U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS E. ZAVALA and U.S. POSTAL SERVICE, POST OFFICE, Fresno, CA

Docket No. 02-1892; Submitted on the Record; Issued December 2, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, WILLIE T.C. THOMAS

The issue is whether appellant sustained any permanent impairment causally related to her accepted March 1, 2000 injuries entitling her to a schedule award of the lower extremity.

On March 1, 2000 appellant, then a 41-year-old letter carrier, filed a claim for low back pain, left elbow bruise and pain and a sore neck sustained that day. Appellant returned to work the next day and was placed on modified duty on July 6, 2000. Appellant's last day of work was October 6, 2000. The Office of Workers' Compensation Programs accepted appellant's claims for cervical and lumbar strains and left elbow contusion, and authorized lumbar epidurals on August 28 and September 20, 2000.

In a report dated October 6, 2000, Dr. Donn R. Cobb, appellant's treating physician and a specialist in public health and general preventive medicine, diagnosed appellant with low back strain with sciatica. Dr. Cobb indicated that appellant had permanent restrictions of standing and walking of no more than 40 minutes in an hour for a total of 3 hours a day and a restriction against lifting or carrying more than 5 pounds for more than 1 hour a day. He also restricted her from reaching above her shoulders, squatting or climbing at any time and from casing mail. Appellant was released to return to modified work that day.

On March 1, 2001 appellant filed a claim for a schedule award.

On March 7, 2001 the Office advised appellant regarding the kind of evidence she needed to process her claim.

In a report dated October 20, 2000 and received by the Office on May 31, 2001, Dr. Cobb stated that he had a familiarity with appellant's history of injury noting that her prior November 8, 1993 work-related injury had resolved except for recurrent low back pain. He noted her continued symptoms of pain in her lower back and left buttock "which at times radiated into the left leg." Dr. Cobb noted her epidural injections and physical therapy which failed to relieve symptomology. He noted her March 1, 2000 injury and stated that his

October 6, 2000, examination revealed normal range of motion findings and neurological findings. Dr. Cobb noted, however, that there was tenderness in the lower sacral area. He also noted a May 31, 2000 magnetic resonance imaging scan of her lumbosacral spine which revealed no evidence of disc herniation or spinal stenosis. Dr. Cobb diagnosis was "chronic low back pain and chronic left shoulder strain probably [a] repetitive movement injury." He then noted that appellant's left low back and left buttock pain were caused by prolonged standing, walking, squatting, kneeling or climbing and restricted her from prolonged standing or walking, especially carrying weight. Dr. Cobb said that, although appellant could not return to her usual work, she could "perform another type of work."

In a report dated March 16, 2001 and received by the Office on April 24, 2001, Dr. Cobb stated that he examined appellant on that day and reported her subjective complaints of pain in her low back and her legs, more on the right. Appellant related difficulty when moving and pain while walking. Dr. Cobb noted that her lumbosacral range of motion was 60 percent of normal. He was unable to identify neurological signs although he noted tenderness at S1 bilaterally. Dr. Cobb stated that appellant could return to modified work that day.

In a letter dated March 16, 2001 and received by the Office on May 31, 2001, Dr. Cobb stated appellant was no longer able to perform her usual and customary occupation and that her restrictions were made permanent in October 2000. Dr. Cobb noted that appellant seemed to have "somewhat of an exacerbation in the past two weeks." He also stated that he understood that the Office would provide him with "a copy of the information that [the Office] wish[es] regarding qualifying impairment and the A.M.A., *Guides* [*to the Evaluation of Permanent Impairment*]," and that he would be "glad to fill them out."

On February 1, 2002 the Office referred appellant, her medical records and a statement of accepted facts to "a specialist in the field of orthopedics." The statement of accepted facts included a request to "Please assist us in calculating the impairment of the right and left lower extremities by completing the attached form(s)."[1]

In a report dated February 28, 2002, Dr. Nath stated that he examined appellant that day and reported findings. He noted that appellant was 5 feet, 3 inches tall, and weighed 205 pounds. Dr. Nath reported that her upper extremities' examination revealed full range of motion of the shoulders, elbows and wrists and that there was no tenderness of the left elbow. Grip strength was equal bilaterally and her Tinel's sign was negative. He noted that her lower extremities had no gross contractures or deformities, and that her knees and ankles demonstrated full range of motion. Dr. Nath also noted that her left ankle had no tenderness or instability. He noted diffuse tenderness in her lumbar region, and reported range of motion findings on flexion to 60 degrees and extention to 20 degrees. Appellant's bilateral straight leg raise was 70 degrees. Dr. Nath found no radiculopathy or extensor hallucis longus weakness. He stated that she had altered lumbar mechanics which restricted her capacity to work. Dr. Nath further noted that appellant had not fully recovered from her November 1993 work-related injury. He diagnosed chronic low back pain and obesity. In an attachment dated the same day, Dr. Nath checked appropriate boxes

[1] The Board notes that Dr. Mahendra Nath, the second opinion physician, is not Board-certified in orthopedic medicine. He is Board-certified in physical medicine and rehabilitation. His letterhead notes orthopedic medicine and rehabilitation.

indicating that there was no neurological involvement, pain, weakness or atrophy in appellant's bilateral lower extremity condition.[2]

In a report dated April 1, 2002, Dr. Leonard A. Simpson, an Office medical adviser and a Board-certified orthopedic surgeon, stated that he had reviewed appellant's records including Dr. Cobb's October 20, 2000 report and Dr. Nath's February 28, 2002 second opinion report, and determined that appellant had a zero percent impairment of each lower extremity as a result of her work-related injury. He noted that Dr. Nath's bilateral lower extremities report revealed no impairment and that the date of maximum medical improvement was February 28, 2002, the date of Dr. Nath's evaluation.

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

The schedule award provisions of the Federal Employees' Compensation Act[3] and its implementing regulation[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

In this case, Dr. Cobb, appellant's treating physician, stated in a May 16, 2001 letter that appellant was no longer able to perform her usual work and that her restrictions were made permanent in October 2000. He also stated that he understood that the Office would provide him with information that it needed to determine appellant's impairment rating in accordance with the A.M.A., *Guides,* and that he would be "glad to fill them out."

The Office's procedures provide: "The attending physician should make the evaluation whenever possible."[6] The Board has recognized that an attending physician, who, unlike an Office medical adviser, has physically examined the employee, is often in a better position to make judgments within allowable ranges in the tables of the A.M.A., *Guides*.[7] However, the Office failed to provide the attending physician an opportunity to make an evaluation, in spite of

[2] The record does not include the Office's referral letter to Dr. Nath.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id*.

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

[7] *Joseph H. Stuart*, 44 ECAB 583 (1993).

Dr. Cobb's clear intent to provide such an evaluation on receipt of the proper forms and information.[8]

For the reasons given above, the Board will set aside the Office's April 17, 2002 decision and remand the case for proper development of the medical evidence and an appropriate final decision on appellant's claim for a schedule award.

The April 17, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
December 2, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[8] The Board further notes that Dr. Nath, the second opinion physician who was asked to determine appellant's impairment rating, if any, failed to include any findings in his February 28, 2002 report concerning the loss in degrees of active and passive motion of either the right or left lower extremity. *See supra* note 5.