United States Department of Labor
Employees' Compensation Appeals Board

EDELIN T. CORDERO-VELEZ, Appellant	)	
and	)	**Docket No. 06-628**
	)	**Issued: July 21, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Lehigh Valley, PA, Employer	)	

Appearances:
Jeffrey Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 19, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated January 10, 2006 which found a two percent impairment of her right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained more than a two percent impairment of her right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On November 27, 2000 appellant, then a 39-year-old city carrier, filed a traumatic injury claim alleging that on that date, she sustained an injury to her right wrist in the performance of duty. She did not stop work.[1] The Office accepted appellant's claim for sprain of the right wrist,

[1] The record reflects that she returned to work in a limited-duty capacity with restrictions.

extensor carpi ulnaris tendinitis of the right wrist and steroid injections. The Office also authorized an arthrogram of the right wrist. On September 19, 2001 the Office authorized arthroscopy of the right wrist with repair of the triangular fibrocartilage complex (TFCC).[2] Appellant received appropriate compensation benefits.

On January 23, 2002 appellant underwent a repair and augmentation of the lunotriquetral (LT) ligament of the right wrist, chondroplasty of the lunate for cartilaginous defect and endoscopic right carpal tunnel release. She accepted a light-duty position on February 12, 2002. On March 6, 2002 appellant underwent excision of the deep pins times two on the right wrist. On January 16, 2003 the Office authorized osteotomy and chondroplasty of the right wrist. Appellant underwent the procedure on January 29, 2003.

In a disability certificate dated May 13, 2003, Dr. Stephen L. Cash, a Board-certified orthopedic surgeon, prescribed permanent restrictions for light duty with maximum lifting and carrying of 20 pounds with both hands and 10 pounds with the right hand. He also advised no repetitive twisting or gripping with the right hand.

On September 26, 2003 appellant's physician, Dr. Cash, diagnosed de Quervain's disease, carpal tunnel syndrome, laxity of ligament and osteochondrosis of upper extremity. He opined that she reached maximum medical improvement on September 26, 2003 and that her work restrictions were permanent.

On February 5, 2004 appellant filed a claim for a schedule award.

By letter dated February 11, 2004, the Office requested that appellant's physician provide an impairment rating pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). No response was received from her physician regarding an impairment rating.

By decision dated April 1, 2004, the Office denied appellant's claim for a schedule award as the evidence was insufficient to establish that she sustained any permanent impairment to her right upper extremity.

On April 28, 2004 appellant underwent a release of the right first dorsal extensor compartment which was authorized by the Office. On July 19, 2004 she filed a claim for a schedule award.

By letter dated November 22, 2004, appellant's attorney advised the Office that Dr. Cash indicated that she had reached maximum medical improvement. However, he did not perform impairment rating evaluations. Dr. Cash requested authorization to seek an evaluation with Dr. George Rodriguez, Board-certified in physical medicine and rehabilitation. By letter dated December 1, 2004, the Office advised appellant's representative that a second opinion examination would be scheduled.

[2] Appellant underwent the surgery on September 27, 2001.

By letter dated April 29, 2005, the Office referred appellant, together with a statement of accepted facts and copies of medical records, to Dr. Anthony Salem, a Board-certified orthopedic surgeon for a second opinion examination.

In a report dated May 24, 2005, Dr. Salem noted appellant's history of injury and treatment and advised that she had a "significantly-painful" right wrist. Appellant had complaints of decreased sensation to pinprick, but a normal circumference of her proximal forearm bilaterally. Dr. Salem noted a negative Tinel's sign at the wrists but explained that he did not feel that she was "disabled from a sensory point of view or from an instability point of view." He explained that he was unable to judge appellant's pain and he did not feel that her wrist was unstable." Dr. Salem advised that she should redo her osteotomy of the ulna to relieve the impingement on her right wrist, which would allow her to return to full duty. He also indicated that appellant could perform her job as a clerk, but that she should not carry any mail.

On June 20, 2005 the Office requested clarification from Dr. Salem with regard to whether appellant sustained any permanent impairment as a result of her November 27, 2000 employment injury. In a June 22, 2005 response, he advised that he did not believe that appellant had a permanent impairment. Dr. Salem explained that with "another surgical attempt at shortening her ulna, she will do fairly well and will be comfortable." He opined that appellant was not disabled and, therefore, there was "no percentage of disability." Dr. Salem advised that appellant had strength, function and motion and that she could perform her normal job.

On June 30, 2005 the Office advised Dr. Salem that appellant had several surgeries as a result of her work-related medical condition and requested that he provide a percentage of impairment as a result of the accepted surgeries. In an August 11, 2005 report, Dr. Salem explained that, "because of the pain over the ulnar styloid and the slight lack of ulnar deviation" according to pages 468 and 469 of the fifth edition of the A.M.A., *Guides*, appellant had a two percent impairment to the right upper extremity.[3] He advised that she had no other disabling factors.

