U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. FREDERICK and HOUSE OF REPRESENTATIVES, Greenwood, IN

Docket No. 02-2135; Oral Argument Held September 23, 2003; Issued March 18, 2004

Appearances: *Mary A. Frederick, pro se*; *Katie M. Streett, Esq.*, for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether appellant has a permanent impairment of her right upper extremity.

On February 26, 1996 appellant, then a 57-year-old office manager and special assistant, filed a claim for a traumatic injury occurring on January 23, 1996 when she fell on an icy sidewalk. She did not stop work. The Office of Workers' Compensation Programs accepted appellant's claim for a wrist and elbow sprain on the right side, tendinitis of the right elbow and tenosynovitis of the right wrist.

In a report dated December 3, 1998, Dr. William J. Lynn, who is Board-certified in family practice, diagnosed tenosynovitis of the wrist and tendinitis of the elbow. On examination, Dr. Lynn stated:

> "[Appellant] has a negative Tinel's and Phalen's sign. She has normal reflexes in the right upper extremity. [Appellant] has good grip strength. She is tender on the volar surface of the wrist. [Appellant] has [a] full range of motion of the wrist, but she does have pain when moving the wrist. Examination of the right elbow shows she has full extension and flexion. There is no edema. [Appellant] does have some tenderness on the lateral side of the elbow. The elbow does seem stable as does the wrist. I would diagnose tenosynovitis of the wrist and tendinitis of the elbow.
>
> "As a result of [appellant's] accident on January 23, 1996, I give [her] [an] eight percent impairment of the right upper extremity…."

On February 15, 1999 an Office medical adviser reviewed Dr. Lynn's December 3, 1998 report and found that it was insufficient to rate the extent of appellant's permanent impairment

under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). The Office medical adviser recommended obtaining accurate range of motion measurements.

In a letter dated February 17, 1999, the Office requested that Dr. Lynn evaluate the extent of any permanent impairment of appellant's right upper extremity due to her accepted employment injury in accordance with the fourth edition of the A.M.A., *Guides*. In an impairment evaluation dated October 26, 1998, received by the Office on March 31, 1999, he found that appellant had 40 degrees of radial deviation, 45 degrees ulnar flexion, 70 degrees dorsiflexion and 85 degrees palmar flexion. Dr. Lynn further found that appellant had 85 degrees of retained active flexion, 70 degrees retained active extension, 180 degrees retained pronation and 180 degrees of retained supination. He concluded that appellant had a nine percent permanent impairment of the right upper extremity due to sensory deficit, pain or loss of strength.

On May 2, 1999 an Office medical adviser reviewed Dr. Lynn's October 26, 1998 report and found that his range of motion measurements for appellant's right elbow "cannot be accepted as being accurate." He noted that appellant's accepted condition was a soft tissue sprain which should "heal without residual in a few weeks."

On June 3, 1999 a second Office medical adviser reviewed the evidence of record and stated:

> "The ROM [range of motion] or joint movement measurements indicate that Dr. Lynn is not familiar with conventional ROM measurements or goniometry for the wrist or the elbow."

The Office medical adviser noted that Dr. Lynn was a family practitioner and questioned why appellant had not been referred for an orthopedic consultation. He stated:

> "Both orthopedic OMA's [Office medical advisers] recognized the inaccuracies of Dr. Lynn's report. Both of us recommended an alternative: orthopedic consultation for correct measurements. Now I am at a loss, since I do not understand why our suggestions were not adequate for corrective action. To reiterate, have [appellant] seen by a [B]oard-certified ortho[pedic] [surgeon]…."

In a letter dated July 7, 1999, the Office informed appellant's representative that she should submit an impairment evaluation by a Board-certified orthopedic surgeon. Appellant's representative submitted a report dated August 9, 1999, by Dr. Richard W. Jackson, a Board-certified orthopedic surgeon, who opined that appellant had a four percent impairment of the whole person due to a neck condition and a two percent whole person impairment due to her right knee.

