

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CANDACE A. KARKOFF and U.S. POSTAL SERVICE,
POST OFFICE, Medina, OH

*Docket No. 00-965; Submitted on the Record;
Issued February 15, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained impairment to her upper extremities as a result of the accepted work conditions that would entitle her to a schedule award.

On June 20, 1995 appellant, then a 45-year-old postal clerk, filed a notice of occupational disease and claim for compensation alleging that she sustained bursitis and tendinitis as a result of her federal employment. She stopped working on June 20, 1995; she performed limited duty from June 27, 1995 until she stopped work again on August 31, 1996. Appellant resigned on November 5, 1996. The claim was accepted by the Office of Workers' Compensation Programs for tennis elbow, flexor and extensor tendinitis of the right forearm, epicondylitis of the right arm, tenosynovitis of the right thumb and left shoulder tendinitis.

In a medical report dated February 27, 1998, Dr. Thomas G. Ebner, a Board-certified orthopedic surgeon and treating physician, stated that he examined appellant, diagnosed fibromyalgia as well as accumulative repetitive trauma syndromes of her upper extremities with bilateral tennis elbows, bursitis, tendinitis and bilateral carpal tunnel syndromes. He stated:

“These conditions do not cause any limitation of motions and the forms she brought with her today are for evaluations of range of motions of various parts of the body which are completely worthless as far as examining a patient with the diagnoses that she carries.

“I completed these, but they are of range of motion value as her conditions do not cause limitation of motion.”

In response to specific questions from the Office, Dr. Ebner noted that appellant had full range of motion with regard to her left shoulder, left elbow, right wrist, right hand and left hand.

By letter dated January 15, 1999, the Office forwarded Dr. Ebner's report to an Office medical adviser. The Office medical adviser responded by letter dated January 27, 1999. He

found that, based on Dr. Ebner's report, there was no basis for permanent partial impairment rating to either upper extremity.

In a decision dated February 4, 1999, the Office denied appellant's claim for a schedule award, as the evidence of record failed to establish that she had any permanent impairment of her upper extremities entitling her to a schedule award.

By letter dated February 10, 1999, appellant requested a hearing.

A hearing was held on July 19, 1999, wherein appellant testified that she worked for the employing establishment from 1982 until 1996, that she had not recovered from her problems with her right elbow, right thumb and left shoulder, and that she was not working and did not believe that she could hold a 40-hour a week job. Appellant testified that Dr. Ebner was reluctant to complete the form. The hearing representative gave appellant 30 days to submit additional medical evidence.

Appellant then submitted a fascimile of a medical opinion dated August 17, 1999, in which Dr. Charles C. Shin, a Board-certified orthopedic surgeon, opined:

“Right elbow shows flexion limitation with 0 to 110 degrees extension, supination 0 to 40 degrees and pronation was limited 0 to 30 degrees. Right thumb has flexion 0 to 90 degrees, extension 0 degrees, adduction 0 to 30 degrees and abduction of 0 to 20 degrees with rotations, external and internal 0 to 6 degrees with remarkable limitations. Left shoulder flexion 0 to 90 degrees. Further 150 degrees elevation and extension 0 to 40 degrees, adduction was limited to 0 to 40 degrees and abduction was 0 to 90 degrees and it was further 150 degrees with elevation from the shoulder level. Internal rotation was 0 to 30 degrees and external rotations were 0 to 40 degrees in limitation. There was positive fibromyalgia symptoms and signs of the upper extremities and neck and shoulders and neural signs were unremarkable and negative for neuropathy.

“She has been treated conservatively with getting maximum medical improvement with treatment plateau and she remains with partial permanent disability at the rate of 14 percent of the whole body under the basic of evaluation of the A[merican] M[edical] A[ssociation], [*Guides to the Evaluation of Permant Impairment*] disability guidance evaluation standard.”

On August 23, 1999 the Office sent Dr. Shin's report to the Office medical adviser for his reviews. The Office medical adviser stated that he agreed with Dr. Ebner that the various inflammatory conditions accepted as work related should not result in decreased range of motion and, therefore, he could not “find a credible medical reason, on the basis of conditions accepted as work related, for the decreased ranges of motion for the claimant's elbow, shoulder and thumb, as reported by Dr. Shin.”

By decision dated September 22, 1999, the hearing representative denied appellant's claim.

On November 2, 1999 appellant requested reconsideration. In support thereof, she submitted a hard copy of the medical report of Dr. Shin. In a decision dated November 18, 1999, the Office denied appellant's request for reconsideration, finding that the evidence submitted was repetitive.

On November 23, 1999 appellant again requested reconsideration, and again submitted Dr. Shin's August 17, 1999 report. In a letter dated December 1, 1999, the Office informed appellant that this report was a duplicate and that she should refer to her appeal rights.

The Board finds this case is not in posture for decision.

Under section 8107 of the Federal Employees' Compensation Act¹ 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 claims, 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*³ have been adopted by the Office and the Board has concurred in such adoption as an appropriate standard for evaluating schedule losses.⁴

Section 8123 of the Act⁵ provides that, if there is disagreement between the physician making the examination for the United States and the employee's physician, the Office shall appoint a third physician who will make an examination.⁶ In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability for and thoroughness of, the physical examination; the accuracy and completeness of the physician's knowledge of the facts and medical history; the care and skill of the physician's analysis and the medical rationale expressed in support of the physician's opinion.⁷

In this case, Dr. Ebner opined that appellant had full range of movement, and further stated that appellant's conditions would not cause any limitations of motion. The case was then referred to an Office medical adviser who determined, based on Dr. Ebner's report, there was no basis for a permanent impairment rating to either upper extremity.

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (4th ed. 1993).

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECBA 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ 5 U.S.C. § 8123(a).

⁶ *Shirley L. Steib*, 46 ECAB 309, 316 (1994).

⁷ *Melvina Jackson*, 42 ECAB 443, 449 (1987).

Appellant was examined, by Dr. Shin, who opined that she had limitations in range of motion resulting in permanent impairment. His opinion was then referred to the Office medical adviser, who stated that he agreed with Dr. Ebner that the various inflammatory conditions accepted as work related should not result in decreased joint range of motion. The Board finds a conflict between the Office medical adviser and Dr. Shin as to whether appellant's accepted conditions resulted in a loss of range of motion and permanent impairment of her right upper extremity.

The Board finds that these conflicting medical reports require remand for resolution. On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an impartial medical evaluation pursuant to section 8123(a).

The decisions of the Office of Workers' Compensation Programs dated November 23, September 22 and February 4, 1999 are set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
February 15, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member