United States Department of Labor
Employees' Compensation Appeals Board

W.W., Appellant	)	
and	)	**Docket No. 07-15**
	)	**Issued: May 22, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Elkins Park, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
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 October 4, 2006 appellant, through her attorney, filed a timely appeal from a September 28, 2006 decision of the Office of Workers' Compensation Programs denying a schedule award, and decisions dated March 1, April 6, July 10 and August 7, 2006 denying compensation for intermittent periods of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this claim.

ISSUES

The issues are: (1) whether appellant has established entitlement to a schedule award; and (2) whether she established her claim for intermittent periods of disability.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated November 13, 2006, the Board affirmed Office decisions dated September 29, 2005 and January 20, 2006, finding that appellant failed to establish a recurrence of disability on or about July 1, 2005 causally related to an August 25, 2004 employment injury. The facts and the circumstances of this case

are set forth in the prior decision and are hereby incorporated by reference.[1] The facts relevant to this appeal are set forth.

On August 25, 2004 appellant sustained injury to her right knee, right temple and left wrist and hand. On October 27, 2004 the Office accepted appellant's claim for strain left wrist, lumbar strain/sprain and right knee contusion. Appellant returned to work limited duty, but had several periods of intermittent disability.

On September 15, 2005 appellant filed a claim for a schedule award.

On September 28, 2005 appellant filed a claim for compensation for disability for intermittent periods between September 11 and 30, 2005, including a claim for 4½ hours on September 27, 2005. On October 28, 2005 she submitted a claim for compensation for October 24 and 25, 2005 for eight hours each.

Dr. John Angeloni, appellant's osteopath, indicated that appellant could return to work on September 12, 2005. In an attending physician's report dated September 23, 2005, Dr. Angeloni indicated that appellant was totally disabled through September 11, 2005 but that he informed her that she could return to work in permanent sedentary duties on September 12, 2005. On September 12, 2005 the employing establishment made an offer of modified assignment (limited duty). On the same date, appellant accepted the offer.

In a note dated November 2, 2005, Dr. Angeloni indicated that he recommended that appellant remain on permanent modified restrictions because of injuries sustained on August 25, 2004. In a report dated November 4, 2005, Dr. Roy T. Lefkoe, a Board-certified orthopedic surgeon, indicated that appellant could continue in her permanent modified-duty position.

In a report dated December 7, 2005, Dr. George Rodriguez, a Board-certified physiatrist, noted that appellant is suffering significantly from bilateral wrist, right knees, lower back, right lower extremity, neck and head pain. He opined that appellant reached maximum medical improvement on November 8, 2004. Dr. Rodriguez found that appellant had a 30 percent impairment of her right upper extremity and a 20 percent impairment to her left upper extremity due to grip strength loss impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition 2001).[2] He found that appellant had a six percent impairment to her right lower extremity, based on a sensory nerve root impairment of one percent[3] and a contusion with chondromalacia (pain and crepitus).[4] Dr. Rodriguez also found that appellant had ratable pain from traumatically exacerbated headaches of 3 percent for a total combined impairment of 52 percent.

[1] *W.W.*, Docket No. 06-754 (issued November 13, 2006).

[2] A.M.A., *Guides* 509, Table 16-34.

[3] *Id.* at 424, Tables 15-15 and 15-18.

[4] *Id.* at 544, Table 17-31.

In a progress note dated January 9, 2006, Dr. Lefkoe noted that he reviewed the impairment rating evaluation by Dr. Rodriguez and that he calculated that appellant had a 52 percent impairment of the whole person as a result of the August 25, 2004 injury.

On February 12, 2006 appellant filed a claim for wage-loss compensation for eight hours each on February 3 and 4, 2006. In support thereof, appellant submitted a note from Dr. Angeloni indicating that appellant had been under his care from February 2 through 5, 2006 and was able to return to work on February 7, 2006.

By decision dated March 1, 2006, the Office denied appellant's claim for wage-loss compensation on September 27 and October 24 and 25, 2005.

