

**United States Department of Labor
Employees' Compensation Appeals Board**

D.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Philadelphia, PA, Employer)

**Docket No. 06-2039
Issued: March 9, 2007**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 5, 2006 appellant filed a timely appeal from March 15 and May 15, 2006 decisions of the Office of Workers' Compensation Programs, which denied her claims of continuing disability and for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues on appeal are whether: (1) appellant met her burden of proof to establish that she had any disability after August 22, 2003 causally related to the February 3, 1979 employment injury; and (2) whether the Office properly denied appellant's claim for a schedule award.

FACTUAL HISTORY

This case has previously been on appeal before the Board.¹ In a September 15, 2005 decision, the Board affirmed the May 2, 2005 decision of the Office hearing representative,

¹ Docket No. 05-1178 (issued September 15, 2005). Appellant claim was accepted for bilateral carpal tunnel

finding that the Office properly terminated appellant's compensation benefits effective August 22, 2003. The Board also found that appellant did not meet her burden of proof to establish that she had any disability after August 22, 2003 causally related to the February 3, 1979 employment injury. The facts and the history contained in the prior appeal are incorporated by reference.

By letter dated January 17, 2006, appellant's representative requested reconsideration. Appellant submitted a December 15, 2005 report from Dr. Michael A. Taormina, a Board-certified neurologist, who noted that nerve conduction studies of the ulnar motor and sensory nerves were normal. Dr. Taormina also indicated that studies of the bilateral median, sensory and motor nerves demonstrated prolonged latencies and that the electromyography (EMG) scan needle examination was normal. He diagnosed bilateral carpal tunnel syndrome. On examination, appellant demonstrated a good range of motion of the hands and fingers, normal strength except for mild left abductor pollicis brevis weakness, two point pin testing, which was consistent with 7 millimeters (mm) loss in the left median digit number two and 12 mm loss in the right hand at digit number two and thumb. Based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001), appellant had a whole person rating of 26 percent. Dr. Taormina noted that he had referred to Tables 16-3, 16-10 and 16-15 and the Combined Values Chart of the A.M.A., *Guides*.

By letter dated February 1, 2006, appellant submitted a CA-7 form claim for a schedule award.

By decision dated March 15, 2006, the Office denied modification of its prior decision. The Office found that the evidence of Dr. Taormina was insufficient to create a conflict with the report of Dr. Richard Mandel, a second opinion Board-certified orthopedic surgeon. The Office further found that the evidence was insufficient to support a schedule award as the effects of appellant's accepted work-related injury had been established to have resolved.

In a February 9, 2006 report, Dr. Nicholas P. Diamond, an osteopath, noted appellant's history of injury and treatment, including an EMG scan from April 7, 2003. He also advised that appellant had nonwork-related diabetes mellitus, cancer and thyroid disease. Dr. Diamond indicated that appellant had complaints of pain, numbness and tingling in her hands, which was greater on the left and which increased with changes in weather and activity. Appellant denied having any prior pain which affected her activities of daily living and described how her activities of daily living were now being affected. Dr. Diamond noted that appellant related that she had difficulty performing household duties such as cooking, dishwashing, vacuuming, cleaning, doing laundry and shopping. He also noted that appellant indicated that she had difficulty with personal care such as washing and dressing herself, styling her hair and brushing her teeth. In addition, Dr. Diamond advised that appellant had difficulty with sleeping, lifting, grasping, pulling, pushing, fine dexterity and had decreased grip strength and clumsiness in both hands. Furthermore, he utilized the Visual Analogue Scale and explained that appellant had pain, which was at a level of 5 to 8 out of 10 on the right hand and 6 to 8 out of 10 on the left hand. Dr. Diamond conducted a physical examination of both wrists and explained that

syndrome for which she underwent surgical release of both wrists.