In a memorandum dated August 17, 2005, the Office medical adviser applied the findings of Dr. Salem to the fifth edition of the A.M.A., *Guides* and determined that appellant had a two percent impairment of her right upper extremity. He noted that appellant had an excellent result from her right wrist ulnar shortening osteotomy and chondroplasty partial excision of the lunate of the right wrist and regained full range of motion. Dr. Salem indicated that appellant had "minor transient medial nerve symptoms, however, there is no evidence of carpal tunnel." He also noted that diagnostic studies showed no evidence of carpal tunnel or median nerve neuropathy. The Office medical adviser stated that there was no significant weakness that would result in a schedule award. He explained that the "only possibility for a [schedule] award was based upon the pain that the claimant appears to have on a very regular basis." The Office medical adviser referred to figure 18-1[4] and indicated that appellant could receive an award of up to three percent over the existing award for pain and opined that she was entitled to two percent

[3] A.M.A., *Guides* (5th ed. 2001).

[4] *Id*. at 574.

impairment to the right upper extremity. Furthermore, he noted that August 8, 2005 was the date of maximum medical improvement.

On January 10, 2006 the Office granted appellant a schedule award for a two percent impairment of the right upper extremity. The award covered a period of 6.24 weeks from August 8 to September 20, 2005.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[5] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.[6] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[7] The Act's implementing regulation has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule award losses.[8]

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[9] However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.

ANALYSIS

The Board finds that this case is not in posture for decision. Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[10]

In an August 11, 2005 report, Dr. Salem, the second opinion physician, opined that appellant had a two percent impairment to the right upper extremity due to pain over the ulnar styloid and due to the slight lack of ulnar deviation. He referred to pages 468 and 469 of

[5] 5 U.S.C. §§ 8101-8193.

[6] 5 U.S.C. § 8107.

[7] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[8] 20 C.F.R. § 10.404.

[9] *See William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

[10] *Horace L. Fuller*, 53 ECAB 775, 777 (2002).

A.M.A., *Guides* and advised that appellant had no other disabling factors.[11] However, the Board notes that Dr. Salem did not explain how he arrived at his two percent rating. Although he referenced pages in Chapter 16 of the A.M.A., *Guides* to assess appellant's right arm impairment, for pain over the ulnar styloid and lack of ulnar deviation, Dr. Salem did not further explain his conclusion. For example, he did not explain how he applied specific examination findings to specific and applicable provisions in the A.M.A., *Guides* to arrive at the two percent right arm impairment.

The Office medical adviser reviewed Dr. Salem's report on August 17, 2005 and determined that appellant had a two percent impairment of her right upper extremity. This report is also deficient. The medical adviser noted that there was no significant weakness that would result in a schedule award. He explained that the "only possibility for a [schedule] award was based upon the pain that the claimant appears to have on a very regular basis." However, the Office medical adviser referred to Figure 18-1[12] and indicated that appellant could receive an award of up to three percent over the existing award for pain and opined that she was entitled to two percent impairment to the right upper extremity. The Board notes that according to section 18.3(b) of the A.M.A., *Guides*, "examiners should not use this chapter to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*."[13] Office procedures provide that Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain (Chapters 13, 16 and 17).[14] The Board notes that the Office medical adviser has not provided sufficient explanation to show why he chose this chapter and why Table 16-10 and 16-15 were not utilized to explain appellant's sensory deficits for pain. The medical adviser did not further explain how the calculated impairment was derived from specific provisions in the A.M.A., *Guides*. His report is, therefore, of limited probative value.

As the Office referred appellant to Dr. Salem, it has the responsibility to obtain an evaluation which will resolve the issue involved in the case.[15] The case will be remanded to the Office to further develop the medical evidence of record as necessary to obtain an opinion in conformance with the A.M.A. *Guides* as to whether appellant has any impairment of the right upper extremity causally related to her November 27, 2000 employment injury. The Office should refer appellant to an appropriate Board-certified specialist for an examination and an opinion on the permanent impairment of her right arm under the A.M.A., *Guides*. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

[11] *Supra* note 3.

[12] *Id*. at 574.

[13] *Id*. at 571, section 18.3b.

[14] *See* Feca Bulletin 01-05 (issued January 31, 2001): Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

[15] *See Mae Z. Hackett*, 34 ECAB 1421 (1983).

CONCLUSION

The Board finds this case is not in posture for decision.[16]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 10, 2006 is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: July 21, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[16] On appeal, appellant's representative also requested impairment for a schedule award to the left upper extremity. However, it appears from the record that the Office did not issue a final decision on the left upper extremity and, therefore, the Board does not have jurisdiction over the matter. *See* 20 C.F.R. § 501.2(c).