An Office medical adviser reviewed Dr. Jackson's opinion on September 14, 1999 and noted that appellant did not have an accepted employment-related knee or neck condition. The Office again wrote appellant's representative on November 1, 1999 and requested an impairment evaluation of appellant's right upper extremity.

On June 20, 2000 appellant again requested a schedule award. In a letter dated October 10, 2000, the Office notified appellant that she should submit a detailed medical report from her physician in accordance with the fourth edition of the A.M.A., *Guides* and enclosed an impairment evaluation sheet.

In an office visit note dated January 30, 2001, Dr. Jackson discussed appellant's continued complaints of pain in her right arm. He stated:

> "[Appellant] has pain centered around her elbow where she had a chip fracture. She has some tenderness over the ulnar side of the olecranon. I do not feel any crepitation. [Appellant] does have full flexion extension. She has no motor weakness elicited. [Appellant] does have some weakness with grip because of her pain over the deeper vein areas. She has some diffuse pain and tenderness around her wrist. [Appellant] has full mobility to the wrist."

In an impairment evaluation dated February 8, 2001, Dr. Jackson discussed appellant's complaints of pain in the right elbow and right wrist and noted that she had lupus and fibromyalgia which contributed to her continued pain. He stated:

> "I think [appellant's] pain that she is now having originated from the initial fall on January 23, 1996. I think that she has reached maximal medical improvement. [Appellant] has persistent pain in the soft tissues and both the elbow and the wrist."

Dr. Jackson concluded that appellant had a two percent whole person impairment due to her wrist pain and a two percent whole person impairment due to pain in the elbow, both as a result of soft tissue injuries.

On May 8, 2001 an Office medical adviser reviewed Dr. Jackson's February 8, 2001 report and found "no basis" for a schedule award. In a letter dated June 12, 2001, the Office informed appellant that Dr. Jackson did not provide any reference to the A.M.A., *Guides* in his February 8, 2001 report. The Office further noted that Dr. Jackson's reports were inconsistent as he referred to a chip fracture in appellant's elbow, in his most recent report, when his prior reports found no fractures or bony abnormalities. The Office requested that appellant submit a report from Dr. Jackson clarifying the apparent discrepancy and providing an estimate of appellant's permanent impairment in accordance with the fifth edition of the A.M.A., *Guides*. The Office included a schedule award calculation worksheet for Dr. Jackson to complete.

Dr. Jackson completed the schedule award calculation worksheet provided by the Office on June 12, 2001. He found that appellant had moderate pain in the elbow which interfered with typing, lifting and carrying. Dr. Jackson listed range of motion measurements for the right elbow as follows: 140 degrees flexion; 0 degrees extension; 80 degrees forearm pronation and 80 degrees supination. He found no evidence of any nerve injury, weakness or atrophy related to the elbow. Dr. Jackson concluded that appellant had a three percent right upper extremity impairment. For the right wrist, he indicated that appellant had moderate pain which interfered with typing, lifting and carrying. Dr. Jackson listed the range of motion for the right wrist as 60 degrees dorsiflexion, 70 degrees palmar flexion, 20 degrees radial deviation and 30 degrees ulnar

deviation. He further found that appellant had no ankylosis or weakness and atrophy of the upper extremity due to her wrist pathology. Dr. Jackson noted findings of "pain over [the] 1st dorsal ext[] compartment of [the] radial side of wrist." He concluded that appellant had a three percent permanent impairment of the right upper extremity.

In a report dated July 6, 2001, Dr. Jackson indicated that, when he reviewed appellant's x-rays in 1996, he "did not appreciate a chip fracture in the olecranon." He noted that Dr. James W. Strickland, a Board-certified orthopedic surgeon, had diagnosed a chip fracture and enclosed his report.[1] He stated:

> "I would like to point out that I do [not] think that the chip fracture is causing the problems but it is the soft tissue around where the fracture was in her elbow that has led to the two percent impairment rating with the elbow with continuation of pain in this area."

An Office medical adviser reviewed Dr. Jackson's June 12 and July 6, 2001 reports on November 14, 2001 and opined that appellant had no loss of motion of the elbow and, therefore, was not entitled to a schedule award.

