurrence of disability.

On March 4, 1993 appellant filed a claim for a schedule award.

In response to appellant's claim, the Office prepared a statement of accepted facts and referred appellant to Dr. Grover, a Board-certified orthopedic surgeon, for a physical examination. In his report dated November 10, 1993, Dr. Grover stated that appellant had reached maximum medical improvement and demonstrated normal range of movement in both shoulders, but with pain and tenderness in the area of the right shoulder girdle.

The Office forwarded the medical evidence of record to Dr. Leonard A. Simpson, an orthopedic surgeon, for a determination of whether appellant had any permanent loss of use of function of her right arm, for the purposes of a schedule award.

After reviewing all of the relevant medical evidence of record, Dr. Simpson concluded that appellant had reached maximum medical improvement by November 10, 1993, the date of Dr. Grover's examination, and based on appellant's documented continuing pain and tenderness, Dr. Simpson recommended assigning an award of six percent permanent impairment of the right upper extremity for subjective complaints of pain that may interfere with activity. Dr. Simpson reiterated that this six percent impairment was appellant's sole permanent impairment arising from her accepted shoulder injury.

In a decision dated April 12, 1994, the Office granted appellant a schedule award for a six percent permanent impairment of the right shoulder.

By letter dated April 22, 1994, appellant requested an oral hearing before an Office representative. Subsequent to the hearing, held on October 26, 1994, appellant submitted a report from her attending physician, Dr. Santiago O. Carin, a general practitioner.

In his report dated November 7, 1994, Dr. Carin provided measurements pertaining to appellant's strength in various muscle groups, and concluded that the results indicated injury to the musculo-tendinous and ligamentous unit of the shoulder joint on the right side, manifested by the strength deficit mostly on extension and decreased endurance. Dr. Carin attributed appellant's weakness entirely to her January 16, 1990 accepted employment injury.

In a decision dated January 25, 1995, the Office hearing representative affirmed the Office's April 12, 1994 decision finding that the weight of the medical evidence, represented by Drs. Grover and Simpson, established that appellant had no more than a six percent permanent impairment of the right upper extremity, for which she had received a schedule award. The hearing representative additionally found that while Dr. Carin provided measurements regarding appellant's strength, he did not appropriately apply the American Medical Association, *Guides to the Evaluation of Permanent Impairment* nor could the information provided in his report be appropriately applied to the A.M.A., *Guides*.

By letter dated March 25, 1995, appellant requested reconsideration of the Office's January 25, 1995 decision and submitted a medical report from Dr. Carin, dated February 17, 1995, in support of her request.

In his February 17, 1995 report, Dr. Carin evaluated appellant in accordance with the A.M.A., *Guides*, and concluded that appellant had a combined upper extremity impairment of 34 percent.

In a merit decision dated May 4, 1995, the Office affirmed its prior decisions, finding that although Dr. Carin evaluated appellant pursuant to the A.M.A., *Guides*, his report confused objective findings with subjective complaints and did not explain how the percentages indicated were derived or what findings supported the particular percentages. The Office concluded,

therefore, that Dr. Carin's report was insufficiently rationalized to overcome the weight of the medical evidence as represented by the well-reasoned reports of Drs. Grover and Simpson.

The Board notes, however, that a review of the record reveals that in addition to the February 17, 1995 report of Dr. Carin, appellant submitted a report from Dr. Carin, dated March 31, 1995, which was received by the Office on April 18, 1995, prior to the issuance of its May 4, 1995 decision. In this supplemental report, Dr. Carin provided all of the objective measurements upon which his earlier conclusions were based. In the case of *William A. Couch*,¹ the Board held that when adjudicating a claim, the Office is obligated to consider all relevant evidence properly submitted by a claimant and received by the Office before the final decision is issued. As the record indicates that appellant submitted relevant evidence, which was received but not reviewed by the Office prior to the issuance of its May 4, 1995 decision, the case will be remanded to the Office to properly consider all the relevant evidence submitted prior to the issuance of its May 4, 1995 decision. Following such further development as the Office deems necessary, it shall issue a *de novo* decision.

The Board further finds that the case is not in posture for a decision with respect to appellant's accepted right wrist condition.

On June 14, 1993 appellant, while still employed as an information specialist and data transcriber, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on June 11, 1993 she injured her right wrist while performing time keeping duties. Following development of the medical evidence, the Office accepted appellant's claim for a right wrist strain.