On March 7, 2006 the Office referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion. In a report dated March 27, 2006, Dr. Hanley diagnosed appellant with sprain/strain of the left wrist and contusion of the right knee. He noted that appellant had a two percent impairment of the left wrist from loss of flexion and a two percent impairment for loss of extension.[5] Dr. Hanley found that appellant had a full range of motion in her knee and has not had surgery and therefore had zero percent impairment or disability according to the A.M.A., *Guides*. He concluded that a reasonable date of medical improvement would be February 25, 2005. Dr. Hanley concluded that there was no indication for any additional treatment for appellant's accepted conditions.

In a note dated April 5, 2006, Dr. Angeloni indicated that appellant was unable to work on September 25, October 24 and 25, 2005 due to lumbar back pain and swelling in her right knee.

By decision dated April 6, 2006, the Office denied appellant's claim for compensation from February 3 to 4, 2006.

On June 8, 2006 the Office referred appellant for an impartial medical examination. The Office noted that a conflict existed as Dr. Hanley, the second opinion physician, stated that there was no evidence of a causally related right wrist condition or causally related right upper extremity condition and that appellant had a zero percent impairment of the right lower extremity and a four percent impairment of the left upper extremity. However, appellant's medical provider Dr. Rodriguez stated that there was a causally related right wrist condition with 30 percent right upper extremity impairment and that the impairment of the right lower extremity was 6 percent and the left upper extremity is 20 percent.

In a decision dated July 10, 2006, following a review of the written record, the Office hearing representative affirmed the March 1, 2006 denial of appellant's claim for compensation for September 27, October 24 and 25, 2005.

By decision dated August 7, 2006, another Office hearing representative affirmed the April 6, 2006 decision denying compensation for February 3 and 4, 2006.

[5] *Id.* at 467, Table 15-16.

In a medical report dated August 15, 2006, Dr. David R. Steinberg, a Board-certified orthopedic surgeon, found that appellant sustained a left wrist sprain, right knee contusion, lumbosacral sprain and traumatic right de Quervain's tendinitis as a result of her work injury. He opined that appellant's injury-related factors of disability appeared out of proportion to her objective findings. Dr. Steinberg noted that appellant's grip testing was inconsistent, indicating a suboptimal effort and therefore could not be relied upon. He calculated appellant's impairment pursuant to the A.M.A., *Guides*. Dr. Steinberg noted that appellant's left wrist had four percent decreased flexion and one percent decreased radial deviation for left upper extremity impairment of five percent.[6] He noted that appellant's right wrist extension was limited by three percent, flexion by two percent, radial deviation by one percent for an upper extremity impairment of six percent.[7] Dr. Steinberg noted zero percent impairment in appellant's right knee and zero percent impairment in appellant's lumbosacral spine.[8]

On September 20, 2006 the Office accepted appellant's claim for right de Quervain's tendinitis.

On September 20, 2006 the Office referred appellant's case with regard to the schedule award to the Office medical adviser. In a report of the same date, the Office medical adviser opined that appellant had no ratable impairment. In evaluating appellant's impairment with regard to grip strength deficits, he indicated that Dr. Rodriguez should have calculated appellant's loss using kilograms, as outlined in the A.M.A., *Guides*, not pounds. The Office medical adviser also noted that Dr. Rodriguez did not explain the process for finding measurements with the Jamar dynamometer. He noted that Dr. Hanley did not document measuring grip strength loss with a Jamar dynamometer and noted that the grip strength was mildly diminished; accordingly, the Office medical adviser concluded that he could not use this report for determining grip strength impairment. The Office medical adviser noted that Dr. Stanley determined that grip strength was inconsistent and could not be relied upon. He found that, based upon the three physicians evaluations, there was no valid ratable impairment for loss of grip strength for appellant. With regard to wrist range of motion, the Office medical adviser noted that both Dr. Hanley and Dr. Rodriguez found full range of motion in both of appellant's wrists. He noted that Dr. Stanley found wrist motion on the right in 45 degrees extension and flexion compared to 70 and 35 on the left, appellant is symmetric at 10 degrees of radial deviation and has 30 degrees of ulnar deviation on the right compared to 45 on the left. After evaluating the three reports, the Office medical adviser indicated that he would use the best measured wrist range of motion as a basis for any impairment, and that accordingly, appellant had no range of motion impairments in the wrists. In terms of lumbar spinal nerve impairments, he noted that neither Dr. Hanley nor Dr. Stanley found a S1 sensory nerve deficit, so there was no ratable impairment for this condition. In terms of right knee impairment, Drs. Stanley and Hanley documented normal right knee examination, and that accordingly, there was no right knee impairment assigned based upon the consistent result of a normal right knee examination. He also found that, although Dr. Rodriguez rated pain for traumatically exacerbated headaches,