appellant had a well-healed midpalmar surgical scar, thenar atrophy, palmar tenderness, a positive Tinel's sign, one-minute Phalen's test and carpal compression test. Regarding range of motion, he indicated that dorsiflexion was the same for both wrists, which equated to 0 to 65 degrees out of 75 degrees. For palmar flexion, Dr. Diamond noted that appellant had 0 to 65 degrees out of 75 degrees on the right and 0 to 60 degrees out of 75 degrees on the left. For radial deviation, he noted that appellant had 0 to 20 degrees out of 20 degrees on both the right and left wrists. Dr. Diamond also found that, for ulnar deviation, appellant had 0 to 25 degrees out of 35 degrees on both wrists. He performed grip strength testing with a Jamar hand dynamometer, as well as pinch testing. Dr. Diamond diagnosed cumulative and repetitive trauma disorder, bilateral carpal tunnel syndrome, post right carpal tunnel syndrome and post left carpal tunnel release and recurrent bilateral carpal tunnel syndrome. He opined that appellant had a left pinch deficit of 20 percent pursuant to Table 16-34,² a Grade 2 sensory deficit of the left median nerve of 31 percent,³ which when combined was equal to 45 percent of the left upper extremity. Dr. Diamond noted that appellant had a Grade 2 sensory deficit of the right median nerve of 10 percent⁴ and a total right upper extremity impairment of 10 percent. He opined that appellant reached maximum medical improvement on February 9, 2006. Furthermore, Dr. Diamond opined that the "work-related injury was the competent producing factor for [appellant's] subjective and objective findings of today."

By decision dated May 9, 2006, the Office denied modification of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.⁵

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the appellant, must be

² A.M.A., *Guides* 509, Table 16-34.

³ *Id.* at 482, Table 16-10; *Id.* at 492, Table 16-15.

⁴ *Id.*

⁵ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the appellant.⁶

ANALYSIS -- ISSUE 1

Following the termination of compensation, appellant submitted additional medical evidence, which included a December 15, 2005 report, from Dr. Taormina. In his report, Dr. Taormina noted that the diagnostic studies were normal and diagnosed bilateral carpal tunnel syndrome. He opined that appellant had a whole person disability rating of 26 percent. However, Dr. Taormina did not provide a rationalized discussion that would overcome or create a conflict with the report of the second opinion physician, Dr. Mandel, a Board-certified orthopedic surgeon, who the Office relied upon in terminating appellant's compensation. Dr. Mandel was found to have provided a well-rationalized opinion based upon a complete and accurate factual and medical history. Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.⁷ Dr. Taormina did not provide any discussion or provide any indication that he was aware of an employment-related injury. Thus, his report is of little probative value.⁸

In a February 9, 2006 report, Dr. Diamond, an osteopath, noted appellant's history of injury and treatment and her nonwork-related diabetes mellitus, cancer and thyroid disease. He concluded that appellant's "work-related injury was the competent producing factor for [appellant's] subjective and objective findings of today." Dr. Diamond noted that his findings included complaints of pain, numbness and tingling in her hands and that appellant related that she had difficulty performing household duties and with personal care as well as sleeping, lifting, grasping, pulling, pushing, fine dexterity and had decreased grip strength and clumsiness in both hands. However, he did not provide any information to suggest that he was aware of the activities that appellant was performing in her actual position as a clerk. Furthermore, Dr. Diamond did not provide any information to suggest what activities appellant was performing after she retired on March 31, 2003. He did not provide any medical rationale to support his own opinion that appellant's condition was related to her employment factors.⁹ Dr. Diamond also indicated that appellant was suffering in her activities of daily living and described those activities which were affected noting that she denied having any prior pain which affected her activities of daily living. The Board has found that because an employee is asymptomatic before an employment injury is insufficient without supporting medical rationale

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁷ *Darlene R. Kennedy*, 57 ECAB ____ (Docket No. 05-1284, issued February 10, 2006).

⁸ The medical opinion to establish a claim must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB ____ (Docket No. 05-715, issued October 6, 2005).

⁹ *Id.*

to establish causal relationship.¹⁰ The Board finds that this report is not sufficient to overcome the weight of Dr. Mandel's opinion or to create a conflict in medical opinion.