By decision dated January 15, 2002, the Office denied appellant's claim for a schedule award on the grounds that the evidence was insufficient to establish that she sustained a permanent impairment of her upper extremity due to her employment injury.[2]

The Board finds that appellant has not met her burden of proof to establish that she sustained a permanent impairment of her right upper extremity.

The schedule award provisions of the Federal Employees' Compensation Act[3] and its implementing federal regulation,[4] 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.[5] 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.[6]

[1] In a report dated August 13, 1996, Dr. Strickland noted that appellant had injured her elbow due to a fall at work on January 23, 1996 and found that "an x-ray confirmed a small chip from the olecranon process."

[2] The Office's decision does not appear to be dated; however, it is stamped received January 15, 2002.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] 20 C.F.R. § 10.404(a).

[6] *See* FECA Bulletin No. 01-05 (issued January 29, 2001).

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*.[7] All factors which prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment. The element of pain may serve as the sole basis for determining the degree of impairment for scheduled compensation purposes.[8]

In this case, the Office accepted that appellant sustained a wrist and elbow sprain on the right side, tendinitis of the right elbow and tenosynovitis of the right wrist due to an employment injury on January 23, 1996. Appellant filed a schedule award claim for a permanent impairment due to residuals of her employment injury; however, the Office determined that she had no ratable impairment based on the opinion of the Office medical adviser. In the most recent report submitted by appellant in support of her claim, Dr. Jackson, her attending physician, opined that she had a three percent impairment of the right upper extremity due to pain. Dr. Jackson, however, did not specifically refer to the appropriate tables and pages of the A.M.A., *Guides* in reaching his impairment determination. The Office, therefore, properly requested that the Office medical adviser review Dr. Jackson's report and calculate the degree of appellant's permanent impairment of the right upper extremity. After reviewing the findings obtained by Dr. Jackson, the Office medical adviser determined that appellant had no loss of motion of her right upper extremity and, consequently, was not entitled to a schedule award.

The Board finds that the report of the Office medical adviser constitutes the weight of the medical evidence and establishes that appellant has no permanent impairment of the right upper extremity. Dr. Jackson found that appellant had a soft tissue injury which caused pain but no loss of motion, nerve injury, weakness, atrophy or ankylosis. The fifth edition of the A.M.A., *Guides* allows for an impairment percentage to be increased by up to three percent for pain by using Chapter 18, which provides a qualitative method for evaluating impairment due to chronic pain.[9] If an individual appears to have a pain-related impairment that has increased the burden on his or her condition slightly, the examiner may increase the percentage up to three percent.[10] In this case, however, there is no objective evidence that pain has increased the burden on appellant's condition. Dr. Jackson found that appellant had a soft tissue injury without any evidence of a nerve injury, weakness or atrophy. He further concluded that appellant had no loss of range of motion. Appellant, therefore, has not shown that she has any objective evidence of

[7] *William F. Simmons*, 31 ECAB 1448 (1980).

[8] *Paul A. Toms*, 38 ECAB 403 (1987); *see also* A.M.A., *Guides*, fifth edition, Chapter 18, p. 565.

[9] As Dr. Jackson found that appellant did not have a nerve injury, she is not entitled to a schedule award for pain due to a peripheral nerve injury as provided for in Chapter 15 of the A.M.A., *Guides*. *See* A.M.A., *Guides* at 482.

[10] If the examiner performs a formal pain-related impairment rating, he or she may increase the percent by up to three percent and classify the individual's pain-related impairment into one of four categories: mild, moderate, moderately severe or severe. The Office, however, has stated that a separate pain calculation under Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain as outlined in Chapter 13, 16 and 17 of the fifth edition of the A.M.A., *Guides*. FECA Bulletin No. 01-05 (2001).

an impairment, even if not ratable, such that she would be entitled to an additional award due to pain.

Accordingly, the Board finds that the opinion of the Office medical adviser constitutes the weight of the medical evidence of record and establishes that appellant has no ratable impairment of the right upper extremity.

The decision of the Office of Workers' Compensation Programs dated January 15, 2002 is affirmed.

Dated, Washington, DC
March 18, 2004

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member