Appellant's injury occurred on a Friday afternoon and she returned to work the following Monday morning, and, therefore, did not lose any time from work.

Appellant was initially treated for her injury on June 13, 1993, by a Dr. R. Reeve, a physician, with the Kaiser Permanente Medical Group. In a report dated June 15, 1993, Dr. Reeve noted that appellant first presented on June 13, 1993 complaining of pain in her right thumb and wrist. The physician recorded that appellant felt dull pain in her right thumb and along the right side of her hand and wrist during the day on Friday and that the pain developed in the evening after work. Dr. Reeve also noted that appellant was being treated by a Dr. Pramuk for tendinitis and arthritis of the left thumb and wrist. Finally, Dr. Reeve noted his findings on examination of mild tenderness radial side right wrist and full range of motion with no other tenderness, diagnosed probable strain of the right wrist, and prescribed the use of a splint. Dr. Reeve released appellant to return to her regular work on June 14, 1993.

The record also contains a partially illegible occupational therapy requisition form from the Kaiser Permanente group noting appellant's diagnosis as "right de Quervain's."

On February 17, 1994 appellant filed a claim for a schedule award.

¹ 41 ECAB 548 (1990).

On March 15, 1994 the Office referred appellant to Dr. Harle B. Grover, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation. The Office additionally requested that Dr. Grover evaluate appellant pursuant to the A.M.A., *Guides* (Fourth Edition), for the purpose of determining appellant's eligibility for a schedule award.

In his report dated May 3, 1994, Dr. Grover took a history of appellant's injury, reviewed the complete medical file, and performed a thorough physical examination with x-rays. He initially noted that appellant had first been examined by him in October 1993 with regard to her separate claim for right shoulder and chronic peritendinitis complaints which she also attributed to her employment. He noted that at that time appellant gave a history of bilateral de Quervain's disease in both hands or wrists, and indicated that she was under the treatment of Dr. Pramuk with Kaiser Permanente Medical Group. Dr. Grover added that when appellant was seen on April 14, 1994 for reexamination, she indicated that she had returned for examination referable to "both thumbs," but was still having complaints referable to the tendinitis of the right shoulder. Following his examination of appellant, Dr. Grover noted that appellant's neurological examination was normal, and that x-rays of her hands revealed very minimal degenerative arthritic changes of the first carpometacarpal joints bilaterally, where the thumb joins the wrist, not particularly far advanced for appellant's age and with no appreciable change since earlier x-rays taken on April 28, 1993. Dr. Grover stated that "[a]lthough it is possible [appellant] at the time of my examination on April 14, 1994 presented a very early de Quervain's tendinitis, there was nothing on physical examination of any significance which would require surgical intervention." He noted that appellant did have some tenderness and pain over the extensor tendons of the thumbs, and on abduction of the thumbs, but "was not impressed that the patient presented any evidence of stenotic bands to suggest a stenosing tenosynovitis or de Quervain's disease." Dr. Grover further stated:

"It is certainly possible her work activities did precipitate the onset of this tendinitis, but it is also most probable she would have developed tendinitis even in the absence of this type of activity at work. At the time of my examination I would still recommend continued conservative management. Should she actually develop a stenosing tenosynovitis, then it may be necessary to perform a tenovagotomy of the involved extensor tendons. I, however, rather doubt that this is ever going to become necessary. I would, therefore, feel she should be able to return back to her regular occupation without any restriction. She may, however, require some additional physical therapy possibly with ultrasonic therapy to the wrists and possibly iontophoresis with steroids. At the time of my examination, however, the patient presented no objective findings to substantiate her continued complaints, but moderate subjective complaints of pain and discomfort and loss of strength."

Dr. Grover concluded that as appellant was going to be off work for a while due to ovarian cancer treatment, this might be an ideal time for her to also undergo additional hand therapy.

In an attached work restriction evaluation form, Dr. Grover indicted that appellant was restricted from lifting greater than 10 to 20 pounds and could perform only occasional work

above the shoulder due to her shoulder tendinitis, but could work 8 hours a day without additional restrictions. He also noted that he expected appellant to reach maximum medical improvement in possibly two to three months, and that appellant would need continued hand therapy, splints and medication. Dr. Grover also completed on April 14, 1994, following his examination, a form evaluation of appellant's wrist/thumb for schedule award purposes, again noting that appellant would reach maximum medical improvement possibly in two months, and further indicating that appellant had normal range of motion in the interphalangeal, metaphalangeal and carpometacarpal joints. The physician estimated that appellant had an "additional impairment of function of the thumb due to sensory deficit, pain or loss of strength" of 10 percent, but concluded, without further explanation, that he recommended an impairment rating of the thumb of 0 percent.

