

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY STEWART and U.S. POSTAL SERVICE,
RAINBOW STATION, Indianapolis, IN

*Docket Nos. 00-177 and 00-183; Submitted on the Record;
Issued July 19, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has more than 31 percent impairment of her right upper extremity and 20 percent impairment of her left upper extremity for which she has received schedule awards; and (2) whether an overpayment of compensation has occurred.

Appellant, a 46-year-old city mail carrier, filed a notice of occupational disease on December 23, 1989 alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment. The Office of Workers' Compensation Programs accepted her claim on April 23, 1990 and authorized surgery. Appellant requested a schedule award on July 29, 1993. By decision dated November 3, 1993, the Office granted appellant a schedule award for 12 percent permanent impairment of each of her upper extremities. She requested an additional schedule award on July 3, 1998. The Office denied this request for reconsideration as untimely on August 31, 1998. By decision dated June 1, 1999, the Office granted appellant a schedule award for an additional 18 percent permanent impairment of her right upper extremity and an additional 8 percent permanent impairment of her left upper extremity. The Office indicated that it was withholding the entire amount of appellant's schedule award due to an overpayment in a separate claim.¹

Appellant filed an additional claim on August 22, 1996 alleging that she had developed right ring finger stenosing tenosynovitis. The Office accepted her claim on September 10, 1996 and authorized surgery. The Office later expanded this claim to include aggravation of arthritis in the left basilar thumb joint and resulting decompression. By decision dated April 4, 1997, the Office found that appellant had no loss of wage-earning capacity and reduced her compensation benefits to zero.

¹ These decisions address appellant's claim number 09-0339990. She requested review of this claim by the Board on October 6, 1999 and this appeal was docketed as No. 00-183.

In a decision dated April 22, 1997, the Office granted appellant a schedule award for 21 percent impairment of her right upper extremity. She requested reconsideration on February 15, 1998. By decision dated August 31, 1998, the Office declined to reopen appellant's claim for consideration of the merits.

In a letter dated September 30, 1998, the Office made a preliminary determination that an overpayment of compensation occurred as appellant was paid two percent too much in schedule awards for her right arm. She requested an oral hearing on October 24, 1998. By decision dated February 2, 1999, the hearing representative set aside the preliminary determination of overpayment finding that the Office failed to provide appellant with the calculations used to reach the amount of overpayment. The hearing representative required the Office to issue a *de novo* decision regarding the extent of appellant's permanent impairment in both claims and then determine whether an overpayment occurred. The hearing representative suggested that the Office combine appellant's case records.

On April 21, 1999 the Office granted appellant a schedule award for one percent impairment of her right upper extremity.

In a letter dated April 21, 1999, the Office made a preliminary determination that appellant had received an overpayment of compensation in the amount of \$33,731.22. The Office noted that she had previously received schedule awards for 12 percent permanent impairment of each of her upper extremities in a separate claim as well as a schedule award for an additional 21 percent impairment of the right upper extremity for a total of 33 percent impairment of the right upper extremity. The Office noted that the medical evidence established that appellant had 31 percent impairment of her right upper extremity and 20 percent impairment of her left upper extremity; however, the Office found that due to the accepted condition in claim number 09-0419054 appellant had only 1 percent permanent impairment of her right upper extremity. The Office concluded that appellant had monetary entitlement to \$1,681.31 and had received compensation in the amount of \$35,412.53 for an overpayment of compensation in the amount of \$33,731.22. The Office found that appellant was not at fault in the creation of the overpayment.

Appellant requested an oral hearing and waiver on the issue of overpayment on May 18, 1999. She also submitted an overpayment recovery questionnaire. The Office issued a decision finalizing the overpayment on June 1, 1999.²

The Board finds this case not in posture for decision in regard to the overpayment found under claim number 09-0419054.

Section 8124(b) of the Federal Employees' Compensation Act provides that a claimant for compensation not satisfied with a decision of the Office, is entitled to a hearing on her claim before a representative of the Office if the request is made within 30 days after the date of the issuance of the decision.³ The Office's regulations provide that an individual can present

² Appellant requested review of this decision by the Board on July 15, 1999 and this appeal was docketed as No. 00-177.

³ 5 U.S.C. §§ 8101-8193, § 8124(b).

evidence to the Office in response to a preliminary notice of an overpayment in writing or at a preresoupment hearing. The evidence or the request for a hearing must be made within 30 days of the date of the written notice of the overpayment.⁴ At the preresoupment hearing, the Office will consider all issues in the claim on which a formal decision has been issued.⁵

In this case, the Office issued its preliminary determination of overpayment on April 21, 1999. Appellant requested a preresoupment hearing and submitted additional financial information in documents received by the Office on May 19, 1999. As appellant made her request for a preresoupment hearing within 30 days of the Office's notification of overpayment, she is entitled to a hearing as a matter of right.

On remand, the Office shall combine appellant's case files and conduct a preresoupment hearing regarding the alleged overpayment of compensation. The Office should then issue an appropriate decision on this issue.

The Board further finds that appellant has no more than 31 percent permanent impairment of her right upper extremity and 20 percent impairment of her left upper extremity.

The schedule award provision of the Act⁶ and its implementing regulation⁷ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled 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 implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, appellant received a schedule award for 12 percent permanent impairment of each of her upper extremities on November 3, 1993 due to her accepted employment injury of bilateral carpal tunnel syndrome. She filed an additional claim which the Office accepted for right ring finger stenosing tenosynovitis. The Office granted appellant a schedule award for 21 percent permanent impairment of her right upper extremity on April 22, 1997. She requested reconsideration.

The Office medical advisers reviewed the February 26, 1997 and March 26, 1999 reports from appellant's attending physician, Dr. James W. Strickland, a Board-certified surgeon and concurred with Dr. Strickland's findings, which he correlated with the A.M.A., *Guides*, that appellant had 31 percent impairment of the right upper extremity and 20 percent impairment of

⁴ 20 C.F.R. § 10.432.

⁵ 20 C.F.R. § 10.439.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (1999).

the left upper extremity due to both of her accepted employment injuries. There is no medical evidence in the record to support any additional impairment rating.

The Board notes that there is no dispute in the record regarding the extent of appellant's permanent impairment, however, as noted previously, the Office has issued appellant schedule awards for her right upper extremity totaling more than the 31 percent established by the medical evidence. The record also establishes that appellant has an additional eight percent impairment of her left upper extremity for which she has not received monetary compensation. The determination of the amount compensation currently due appellant for the combined impairments of her upper extremities, cannot be made until the Office has conducted the preresoupment hearing as directed by the Board and determines the actual amount of the overpayment, if any, received by appellant.

The June 1, 1999 decision of the Office of Workers' Compensation Programs addressing appellant's entitlement to a schedule award is affirmed in regard to the extent of the permanent impairment and set aside for additional development regarding the amount of compensation due to appellant. The June 1, 1999 final overpayment decision is hereby set aside and remanded for a preresoupment hearing and an appropriate decision.

Dated, Washington, DC
July 19, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member