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| <b>D.B., Appellant</b>                   | ) |                             |
|  | ) |                             |
| <b>and</b>                               | ) | <b>Docket No. 08-1136</b>   |
|  | ) | <b>Issued: May 20, 2009</b> |
| <b>U.S. POSTAL SERVICE, POST OFFICE,</b> | ) |                             |
| <b>Pittsburgh, PA, Employer</b>          | ) |                             |
|  | ) |                             |

### Case Submitted on the Record

## DECISION AND ORDER

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

On March 4, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 1, 2007 regarding a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established a permanent impairment to a scheduled member or function of the body causally related to her employment injuries.

The case was before the Board on a prior appeal. In a decision dated November 30, 2004, the Board affirmed an October 6, 2003 Office decision, denying modification of an

October 23, 2001 decision terminating compensation for wage-loss and medical benefits.<sup>1</sup> The Board found the weight of the medical evidence was represented by the referee orthopedic surgeon, Dr. Perry Eagle. In addition, the Board affirmed the denial of a recurrence of disability commencing May 2, 2001. The history of the case is provided in the Board's prior decision and is incorporated herein by reference. The record indicates appellant stopped working at the employing establishment in May 2002 and has worked as an independent courier since November 2002.

In a report dated April 21, 2005, Dr. Nicholas Diamond, an osteopath, provided a history and results on examination. He diagnosed repetitive use/aggravation of preexisting cervical degenerative disc disease and repetitive use/bilateral carpal tunnel syndrome. Dr. Diamond stated, "The cumulative and repetitive work-related injury was the competent producing factor for the claimant's subjective and objective findings of today." He opined that appellant had 25 percent right upper extremity impairment and a 23 percent left upper extremity impairment.

The Office requested that an Office medical adviser review Dr. Diamond's report and provide an opinion as to permanent impairment. In a report dated March 27, 2006, an Office medical adviser determined that appellant had 10 percent right upper extremity impairment and 4 percent left upper extremity impairment.

In a memorandum dated November 9, 2006, the Office indicated that the Office medical adviser had not reviewed all the relevant evidence, including the reports from Dr. Eagle, the referee physician. By report dated November 17, 2006, the Office medical adviser indicated he had reviewed additional medical evidence. He stated that based on Dr. Eagle's reports, he would retract his recommendation for a schedule award. The Office medical adviser stated that he "would also conclude that the accepted conditions of bilateral carpal tunnel syndrome and aggravation of cervical degenerative disc disease were not the accepted conditions. Since they are not the accepted conditions, there could be no schedule award."

By decision dated March 7, 2007, the Office determined that appellant was not entitled to a schedule award under 5 U.S.C. § 8107. Appellant requested a hearing before an Office hearing representative, which was held on July 18, 2007.

In a decision dated October 1, 2007, the hearing representative affirmed the March 7, 2007 decision. He acknowledged that the Office medical adviser's November 17, 2006 report was of little probative value, as he improperly concluded that bilateral carpal tunnel syndrome and aggravation of cervical degenerative disc disease were not accepted conditions. The hearing representative found that Dr. Diamond did not provide a rationalized medical opinion on causal relationship between his findings and the employment injuries.

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<sup>1</sup> Docket No. 04-711 (issued November 30, 2004). The Office accepted that appellant sustained bilateral carpal tunnel syndrome and aggravation of cervical degenerative disc disease as a result of her federal employment as a mail processor.

## **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>3</sup> The permanent impairment must be causally related to an accepted employment injury.<sup>4</sup>

## **ANALYSIS**

In this case the Office undertook additional development of the medical evidence with respect to entitlement to a schedule award. The initial referral to an Office medical adviser did not include the complete medical record. In his subsequent report dated November 17, 2006, he concluded that the accepted conditions of bilateral carpal tunnel syndrome and aggravation of cervical degenerative disc disease were not accepted conditions based on the medical evidence, and therefore appellant was not entitled to a schedule award. The record establishes that bilateral carpal tunnel syndrome and aggravation of cervical degenerative disc disease were accepted conditions and remain accepted conditions as there has been no rescission of acceptance. The Office had properly terminated compensation for the accepted conditions, but this does not in itself preclude a claimant from establishing an employment-related permanent impairment.<sup>5</sup> The November 17, 2006 report from the Office medical adviser, as noted by the hearing representative, is of little probative value.

Since the Office began development of the medical evidence, it has the responsibility to obtain a report which properly addresses the issues presented in the case.<sup>6</sup> It should secure a medical report with a rationalized medical opinion, based on a complete background, regarding a permanent impairment causally related to the employment injuries. After such further development as the Office deems necessary, it should issue an appropriate decision.

## **CONCLUSION**

The case will be remanded to the Office for further development of the medical evidence on the issue of a permanent impairment causally related to the employment injuries.

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<sup>2</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>3</sup> *A. George Lampo*, 45 ECAB 441 (1994).

<sup>4</sup> *Rosa Whitfield Swain*, 38 ECAB 368 (1987).

<sup>5</sup> *See A.A.*, 59 ECAB \_\_\_\_ (Docket No. 08-951, issued September 22, 2008).

<sup>6</sup> *See Richard Williams*, 55 ECAB 343 (2004); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs' dated October 1 and March 7, 2007 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 20, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board