U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENERVER Y. DAVIS and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Los Angeles, Calif.

Docket No. 96-1043; Submitted on the Record;
Issued May 26, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant is entitled to a schedule award for a permanent impairment of the right upper extremity.

The Board has duly reviewed the case record in this appeal and finds that appellant is not entitled to a schedule for a permanent impairment of the right upper extremity.

On September 10, 1992 appellant, then a clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 1992, she sprained the heart wall muscle on the right side of the breast due to pushing a heavy cart with a large amount of cases up and down stairs.

By letter dated December 28, 1992, the Office of Workers' Compensation Programs accepted appellant's claim for chest wall strain.

The Office found a conflict in the medical opinion evidence between Dr. Bartholomew DeCoro, appellant's treating physician and a Board-certified physiatrist, who opined that appellant had costochondritis and was totally disabled and Dr. Russell W. Nelson a Board-certified orthopedic surgeon and second opinion physician, who opined that could work eight hours per day with physical restrictions.

By letter dated August 16, 1994, the Office referred appellant along with a statement of accepted facts, a list of specific questions and medical records to Dr. Manny J. Karbelnig, a Board-certified orthopedic surgeon, for an impartial medical examination. By letter of the same date, the Office advised Dr. Karbelnig of the referral.

Dr. Karbelnig submitted a September 6, 1994 medical report revealing that appellant had chronic residuals of traumatic costochondritis of the right anterior chest and of the right pectoralis myofascial strain. He opined that appellant's conditions were caused by the September 1992 employment injury and that appellant could work eight hours per day with physical restrictions.

By letter dated November 2, 1994, the Office requested Dr. Karbelnig to determine the extent of permanent partial impairment of the right upper extremity due to the September 2, 1992 employment injury based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* By letter of the same date, the Office requested Dr. Karbelnig to submit a report providing the physiological basis for the length of appellant's strain and to explain why appellant's condition was not caused by factors other than the employment injury such as, appellant's pregnancy, lifting/carrying/handling a young child, everyday activities and appellant's large breasts.

In response to the Office's November 2, 1994 letter requesting an explanation for appellant's continued condition, Dr. Karbelnig submitted a November 29, 1994 medical report revealing that he could not explain the physiological basis for appellant's subjective complaints. His report also revealed that it would be unlikely that the September 2, 1992 employment injury would explain appellant's current condition.

In a notice of proposed termination dated January 5, 1995, the Office advised appellant that it proposed to terminate her compensation because the medical evidence of record failed to establish continued disability caused by the September 2, 1992 employment injury. The Office also advised appellant to submit additional medical evidence supportive of her continued disability within 30 days. In an accompanying memorandum, the Office accorded greater weight to Dr. Karbelnig's November 29, 1994 supplemental medical report.

In response to the Office's November 2, 1994 letter regarding whether appellant had any permanent disability, Dr. Karbelnig submitted a December 13, 1994 narrative medical report and response to the Office's specific questions revealing that appellant had no impairment of the upper extremities.

By decision dated February 6, 1995, the Office terminated appellant's compensation benefits on the grounds that the medical evidence of record failed to establish continued disability due to the September 2, 1992 employment injury.[1]

On February 1, 1995 appellant filed a claim for a schedule award (Form CA-7) for the loss of use of her right arm accompanied by medical evidence.

By decision dated June 2, 1995, the Office found the medical evidence of record insufficient to establish that appellant was entitled to a schedule award. In an accompanying memorandum, the Office found that Dr. Karbelnig's December 13, 1994 medical report constituted the weight of the medical opinion evidence.

Section 8123(a) of the Federal Employees' Compensation Act provides that if there is a disagreement between the physician making the examination for the United States and the

[1] In a memorandum accompanying its February 6, 1995 decision, the Office also found that appellant was not entitled to an allowance for attendant care.

physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[2]

In the present case, the Office determined that a conflict in the evidence existed between Dr. DeCoro and Dr. Nelson as to continuing disability causally related to the September 2, 1992 employment injury. The Office properly referred appellant to Dr. Karbelnig for an impartial medical evaluation pursuant to section 8123(a) of the Act.

The schedule award provision of the Act[3] and its implementing regulation,[4] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[5] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[6]

In support of her claim for a schedule award, appellant submitted a November 18, 1994 attending physician's report (Form CA-20) signed by Dorothy Walker, an authorized representative for Dr. Karen Davis, a Board-certified family practitioner and appellant's treating physician. This report revealed that a history of the September 2, 1992 employment injury, a diagnosis of tendinitis of the right shoulder and an arm strain. This report further revealed a checkmark in the box marked "yes" in response to the question whether appellant's conditions were caused or aggravated by the employment activity. In addition, this report revealed that appellant could return to light-duty work December 1, 1994 with physical restrictions. In further support of her claim, appellant submitted an undated and unsigned Form CA-20 revealing a history of the September 2, 1992 employment injury and a diagnosis of chronic pectoralis. This report also revealed a checkmark in the box marked "no" in response to the question whether appellant's condition was caused or aggravated by the employment activity. The record does not reveal that Ms. Walker is a physician and the undated Form CA-20 is not signed by a physician. Inasmuch as these reports are not signed by a physician,[7] they do not constitute competent medical evidence.

[2] 5 U.S.C. § 8123(a); *see also Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

[3] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[4] 20 C.F.R. § 10.304.

[5] 5 U.S.C. § 8107(c)(19).

[6] *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[7] *Jerre R. Rinehart*, 45 ECAB 518 (1994).

Dr. Karbelnig indicated in his December 13, 1994 medical report that appellant expressed pain in her right anterior chest which radiated into her upper right arm. He further indicated his findings on physical examination. In response to the Office's form which contained specific questions regarding whether appellant had any impairment of the upper extremity, Dr. Karbelnig indicated that appellant had slight and occasional pain which increased by motion of appellant's right shoulder. He further indicated that the range of motion of the affected shoulder compared to the opposite shoulder was normal for abduction, forward and backward elevation, internal and external rotation, adduction and extension. Dr. Karbelnig also indicated that appellant did not have any weakness or atrophy of the upper extremity as a result of the shoulder pathology. He further indicated that appellant may have causalgia[8] and that she was still improving with regard to the date of maximum medical improvement. Inasmuch as Dr. Karbelnig opined that appellant did not have any impairment of the right upper extremity and provided medical rationale in support of his opinion, the Board finds that the Office properly relied on Dr. Karbelnig's medical report in reaching its determination that appellant was not entitled to a schedule award for a permanent impairment of the right upper extremity.

The June 2, 1995 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 26, 1999

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] The Board notes that in his narrative report dated December 13, 1994, Dr. Karbelnig stated that there was no evidence of any "causalgia or reflex sympathetic dystrophy" and that since appellant's range of motion was normal, there was no ankylosis present.