[6] *Id.* at 467, Figure 16-28; *Id.* at 469, Figure 16-31.

[7] *Id.*

[8] *Id.* at 384, Table-15-3 (DRE category 1).

as the Office has not accepted this condition, it was not included in appellant's impairment evaluation.

By decision dated September 28, 2006, the Office denied appellant's claim for a schedule award, finding that she did not establish any permanent impairment.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[9] provides for compensation to employees sustaining permanent loss, or loss of use, of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* (5th ed. 2001) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[10]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for strain left wrist, lumbar strain/sprain and right knee contusion. Appellant's claim was later accepted for right de Quervain's tendinitis. Dr. Rodriguez found that appellant had a 30 percent impairment of her right upper extremity, a 20 percent impairment to her left upper extremity and a 6 percent impairment to her right lower extremity.[11] Dr. Hanley, a second opinion physician, found that appellant had a four percent impairment of her left wrist. However, he found no impairment of her right knee. Due to the conflict with regard to appellant's impairment, the Office referred appellant to Dr. Steinberg for an impartial medical evaluation. Dr. Steinberg found that appellant had a five percent impairment of her left upper extremity and a six percent impairment of her right upper extremity and no impairment of her right knee. The Office referred appellant's case to the Office medical adviser who opined that appellant had no ratable impairment. The Office relied upon the opinion of the Office medical adviser in determining that appellant had no impairment.

With regard to appellant's right upper extremity, Dr. Rodriguez found that appellant had a 30 percent impairment based on grip strength loss impairment. He noted that appellant had full range of motion of the wrist and fingers. Dr. Hanley found no evidence of a causally related right upper extremity condition caused by the work-related fall of August 25, 2004. Dr. Steinberg, the impartial medical examiner, found that appellant sustained right de Quervain's tendinitis as a result of the work injury and that appellant had an impairment of her right upper extremity of six percent. Dr. Hanley found no evidence of a causally related right upper extremity condition but on September 20, 2006 the Office accepted appellant's claim for right

[9] 5 U.S.C. §§ 8101-8193.

[10] *See* 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[11] Dr. Rodriguez also found that appellant had a disability of three percent for traumatically exacerbated headaches. However, as the Office did not accept that appellant's headaches were causally related to her employment injury, this condition is not considered in determining a schedule award.

de Quervain's tendinitis. The Office medical adviser neglected to mention Dr. Steinberg's conclusion that appellant had a six percent impairment to her right upper extremity. The opinion of the impartial medical examiner, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[12] Dr. Steinberg noted on physical examination of appellant that she had 45 degrees extension in her right wrist which would equal a 3 percent impairment pursuant to the A.M.A., *Guides*.[13] He further noted that appellant had 45 degrees flexion which he calculated as an impairment of 2 percent for limited flexion pursuant to the A.M.A., *Guides*.[14] Finally, Dr. Steinberg noted that appellant and 1 percent for radial deviation.[15] Dr. Steinberg's conclusions are supported by the A.M.A., *Guides*, and accordingly, appellant sustained a six percent impairment to her right upper extremity. Therefore, the Office erred in finding no ratable impairment.