Thus, the additional reports subsequent to the termination of appellant's compensation are insufficient to establish an ongoing condition and disability causally related to the work injury of February 3, 1979. Neither physician provided findings and rationale sufficient to overcome or create a conflict with the opinion of Dr. Mandel.

Consequently, appellant has not established that her condition on and after August 22, 2003 was causally related to her accepted employment injury.

LEGAL PRECEDENT -- ISSUE 2

Section 8107 of the Federal Employees' Compensation Act¹¹ 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.¹² 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.¹³ The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹⁴

ANALYSIS -- ISSUE 2

The evidence of record is insufficient to establish that appellant is entitled to a schedule award in accordance with the fifth edition of the A.M.A., *Guides*.

In support of her request for a schedule award, appellant submitted the reports of Dr. Taormina and Dr. Diamond. However, these reports are insufficient to support her claim for a schedule award for impairment caused by her accepted employment condition. This is especially true in light of Dr. Mandel's well-rationalized report, which indicated that appellant's accepted conditions had resolved without residuals. Neither physician explained why appellant's resolved bilateral carpal tunnel syndrome would have caused a permanent impairment pursuant to the A.M.A, *Guides*.

For example, Dr. Taormina in his December 15, 2005 report merely provided his examination findings, which appeared to be normal. He opined that appellant had 26 percent whole person impairment. The Act, however, does not provide a schedule award based on whole

¹⁰ *Thomas Petrylak*, 39 ECAB 276 (1987).

¹¹ 5 U.S.C. §§ 8101-8193.

¹² 5 U.S.C. § 8107.

¹³ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹⁴ 20 C.F.R. § 10.404.

person impairments.¹⁵ Additionally, Dr. Taormina did not explain how any impairment of a schedule member was due to appellant's accepted condition.

Dr. Diamond's report of February 9, 2006 is also insufficient. He concluded that appellant's "work-related injury was the competent producing factor for [appellant's] subjective and objective findings of today." While Dr. Diamond provided findings for pain and noted that appellant had difficulties with her activities of daily living, he did not explain the disparity in his findings with those of Dr. Mandel who found no continuing work-related residuals. He did not provide any rationale to support his own opinion that appellant had permanent impairment related to her employment injury¹⁶ which, as noted above, was previously found to have resolved. Furthermore, Dr. Diamond did not explain precisely how he applied the grading scheme in Table 16-10 at page 482 of the A.M.A., *Guides* in calculating impairment due to sensory deficit. Dr. Diamond also improperly sought to assign left arm impairment for decreased pinch strength. However, Office procedures clearly provide that "grip and/or pinch strength should not be used to calculate upper extremity impairment caused by a compression neuropathy such as carpal tunnel syndrome."¹⁷

Appellant did not submit any medical reports from a physician explaining how, pursuant to the fifth edition of the A.M.A., *Guides*, her accepted conditions of bilateral carpal tunnel syndrome caused a permanent impairment to a scheduled member of the body. As noted above, the Office evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Appellant has the burden of proof to submit medical evidence supporting that she has permanent impairment of a schedule member of the body.¹⁸ As such evidence has not been submitted, appellant has not established entitlement to a schedule award.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she had any injury-related disability or residuals after August 22, 2003 causally related to the accepted employment injuries. Additionally, the Board finds that appellant has not established that she is entitled to a schedule award.

¹⁵ See *Tania R. Keka*, 55 ECAB 354 (2004); *James E. Mills*, 43 ECAB 215 (1991) (neither the Act, nor its implementing regulations provide for a schedule award for impairment to the body as a whole).

¹⁶ See *supra* note 8.

¹⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, Schedule Awards, Chapter 3.700 Exhibit 4 (June 2003).

¹⁸ See *Annette M. Dent*, 44 ECAB 403 (1993).

ORDER

IT IS HEREBY ORDERED THAT the May 15 and March 15, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 9, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board