United States Department of Labor
Employees' Compensation Appeals Board

S.L., Appellant	)	
and	)	**Docket No. 09-627**
	)	**Issued: October 27, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Columbus, OH, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 5, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative dated October 6, 2008, which affirmed the Office's February 28, 2008 schedule award decision. 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 has met her burden of proof in establishing that she is entitled to a schedule award of the left upper extremity.

FACTUAL HISTORY

On October 1, 2004 appellant, then a 49-year-old mail processor, filed an occupational disease claim for trigger finger of the left ring finger and forefinger.[1] The Office accepted

[1] Appellant also filed a traumatic injury claim on October 5, 2004; however, the Office treated her claim as an occupational disease claim, as her injury occurred over a period of time.

appellant's claim for trigger finger left ring and index finger. Appellant underwent trigger finger surgery for the left hand on August 30, 2005. She received appropriate compensation benefits.[2]

In a September 13, 2007 disability certificate, Dr. Michael E. Ruff, a Board-certified orthopedic surgeon, and treating physician, indicated that appellant reached maximum medical improvement for her left hand index and ring fingers on October 17, 2005.

On September 19, 2007 appellant filed a claim for a schedule award.

In a letter dated October 9, 2007, the Office requested that Dr. Ruff provide an opinion on impairment. It requested that the physician utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*).[3] Dr. Ruff did not respond.

The Office referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. James H. Rutherford, a Board-certified orthopedic surgeon.

In a November 13, 2007 report, Dr. Rutherford noted appellant's history. He examined appellant and determined that she had full range of motion of her shoulders, elbows and wrists fingers and hands. Regarding the left hand, Dr. Rutherford indicated that she had a full range of motion of the left index finger and the left fourth or ring finger with no sensory loss. He advised that appellant did not have any tenderness over the distal palmar ridge where there were small surgical scars from her previous trigger finger releases. Dr. Rutherford added that there was no limitation of movement of either finger and she had normal sensation and equal strength in each arm. He opined that appellant reached maximum medical improvement on December 15, 2005. Dr. Rutherford concluded that appellant did not have any ratable impairment of the left upper extremity.

In a report dated January 12, 2008, the Office medical adviser noted that he had reviewed Dr. Rutherford's report and concurred with his findings. He utilized the A.M.A., *Guides* and advised that appellant had full range of motion and normal sensation in the left hand and no objective evidence of any residual loss of function in the left hand. Dr. Rutherford determined that appellant had a zero percent impairment of the left upper extremity.

By decision dated February 28, 2008, the Office denied appellant's claim for a schedule award of the left upper extremity.

On March 26, 2008 appellant requested a hearing, which was held on July 16, 2008. During the hearing, she indicated that her physician did not perform ratings and thus she was

[2] The record reflects that appellant also has several accepted claims involving the left right upper extremity. They include: bilateral carpal tunnel syndrome, File No. xxxxxx498; right trigger finger, File No. xxxxxx964; bilateral lateral epicondylitis, File No. xxxxxx965; bilateral shoulder strain and neck sprain, File No. xxxxxx498; right elbow contusion, File No. xxxxxx562 and right middle trigger finger, File No. xxxxxx845.

[3] Appellant was also provided a copy of this letter.

sent to Dr. Rutherford. Appellant was also advised that the present claim only addressed her left hand.

By decision dated October 6, 2008, the Office hearing representative affirmed the prior decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing federal regulations[5] 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 for all claimants, the Office has adopted the A.M.A., *Guides* (5th ed. 2001) as the uniform standard applicable to all claimants.[6] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[7]

ANALYSIS

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*.

By letter dated October 9, 2007, the Office requested that appellant's physician, Dr. Ruff, submit a report in which he described appellant's condition and determined whether he was entitled to an impairment rating. Appellant was also provided a copy of this letter. However, Dr. Ruff did not respond. 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 trigger finger left ring and index finger caused a permanent impairment to a scheduled member of the body.

Additionally, both the second opinion physician, Dr. Rutherford, and the Office medical adviser determined that appellant had reached maximum medical improvement on December 15, 2005 and that there was no evidence to support any permanent impairment to the left upper extremity due to the accepted injuries in accordance with the A.M.A., *Guides.* In his November 13, 2007 report, Dr. Rutherford indicated that she had a full range of motion of the left index finger and the left fourth or ring finger with no sensory loss and no tenderness in the area of her previous trigger finger releases. He also determined that she had normal sensation and there was no limitation of movement of either finger. The Office medical adviser explained that appellant had full range of motion and normal sensation in the left hand and no objective evidence of any residual loss of function in the left hand.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.* at § 10.404(a).

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

As noted above, the Office evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Dr. Rutherford and an Office medical adviser both found no basis under the A.M.A., *Guides* to rate impairment. Appellant has the burden of proof to submit medical evidence supporting that she has permanent impairment of a scheduled member of the body.[8] As such evidence has not been submitted, appellant has not established entitlement to a schedule award of the left upper extremity.

On appeal, appellant submitted additional evidence, this included a new medical report. The Board has no jurisdiction to review this evidence for the first time on appeal.[9] Appellant, however, retains the right to file a claim for an increased schedule award based on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated.[10]

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she is entitled to a schedule award of the left upper extremity.

[8] *See Annette M. Dent*, 44 ECAB 403 (1993).

[9] 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

[10] *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated October 6, 2008 is affirmed.

Issued: October 27, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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