With regard to appellant's left upper extremity, Dr. Rodriguez found that appellant had a 20 percent impairment to her left upper extremity due to grip strength and loss impairment. Dr. Hanley found that appellant had a 4 percent impairment. Dr. Steinberg, the impartial medical examiner, found that appellant had 35 degrees of flexion which equaled a 4 percent impairment[16] and 1 percent decreased radial deviation.[17] Once again, the Office failed to discuss Dr. Steinberg's report. As Dr. Steinberg's report is entitled to the special weight of that afforded an impartial medical examiner, the Board finds that the Office erred in finding no ratable impairment to the left upper extremity. Appellant sustained a five percent impairment to the left upper extremity based on Dr. Steinberg's report.

With regard to the right knee, Dr. Rodriguez found a six percent impairment to appellant's right lower extremity; Dr. Hanley found a 0 percent impairment. Dr. Steinberg found zero percent impairment based on no patellofemoral laxity or crepitus, effusion or joint tenderness. He found based testing to varus and valgus and anterior drawer were all negative.

The Office erred in relying upon the report of the Office medical adviser in denying appellant's claim for a schedule award. The Office medical adviser referred to Dr. Steinberg's report but also to a report of a Dr. Stanley, whose report is not in the record. In a situation where the Office secures a report from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion.[18] The Board finds that

[12] *Jaja K. Asaramo*, 55 ECAB 200, 203 (2004).

[13] A.M.A., *Guides* 467, Figure 16-28.

[14] *Id.*

[15] *Id.* at 469, Figure 16-31.

[16] *Id.* at 467, Figure 16-28.

[17] *Id.* at 469, Figure 16-31.

[18] *Guiseppe Aversa*, 55 ECAB 164, 168 (2003).

Dr. Steinberg's opinion is sufficiently well rationalized and based upon a factual background and accordingly, must be given special weight.[19]

The Board finds that the Office erred in denying appellant a schedule award. On remand, the Office should issue a schedule award based on a six percent impairment to her right upper extremity and a five percent impairment to her left upper extremity.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Act[20] has the burden of proving by the preponderance of reliable, probative and substantial evidence that he was disabled for work as a result of an employment injury.[21] Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.[22] Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.[23]

The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish a causal relationship between the two.[24] The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[25]

ANALYSIS -- ISSUE 2

The Office accepted appellant's claim for strain left wrist, lumbar strain/sprain, right knee contusion and right de Quervain's tendinitis. Accordingly, appellant has the burden of establishing by the weight of substantial, reliable and probative evidence a causal relationship between her claimed disabilities for the claimed hours on September 27, October 24 and 25 and February 3 and 4, 2006.

Appellant has not submitted medical evidence sufficient to establish her disability from work on these dates. Dr. Angeloni's brief statements that appellant was "unable to work" or was under his care on these dates are not sufficient in that they do not link appellant's inability to

[19] *John E. Cannon*, 55 ECAB 585, 589 (2004).

[20] 5 U.S.C. §§ 8101-8193.

[21] *Thomas M. Petroski*, 53 ECAB 484 (2002).

[22] *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

[23] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[24] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

[25] *Fereidoon Kharabi*, *supra* note 23.

work on these dates to the stated accepted conditions nor do they constitute rationalized medical opinions. The Board has held that medical conclusions unsupported by rationale are of little probative value.[26] Accordingly, appellant has not established that he is entitled to compensation for the aforementioned dates.

CONCLUSION

The Board finds that the Office improperly denied appellant's claim for a schedule award and remands this case for the issuance of a schedule award for a six percent impairment of the right upper extremity and a five percent impairment of the left upper extremity. The Board further finds that the Office properly denied appellant's claim for intermittent periods of disability.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2006 is reversed, and this case is remanded for the issuance of a schedule award in accordance with this opinion. The decisions of the Office dated August 7, July 10, April 6 and March 1, 2006 are affirmed.

Issued: May 22, 2007
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

[26] *Willa M. Frazier*, 55 ECAB 379, 384 (2004).