United States Department of Labor
Employees' Compensation Appeals Board

S.L., Appellant	)	
and	)	**Docket No. 08-1331**
	)	**Issued: November 24, 2008**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Dallas, TX, Employer	)	

Appearances:
Appellant, pro se
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 April 2, 2008 appellant timely appealed the January 18, 2008 merit decision of the Office of Workers' Compensation Programs, which denied her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.[1]

ISSUE

The issue is whether appellant sustained permanent impairment due to her accepted conditions.

[1] The record on appeal contains evidence that was received after the Office issued its January 18, 2008 decision. The Board may not consider evidence that was not in the case record when it rendered its final decision. 20 C.F.R. § 501.2 (2008).

FACTUAL HISTORY

Appellant, a 44-year-old mail handler, has an accepted claim for cervical, thoracic, lumbar and right shoulder strains which arose on February 4, 1999. She was placing a mail sack in an over-the-road (OTR) container when her foot slipped on a piece of mail lying on the floor. Appellant injured her back and right upper extremity. She stopped work on the day she was injured. Appellant received continuation of pay followed by appropriate wage-loss compensation. The Office placed her on the periodic compensation rolls beginning May 23, 1999. Effective June 18, 2000, it terminated appellant's wage-loss compensation because her injury-related disability had ceased.[2] The Office later expanded appellant's claim to include lumbar intervertebral disc displacement and lumbosacral radiculitis as accepted conditions.

On October 23, 2006 appellant filed a claim for a schedule award. In a report dated October 19, 2006, Dr. Robert Chouteau diagnosed traumatic lumbar myositis, bilateral sacroiliac joint dysfunction, L4-5 disc herniation, and L5-S1 disc bulge with right leg radiculopathy. He found 35 percent impairment of the lower extremity due to loss of motion in the right hip. Dr. Chouteau found an additional 2 percent impairment for loss of motion in the right ankle, for a total right lower extremity impairment of 37 percent.

In a December 20, 2006 report, Dr. H. Mobley, an Office medical adviser, recommended referring appellant to a Board-certified physiatrist familiar with preparing impairment ratings under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). He believed that Dr. Chouteau's October 19, 2006 impairment rating was not accurately based upon appellant's accepted conditions.

On January 29, 2007 Dr. Chouteau provided another impairment rating. He found 10 percent impairment of the right lower extremity due to motor and sensory deficits involving the L5 nerve root distribution.

The Office referred appellant to Dr. John A. Sklar, a Board-certified physiatrist, who examined her on March 1, 2007. In a March 5, 2007 report, Dr. Sklar found two percent impairment of the right upper extremity due to pain. He also noted there was decreased motion in the right shoulder. However, the loss in range of motion was inconsistent over the course of his examination. Therefore, Dr. Sklar could not rate this particular impairment. As to appellant's left upper extremity, he found one percent impairment for pain. With respect to her lower extremities, Dr. Sklar found three percent impairment due to pain in the right lower extremity and one percent impairment for pain in the left lower extremity. He indicated that appellant's chronic upper and lower back pain, as well as her extremity pain "might well be diagnosed as fibromyalgia," which is a nonwork-related condition.[3]

[2] The Office based its decision on the April 25, 2000 report of Dr. Bernie L. McCaskill, a Board-certified orthopedic surgeon and impartial medical examiner.

[3] Dr. Sklar referenced Dr. Chouteau's October 19, 2006 impairment rating, but no mention was made of the 10 percent right lower extremity rating Dr. Chouteau provided on January 29, 2007.

On May 1, 2007 Dr. Mobley, reviewed Dr. Sklar's March 5, 2007 report. He concurred with the pain-related impairments involving both upper extremities; but in view of Dr. Sklar's reference to fibromyalgia as the possible cause of appellant's pain, Dr. Mobley opined that appellant's bilateral upper extremity impairment was not the result of her 1999 employment injury. Dr. Mobley did not comment on appellant's bilateral lower extremity impairment as identified by Dr. Sklar in his March 5, 2007 report. Additionally, he did not review Dr. Chouteau's January 29, 2007 impairment rating.

By decision dated May 31, 2007, the Office denied appellant's claim for a schedule award. It based its decision on Dr. Mobley's May 1, 2007 opinion. The Office, however, mailed the decision to an incorrect address and it was later returned as undeliverable. It reissued the decision on September 13, 2007. In the interim, appellant submitted a June 28, 2007 impairment rating from Dr. Louis D. Zegarelli.[4] He diagnosed chronic mechanical lumbosacral dysfunction with L4 sensory dysfunction on the right. Dr. Zegarelli found no impairment with respect to appellant's upper extremities. As to her right lower extremity, he found six percent impairment due to sensory abnormality at the L4 level, which involved the common peroneal and superficial peroneal nerves. There was no evidence of motor function deficit. Dr. Zegarelli advised that appellant reached maximum medical improvement on October 19, 2006. The September 13, 2007 decision did not address his findings, but merely reiterated verbatim the content of the May 31, 2007 schedule award decision.

Appellant requested reconsideration on November 14, 2007. She submitted an unsigned medical report dated October 23, 2007 from Metroplex Orthopedics[5] and a copy of Dr. Zegarelli's June 28, 2007 impairment rating.

In a January 18, 2008 decision, the Office denied modification. It found that appellant submitted an unsigned medical report dated October 23, 2007 which did not address permanent impairment. The Office found that appellant did not submit sufficient medical evidence to establish permanent impairment. It did not discuss or otherwise mention Dr. Zegarelli's June 28, 2007 impairment rating and Dr. Chouteau January 29, 2007 rating.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A.,

[4] The Office received Dr. Zegarelli's report on August 28, 2007.

[5] Although the author of this particular report was not identified, the record indicates that Dr. Chouteau is affiliated with Metroplex Orthopedics.

[6] 5 U.S.C. § 8107(c) (2000).

Guides, as the appropriate standard for evaluating schedule losses.[7] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[8]

ANALYSIS

The Board's jurisdiction over a case is limited to reviewing the evidence that was before the Office at the time of its final decision.[9] As the Board's decisions are final with regard to the subject matter appealed, it is crucial that the Office consider all relevant evidence that was properly submitted prior to the time of issuance of its final decision.[10] In the January 18, 2008 decision, the Office referenced the October 23, 2007 unsigned medical report as the only evidence relevant to her November 14, 2007 request for reconsideration. However, appellant also submitted Dr. Zegarelli's June 28, 2007 impairment rating. Whether it receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.[11] The Office failed to address all relevant evidence received in the January 18, 2008 decision. The case is remanded for a proper review of the evidence and issuance of an appropriate final decision.

CONCLUSION

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

[7] 20 C.F.R. § 10.404.

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

[9] 20 C.F.R. § 501.2(c).

[10] 20 C.F.R. § 501.6(c); *see William A. Couch*, 41 ECAB 548, 553 (1990).

[11] *Willard McKennon*, 51 ECAB 145 (1999).

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2008 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further consideration consistent with this decision.

Issued: November 24, 2008
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