United States Department of Labor
Employees' Compensation Appeals Board

JANICE SHAPERO, Appellant	)	
and	)	**Docket No. 05-344**
	)	**Issued: May 13, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Huntington Beach, CA, Employer	)	

Appearances:
Janice Shapero, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 18, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit schedule award decisions dated August 31 and November 12, 2004, finding no ratable impairment due to her accepted employment injury. Pursuant to 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 has any permanent impairment of her upper extremities entitling her to a schedule award.

FACTUAL HISTORY

On April 23, 2003 appellant, then a 46-year-old mail carrier, filed an occupational disease claim alleging that on March 30, 2003 she became aware of severe neck, upper back and left arm pain. Appellant first attributed this condition to her employment duties of carrying mail on April 21, 2003. On July 17, 2003 the Office accepted appellant's claim for cervical sprain, rule out nerve root compression.

Appellant's attending physician, Dr. Ram Mudiyam, a Board-certified orthopedic surgeon, examined her on March 2, 2004 for a "permanent and stationary evaluation" regarding her cervical spine injury. His initial examinations of appellant had revealed bilateral carpal tunnel syndrome as well as cervical spondylosis at C5-6 and bilateral neural foraminal encroachment. He noted that appellant underwent a left carpal tunnel release. Dr Mudiyam described appellant's cervical symptoms and loss of range of motion. He stated that she had positive tenderness with spasms to palpation of the bilateral trapezii and bilateral levator scapulae. Dr. Mudiyam measured appellant's grip strength and noted that the Jamar Grip Dynamometer measured appellant's right hand at 65/75/68 while her left hand measured 30/40/40 approximately one month after undergoing left carpal tunnel surgery. He provided arm circumference measurements and noted that above the olecranon the right arm was 11 6/8 inches while the left was 11 1/8 inches; below the olecranon the right arm measured 11 3/8 inches while the left was 10 inches and appellant's right wrist circumference was 6 2/8 inches and her left 6 3/8 inches. Appellant's neurological tests were normal except for the left brachioradialis reflex which was 1+, her sensation to pinprick and light touch was intact and her muscle strength 5/5 except for the left wrist dorsiflexor and left wrist extensor. Dr. Mudiyam diagnosed chronic musculoligamentous injury to the cervical spine, cervical spondylotic radiculopathy at C5-6 and bilateral carpal tunnel syndrome, left worse than right. He listed appellant's subjective factors of disability as intermittent slight neck pain and intermittent headaches and found that she had objective factors of tenderness to palpation over the posterior cervical spine spondylotic changes at C5-6.

Appellant requested a schedule award on July 20, 2004.

The Office referred appellant's claim to an Office medical adviser and listed the accepted conditions as cervical strain and cervical spondylitic radiculopathy. The Office stated that appellant had a separate claim for bilateral carpal tunnel syndrome and had not reached maximum medical improvement for that condition. The Office medical adviser found that, based on Dr. Mudiyam's report, appellant had no impairment to either upper extremity for loss of range of motion, loss of strength or pain.

By decision dated August 31, 2004, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not demonstrate a permanent impairment to a scheduled member or function of the body.

Appellant requested reconsideration on October 27, 2004 and stated that she had work restrictions as a result of her accepted injury. In support of her request, appellant submitted a report from Dr. Mudiyam dated September 23, 2004, in which he disagreed with the conclusions of the Office medical adviser. He stated that appellant had decreased grip strength, decreased wrist dorsiflexion and extension as well as intermittent pain in the neck along with intermittent headaches. Dr. Mudiyam concluded that appellant did have "some resulting disability."

By decision dated November 12, 2004, the Office denied modification of the August 31, 2004 decision. The Office stated that the positive findings on examination on March 2, 2004 were most likely due to appellant's bilateral carpal tunnel syndrome adjudicated under a separate claim and not due to her cervical condition. The Office noted that Dr. Mudiyam indicated that appellant's left carpal tunnel surgery was less than one month prior to his March 2, 2004

examination and that he did not state that appellant had reached maximum medical improvement with regard to the left upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Before utilizing the A.M.A., *Guides*, the Office must obtain a description of appellant's impairment from an attending physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[3]

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.[4] However, as the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.[5]

A schedule award commences on the date of maximum medical improvement or the point at which the injury has stabilized and will not improve further. That determination is based on the medical evidence.[6] Medical records which predate the date of maximum medical improvement cannot establish the extent of permanent impairment for schedule award purposes.[7]

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

[4] *George E. Williams*, 44 ECAB 530, 533 (1993).

[5] *Id.*

[6] *Richard Larry Enders*, 48 ECAB 184, 187 (1996).

[7] *Andrew Aaron, Jr.*, 48 ECAB 141, 143 (1996).

Under the Act,[8] the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[9] Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. A permanent physical impairment is an anatomic or function abnormality or loss after maximum medical improvement has been achieved.[10]

ANALYSIS

Appellant developed cervical strain and cervical spondylitic radiculopathy due to her employment duties. She filed a claim for a schedule award. As noted above, appellant is not entitled to a schedule award due to impairment of her cervical spine. However, if she has impairment of a scheduled member as a result of her cervical spine injury she would be entitled to compensation for impairment of her upper extremities.

In support of her claim, appellant submitted reports dated March 2 and September 23, 2004 from Dr. Mudiyam, a Board-certified orthopedic surgeon. He stated that appellant's cervical condition was permanent and stationary. He noted that appellant experienced cervical tenderness and muscle spasm as well as loss of range of motion. These findings, however, relate only to appellant's cervical spine. Dr. Mudiyam did not provide any description of impairment to appellant's upper extremities caused by her accepted cervical condition. The Board concludes that these reports do not support an impairment rating for appellant's upper extremities.

Dr. Mudiyam noted that appellant had a diagnosis of bilateral carpal tunnel syndrome and that in February 2004 she underwent a left carpal tunnel surgery.[11] He provided findings relating to her left arm, noting a loss of grip strength, variation of arm measurement and left wrist weakness as well as loss of range of motion of the left wrist. Dr. Mudiyam did not offer a clear opinion that appellant's left wrist impairment was due to her accepted cervical conditions. In reviewing the medical records, the Board is unable to clearly visualize how appellant's accepted cervical condition caused these left wrist impairments. A clear and detailed description is necessary given appellant's concurrent impairment due to her separate claim for bilateral carpal tunnel syndrome. Moreover, Dr. Mudiyam did not state that appellant had reached maximum medical improvement regarding her carpal tunnel syndrome. Rather, he indicated that she had not yet reached maximum medical improvement since his examination took place only one month after the left carpal tunnel surgery. As the medical evidence does not establish that appellant has reached maximum medical improvement regarding her accepted carpal tunnel syndrome, she is not entitled to a schedule award for any impairment resulting from this condition.

[8] 5 U.S.C. §§ 8101-8193.

[9] 20 C.F.R. § 10.5(f).

[10] 20 C.F.R. § 10.5(m).

[11] The Office stated that appellant's claim for carpal tunnel syndrome had been accepted under a separate claim number.

Finally, the Board notes that appellant and her physician appear to be confusing her need for work restrictions or partial disability for work, with permanent impairment resulting from her accepted employment injuries. A schedule award under the Act compensates for any anatomic or function abnormality or loss after maximum medical improvement has been reached.

CONCLUSION

The Board finds that appellant has not submitted sufficient medical evidence to establish impairment to her upper extremities as a result of her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 12 and August 31, 2004 are affirmed.

Issued: May 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member