U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EILEEN CAMPOS and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

Docket No. 99-2213; Submitted on the Record;
Issued September 21, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant is entitled to a schedule award for a permanent impairment of the upper extremities.

On October 12, 1995 appellant, then a 42-year-old distribution/window clerk, filed an occupational disease claim alleging that she sustained tendinitis of both hands causally related to factors of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral de Quervain's tendinitis and bilateral carpal tunnel syndrome. Appellant underwent a carpal tunnel release on the right in May 1996 and on the left in June 1996.

On May 14, 1997 appellant filed a claim for a schedule award. In support of her claim, appellant submitted a report dated March 25, 1997 from Dr. Mikunal Patel, a Board-certified orthopedic surgeon and her attending physician. He diagnosed bilateral carpal tunnel syndrome, bilateral de Quervain's disease and bilateral lateral epicondylitis. Dr. Patel listed range of motion findings for appellant's upper extremities and provided impairment estimates due to decreased motion, loss of strength and complaints of pain.

By letter dated February 6, 1998, the Office requested that Dr. Patel provide an impairment rating with reference to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

By letter dated September 16, 1998, the Office referred appellant to Dr. C.M. Sharma, a Board-certified neurologist, for a second opinion evaluation.

In a report dated October 1, 1998, Dr. Sharma noted that appellant was status post bilateral carpal tunnel surgery and currently had a "normal neurological examination" with "no objective signs of carpal tunnel syndrome or radiculopathy." He opined that appellant could resume her usual employment without restrictions. In an addendum dated October 21, 1998,

Dr. Sharma found that appellant had no objective findings upon which to base an impairment determination.

In a report dated October 28, 1998, Dr. Patel listed findings of decreased grip strength bilaterally, decreased movement of the right third finger and pain of the hands and fingers.

The Office determined that a conflict in medical opinion existed between Drs. Patel and Sharma regarding whether appellant had a permanent impairment of the upper extremities. The Office referred appellant, together with a statement of accepted facts, to Dr. Ricardo Madrid, a Board-certified neurologist, for an impartial medical examination.

In a report dated February 24, 1999, Dr. Madrid noted that appellant's "chief complaint is an almost constant pain of both hands that spreads from the fingertips of the index, middle and ring fingers to her elbows" and a tingling feeling when her right hand remains extended. He diagnosed bilateral post-carpal tunnel syndrome, bilateral de Quervain's tendinitis, status post basal thumb joint arthroplasy of the right wrist and left basal thumb joint synovitis and ostheoarthritis. Dr. Madrid stated that he had applied the fourth edition of the A.M.A., *Guides* but found "no objective sensory or motor loss…." He related:

> "I concur with Dr. Sharma's findings that at this time there are no objective signs of a permanent neurological deficit derived from [appellant's] bilateral carpal tunnel syndrome. The carpal tunnel syndrome, in retrospect, was mild and not the main cause of [appellant's] hand symptoms. Therefore, a further reexploration of the carpal tunnel is not justified in [her]."

Dr. Madrid opined that patients with carpal tunnel syndrome as well as conditions like tenosynovitis should have one operation to correct both problems. He stated:

> "In [appellant's] case, the hand surgeon chose to relieve the carpal tunnel in rapid succession. He addressed the issue of the associated tenosynovitis only after the carpal tunnel release did not improve her hand symptoms. A basal thumb joint arthroplasty done one year later was, as expected, largely ineffective. The proposed arthoplasty of the left wrist is also unlikely to provide permanent relief of [appellant's] symptoms.
>
> "It is my medical opinion that [appellant] is permanently partially impaired due to her subjective complaints of pain and numbness of the hands. These symptoms appear whenever her flexor tendons are stretched during activities of her daily living. Those complaints are the result of a substandard treatment of her work-related hand conditions."

On April 30, 1999 an Office medical adviser reviewed Dr. Madrid's report and opined that appellant was not entitled to a schedule award due to the "lack of objective signs of a permanent neurological deficit."

By decision dated April 30, 1999, the Office denied appellant's claim for a schedule award.

The Board finds that the case is not in posture for decision.

Under section 8107 of the Federal Employees' Compensation Act,[1] and section 10.404 of the implementing federal regulations,[2] schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[3]

Where there are opposing medical reports of virtually equal weight and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently rationalized and based upon a proper factual background, must be given special weight.[4]

In the instant case, the opinion of Dr. Madrid, the impartial medical specialist, is not sufficient to determine whether appellant has a permanent impairment of her upper extremities. He found that appellant was "permanently partially impaired due to her subjective complaints of pain and numbness of the hands" which he attributed to "substandard treatment of her work-related hand conditions." Dr. Madrid concluded that appellant did not have a permanent impairment of her upper extremities because he could not find objective evidence of impairment on examination. However, all factors that prevent a limb from functioning normally, including subjective complaints, are factors to be considered in determining impairment for a schedule award.[5] The Board has stated, "The element of pain may serve as the sole basis for determining the degree of impairment for schedule award purposes."[6] Although the A.M.A., *Guides* provides that pain that cannot be characterized as described in the A.M.A., *Guides* are not to be considered, it is not clear from Dr. Madrid's report that appellant's pain cannot be estimated or

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] *James J. Hjort*, 45 ECAB 595 (1994).

[4] *Rose E. Garner*, 48 ECAB 220 (1996).

[5] *Cynthia M. Judd*, 42 ECAB 246 (1990).

[6] *Id.*

rated as described in the A.M.A., *Guides*.[7] The Board notes that Chapter 3 of the A.M.A., *Guides*, entitled "The Musculoskeletal System," provides a chart tracking the maximum percentage of loss of function for pain or a sensory deficit.[8]

The case will be remanded to the Office to obtain a supplemental report from Dr. Madrid calculating the impairment of appellant's upper extremities due to pain or sensory loss in accordance with the appropriate sections of the A.M.A., *Guides*. After such further development as it deems necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated April 30, 1999 is set aside and the case is remanded for further proceedings in accordance with this decision.

Dated, Washington, DC
September 21, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] Regarding pain of the upper extremities, the fourth edition of the A.M.A., *Guides* states, at page 46-47:

"Pain and sensory deficits associated with peripheral nerve disorders are evaluated according to the following criteria: (1) How does the pain or sensory deficit interfere with the individual's performance of daily activities?; (2) To what extent does the pain or sensory deficit follow the defined anatomical pathways of the root, plexus, or peripheral nerve?; (3) To what extent does the description of the pain or sensory deficit indicate that it is caused by a peripheral spinal nerve abnormality?; [and] (4) To what extent does the pain or sensory deficit correspond to other disturbances of the involved nerve structure?"

…Pain that does not meet one or more of the above criteria is not considered within the scope of this section."

[8] *Id*. at 54, Table 115.