U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILDRED LYSEK and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

Docket No. 97-1990; Submitted on the Record;
Issued July 20, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has a permanent loss of use of the left arm or left leg, for which she would be entitled to a schedule award; and (2) whether the Office of Workers' Compensation Programs properly refused to pay appellant compensation for holidays from December 25, 1996 to February 17, 1997.

The Office accepted that appellant sustained a sprain of the left thumb, a sprain of the left foot, a strain of the left knee and a torn medial meniscus of the left knee in a slip-and-fall injury at work on May 15, 1991. Appellant returned to limited duty on May 17, 1991 and the Office paid her for time missed from work, including payments for holidays from September 4, 1995 to December 25, 1996.

On April 18, 1995 appellant filed a claim for a schedule award. By decision dated February 29, 1996, the Office found that appellant had no permanent loss of use of a member of the body covered by the schedule award provision of the Federal Employees' Compensation Act. This decision was affirmed by an Office hearing representative in a decision dated February 20, 1997. The Office refused to review this decision by decision dated April 14, 1996. Also on April 14, 1997 the Office denied appellant's claim for compensation for holidays from December 25, 1996 to February 17, 1997 on the basis that part-time flexible employees did not work holidays and appellant, therefore, had not experienced any compensable wage loss.

The Board finds that the case is not in posture for a decision on appellant's claim for a schedule award.

The schedule award provision of the Act[1] and its implementing regulation[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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 to 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[3]

In the present case, the Office, upon receipt of appellant's claim for a schedule award, referred appellant to Dr. Leonard R. Smith, a Board-certified orthopedic surgeon, for an evaluation of any permanent impairment related to the May 15, 1991 employment injury, using the A.M.A., *Guides*. Dr. Smith's January 8, 1996 report, states that sensation of the upper extremities was normal, that finger and thumb motion was normal, that grip was good and that appellant had mild limitation in grasping. This report, however, does not contain any measurements of thumb motion, nor does it indicate that sensory testing was done according to the fourth edition of the A.M.A., *Guides*, which requires a two-point discrimination test for determining sensory loss of the digits. His report does not attempt to evaluate appellant's pain, and the mild limitation in grasping was not considered by an Office medical adviser in concluding appellant had no permanent impairment of the upper extremity.

Once the Office undertakes to develop the medical evidence, it has the responsibility to do so in a proper manner.[4] The Office's procedure manual provides that the report of the schedule award examination "must always include" losses in degrees of motion of the affected member and a detailed description of decreases in strength or disturbance of sensation. The procedure manual also provides that the evaluation must describe the impairment in sufficient detail for the reviewer to visualize the character and degree of impairment.[5] As Dr. Smith's report was not sufficient to determine the extent of any permanent impairment due to appellant's May 15, 1991 employment injury, the case will be remanded to the Office for another evaluation of any permanent impairment.

The Board further finds that the case is not in posture for decision on appellant's entitlement to compensation for holidays.

The case record contains contradictory information on appellant's work schedule, specifically with regard to working and being paid for holidays. On the reverse side of

[1] 5 U.S.C. § 8107

[2] 20 C.F.R. § 10.304.

[3] *Quincy E. Malone*, 31 ECAB 846 (1980).

[4] *Henry G. Flores, Jr.*, 43 ECAB 901 (1992).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (March 1995).

appellant's claim form for the May 15, 1991 injury, the employing establishment indicated she was a part-time flexible employee and that her work hours rotated. On the reverse side of appellant's claim form claiming compensation for the four holidays between December 25, 1996 and February 17, 1997, the employing establishment noted that part-time flexible employees do not work holidays. This information indicates appellant would not be entitled to compensation for not working on holidays.

On the other hand, the employing establishment, in a letter dated February 9, 1996, stated that appellant "is a 'rehab[ilitation]' claimant and was placed into a modified position as a result of permanent residuals causally related to her work-related injury. She was placed into a 'part-time flexible' facility. As a result, she is no longer afforded paid holidays. At the time of rehabilitation, she was entitled to all holidays off with pay." This would indicate appellant is entitled to compensation for not working on holidays. The case will be remanded to the Office for further development on this issue, to be followed by an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated April 14, 1997 and December 18, 1996 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
July 20, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member