On August 9, 1994 the Office forwarded the file to Dr. Simpson, an orthopedic consultant. The Office informed Dr. Simpson that appellant's claim had been accepted as an employment-related right wrist strain, and asked the physician to determine the date of maximum medical improvement, whether appellant had any permanent functional loss of use of her right wrist and, if so, whether the permanent partial impairment of the right wrist was the sole permanent impairment resulting from the June 11, 1993 employment injury.

In a report dated August 22, 1994, Dr. Simpson reviewed the medical records of file, paying particular attention to the reports of Dr. Grover. Dr. Simpson stated that the medical records indicated that appellant had some right hand/wrist pain at the base of the thumb, or the carpometacarpal joint. He further stated that the location of appellant's reported pain as documented by Dr. Grover corresponded to sensory branches of the radial nerve, with a maximal five percent impairment, and that the moderate degree of pain reported corresponded to a three percent impairment of the right upper extremity. Dr. Simpson also noted that appellant's reported weakness was secondary to her pain, and that she presented no objective evidence of atrophy or weakness. The physician concluded:

"At the present time the records would support a maximal 3 [percent] impairment of the right upper extremity or arm for the wrist strain with date of maximum medical improvement reached by April 14, 1994. However, before OWCP accepts this award the undersigned would add that Dr. Grover's report implies that there may be further improvement and perhaps it would be wise to defer declaring as having reached maximum medical improvement at this time with Dr. Grover mentioning that she might benefit from further occupational/physical therapy modalities."

In a decision dated May 30, 1995, which incorporated a memorandum summarizing the evidence, the Office denied appellant's claim for continuing compensation benefits and her claim for a schedule award on the grounds that the weight of the medical evidence, as represented by the report of Dr. Grover, established claimant had no continuing disability or impairment causally related to the June 11, 1993 work injury.

In the present case, in a report dated June 15, 1993 appellant's attending physician Dr. Reeve, diagnosed probable strain of the right wrist, prescribed the use of a splint and released appellant to return to her regular work. Dr. Reeve did not comment, however, as to

whether appellant had any continuing degree of permanent impairment resulting from her employment injury.

Because of the deficiencies in the medical evidence submitted by appellant, the Office referred appellant to Dr. Grover, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his form report dated April 14, 1994, completed for the purpose of determining appellant's entitlement to a schedule award, Dr. Grover opined that appellant had a 10 percent permanent impairment of the right thumb due to pain caused by tendinitis. Dr. Simpson in turn equated Dr. Grover's findings to a three percent permanent impairment, but noted that appellant might not have reached maximum medical improvement. On the issue of the etiology of appellant's tendinitis, however, Dr. Grover stated only that "[i]t is certainly possible that her work activities did precipitate the onset of this tendinitis, but it is also most probable she would have developed tendinitis even in the absence of this type of activity at work." Dr. Simpson did not comment on the etiology of appellant's impairment.

The Office ignored both Drs. Grover and Simpson's finding of permanent impairment to the right thumb in summarily denying the claim for permanent impairment.

Once the Office undertakes to develop the medical evidence, as it did in this case by referring appellant to Dr. Grover for a second opinion evaluation, it has the responsibility to do so in a proper manner.² As Dr. Grover's report was equivocal as to the etiology of appellant's tendinitis, his report was insufficient to determine the causal relationship, if any, between appellant's diagnosed condition and her accepted employment injury of June 11, 1993, and, therefore, insufficient to represent the weight of the medical evidence in this case.³ The case will, therefore, be remanded to the Office for referral to another appropriate specialist for a determination of whether appellant has any continuing medical condition causally related to her accepted employment injury, and if so, whether appellant has any permanent impairment resulting from that condition such that she would be entitled to a schedule award.

² *Henry G. Flores*, 43 ECAB 901 (1992).

³ See *William Nimitz, Jr.*, 30 ECAB 567 (1979) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

The decisions of the Office of Workers' Compensation Programs dated August 15, May 30, May 4, April 12 and January 25, 1995 are set aside and the case remanded to the Office for further action consistent with this decision of the Board, to be followed by an appropriate decision

Dated, Washington, D.C.
September 17, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member