

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY F. SIMMONS and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Memphis, TN

*Docket Nos. 98-1204; 00-164; Submitted on the Record;
Issued June 21, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing she that has any disability arising from a November 5, 1997 employment injury; and (2) whether she has more than a 10 percent permanent impairment of each arm.

On September 9, 1994 appellant, then a 47-year-old mailhandler, was walking up stairs at work when her foot became caught between two steps and she fell. She developed pain in her back and legs. In a November 3, 1994 letter, the Office of Workers' Compensation Programs informed appellant that it had accepted her claim for lumbar strain. Appellant received continuation of pay for the period September 13 through October 27, 1994. The Office began payment of temporary total disability compensation effective October 28, 1994. Appellant returned to work on limited duty on April 4, 1995.

On August 19, 1995 appellant was throwing magazines from the main conveyer belt into a container when she developed pain in her back, extending down her right leg and in her shoulder. She stopped working that day. She subsequently filed a claim for carpal tunnel syndrome in both arms. The Office accepted appellant's claim for bilateral carpal tunnel syndrome. Appellant received continuation of pay for the period August 22 through October 5, 1995. The Office then began payment of temporary total disability based on appellant's claim for her back condition effective October 9, 1995. She underwent surgery on April 9, 1996 for carpal tunnel release in the left arm and on January 14, 1997 for carpal tunnel release in the right arm. In a June 23, 1997 letter, the employing establishment offered appellant a position as a modified mailhandler. Appellant accepted the offered position and returned to work on July 26, 1997 for four hours a day, subsequently increasing to six hours a day.

On November 5, 1997 appellant was rewrapping mail when she developed numbness in her hands and shoulder and neck pain. She stopped working effective November 8, 1997. She returned to work on January 24, 1998. In a February 2, 1998 decision, the Office rejected

appellant's claim on the grounds that she had failed to establish the fact of an employment-related injury.

On June 2, 1998 appellant filed a claim for a schedule award. In an August 5, 1998 decision, the Office issued a schedule award for a 10 percent permanent impairment of each arm.

The Board finds in regard to appellant's claim for disability from November 8, 1997 through January 24, 1998, the case is not in posture for decision.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.² As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.³ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁵

In a November 11, 1997 report, Dr. John P. Howser, a Board-certified neurosurgeon, gave a history of the November 5, 1997 employment incident. He indicated that appellant was rewrapping mail when she felt pain in her left elbow, which radiated up to her neck and back and then back to her hand. She also reported numbness and tingling in both arms. Dr. Howser stated that on examination appellant had mild restricted motion of the cervical spine, decreased sensation over the palms and fingers, pain and restricted motion of the left shoulder and mild restriction range of motion of the lumbar spine. In a November 20, 1997 note, he reported that a magnetic resonance imaging (MRI) scan was normal. In a December 11, 1997 duty status report, Dr. Howser diagnosed cervical facet syndrome, thoracic outlet syndrome and a frozen shoulder, all of which he related to appellant's employment injury.

In a December 29, 1997 report, Dr. William L. Moffatt, an orthopedic surgeon, performing a fitness-for-duty examination, indicated that appellant had a negative Phalen test and negative Tinel test of both wrists and hands. Dr. Moffatt noted that appellant had a full range of motion of the cervical spine with pain at the extremes of motion and a full range of motion of the left shoulder. He pointed out that appellant's pain was not in the left shoulder but in the trapezius muscle and into the neck on the left side. Dr. Moffatt stated that an MRI scan of the cervical region of the spine showed a mild posterior broad bar at C5-6, slightly greater on the

¹ 5 U.S.C. §§ 8101-8193.

² *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

³ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁴ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁵ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

right. He reported that MRI scans of the left shoulder and thoracic and lumbar regions of the spine were negative and an electromyogram (EMG) and nerve conduction studies were normal. Dr. Moffatt diagnosed mild to moderate degenerative disc disease at C5-6 and mild cervical neuritis secondary to the degenerative disc disease. He found no evidence of carpal tunnel syndrome or frozen shoulder on the left. Dr. Moffatt stated there was no substantial evidence to support two of appellant's three diagnoses and carpal tunnel syndrome was not a feature due to surgical correction. He concluded appellant was able to return to work with her prior restrictions.

In a January 15, 1998 report, Dr. Howser indicated that the cervical MRI scan showed an osteoarthritic spur at C5. He noted that the MRI scans of the left shoulder and lumbar spine were normal as was the EMG of the left arm. Dr. Howser diagnosed bilateral carpal tunnel syndrome, postoperative with aggravation from repetitive use of the hands at work and cervical facet syndrome with possible cervical radiculopathy which had not yet shown up on the EMG.

Dr. Howser's reports demonstrated that appellant had pain in her neck, extending down her left arm to the fingers and accompanied by tingling and numbness. He described findings on examination in support of his diagnosis of cervical facet syndrome and a possible cervical radiculopathy that had not yet been diagnosed by an EMG. Dr. Howser related appellant's condition to appellant's repetitive motion in rewrapping mail. Dr. Howser's reports, while not sufficiently rationalized to establish appellant's claim, is sufficient to require further development of the record. Therefore, the case will be remanded for referral of appellant, together with a statement of accepted facts and the case record, to an appropriate physician for an examination. The physician should be requested to provide diagnosis of all conditions causally related to the November 5, 1997 employment injury and his opinion on whether appellant's disability from November 8, 1997 through January 24, 1998 was causally related to appellant's November 5, 1997 employment injury.

The Board finds that the Office properly found that appellant had a 10 percent permanent impairment of each arm.

The schedule award provision of the Act⁶ and its implementing regulation⁷ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁸

⁶ 5 U.S.C. § 8107(c).

⁷ 20 C.F.R. § 10.304.

⁸ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

In a March 24, 1998 report, Dr. Howser stated that appellant had reached maximum medical improvement from her carpal tunnel problems and subsequent operations. He indicated appellant had a 2 percent disability rating of the whole body for the right carpal tunnel problem and a similar rating of the whole body for the left carpal tunnel problem which equaled a 15 percent permanent impairment of each arm. In a June 1, 1998 memorandum, an Office medical adviser indicated that under the A.M.A., *Guides* a two percent permanent impairment of the whole body equaled a four percent permanent impairment of the arm.⁹ Dr. Howser concluded that appellant had a mild entrapment neuropathy of the median nerve at the wrist which equaled a 10 percent permanent impairment of each arm.¹⁰ In a June 24, 1998 letter, he stated that a carpal tunnel condition was at least a 15 percent disability of the arm, not 4 percent as suggested by the Office medical adviser. Dr. Howser made no reference to the A.M.A., *Guides* in his reports on the extent of appellant's impairment. The Office medical adviser, on the other hand, used Dr. Howser's findings of appellant's condition and properly applied the A.M.A., *Guides* in determining that appellant had a 10 percent permanent impairment of each arm. When an attending physician's report gives an estimate of permanent impairment but does indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly used the A.M.A., *Guides*.¹¹ As the Office medical adviser properly used the A.M.A., *Guides* in this case, the Office properly issued a schedule award for a 10 percent permanent impairment of each arm.

⁹ A.M.A., *Guides*, p. 20, Table 3.

¹⁰ A.M.A., *Guides*, p. 57, Table 16.

¹¹ *Paul R. Evans*, 44 ECAB 646 (1993).

The decision of the Office of Workers' Compensation Programs, dated August 5, 1998, is hereby affirmed. The decision of the Office, dated February 2, 1998, is hereby set aside and the case remanded for further development as set forth in this decision.

Dated, Washington, D.C.
June 21, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member