

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSALIE ANDERSON-ZOHNY and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Denver, CO

*Docket No. 00-2432; Submitted on the Record;  
Issued July 11, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has permanent impairment of her left upper extremity entitling her to a schedule award; and (2) whether appellant has met her burden of proof in establishing that she injured her left hip, neck, right arm and head on April 6, 1998.

Appellant, a 60-year-old clerk, filed a notice of traumatic injury on April 8, 1998 alleging that on April 6, 1998 she tripped in the performance of duty injuring her head, back, rib cage and buttocks. The Office of Workers' Compensation Programs accepted appellant's claim for right rib contusion on June 22, 1998.

Appellant filed an additional claim on August 10, 1998 alleging that on August 9, 1998 the rest bar on which she was sitting collapsed resulting in injury to her back. The Office accepted the additional conditions of left rotator cuff strain and lumbar strain on October 19, 1998.

On November 28, 1999 appellant filed a claim and alleged that on April 6, 1998 she had sustained injury to her hips, neck, arm, head, back and left shoulder. Appellant requested a schedule award on December 2, 1999. By decision dated June 1, 2000, the Office denied appellant's claim for a schedule award finding that she had no permanent impairment due to her accepted conditions. The Office further found that appellant had not established that she sustained the additional conditions of left hip, neck, bilateral arms, head and back due to her April 6, 1998 employment injury.

The Board finds the case not in posture for decision in regard to appellant's request for a schedule award.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees

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<sup>1</sup> 5 U.S.C. §§ 8101-8193, § 8107.

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.

Appellant submitted a report dated September 1, 1999 from Dr. Joseph H. Fillmore, a physiatrist, in which he noted appellant's history of injury stated that she had reached maximum medical improvement and provided his findings on physical examination. Dr. Fillmore stated that appellant had loss of range of motion of her left upper extremity due to left shoulder impingement as well as loss of range of motion in her lumbar spine. He provided his impairment rating for both the left shoulder and the spine in accordance with the third edition revised of the A.M.A., *Guides*.

The Office requested a supplemental report from Dr. Fillmore noting that the current edition of the A.M.A., *Guides* should be utilized and informing him that the Act does not provide a schedule award for impairment to the spine itself.

In a report dated November 15, 1999, Dr. Fillmore applied the fourth edition of the A.M.A., *Guides* to his findings and concluded that appellant had impairment to the left shoulder due to loss of range of motion. He stated that appellant had no sensory or motor deficits to warrant an additional impairment. The Office medical adviser reviewed this report and concluded that appellant had four percent permanent impairment of her left upper extremity.

The Office referred appellant for a second opinion evaluation with Dr. Richard Talbott, a Board-certified orthopedic surgeon. In a report dated May 12, 2000, Dr. Talbott found that appellant had no objective findings, no loss of range of motion and no permanent impairment.

Section 8123(a) of the Act,<sup>3</sup> provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." In this case, appellant's physician, Dr. Fillmore, provided a history of injury, findings on physical examination and concluded that appellant had permanent impairment of her left upper extremity due to loss of range of motion. The Office second opinion physician, Dr. Talbott also noted appellant's history of injury, performed a physical examination and concluded that appellant had no loss of range of motion and no permanent impairment. Due to this unresolved conflict of medical opinion evidence, the Board finds the case not in posture for decision on this issue.

On remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician, to determine whether appellant

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<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

has any permanent impairment due to her accepted employment injuries entitling her to a schedule award. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The Board further finds that appellant has not met her burden of proof in establishing that she sustained or developed a condition of her hips, neck, right arm or cervical spine due to her accepted employment injuries.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

In this case, the Office accepted that appellant sustained employment injuries on April 6, 1998 resulting in right rib contusion and August 9, 1998 resulting in left rotator cuff strain and lumbar strain. Appellant alleged that she sustained additional injuries due to these employment incidents. Appellant alleged that she injured her hips, left leg, knees, ankles, feet, head, neck, right shoulder and left little finger in addition to the accepted conditions.<sup>7</sup>

Appellant submitted a diagnostic test finding degenerative disc L5 and scoliosis as well as a healed fracture of the posterior aspect of the right eleventh rib. This report does not provide an opinion on the causal relationship between appellant's diagnosed conditions and her employment.

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<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>6</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>7</sup> The Board notes that appellant was involved in a nonemployment-related motor vehicle accident on June 20, 1999. Appellant reported to the police that she sustained injuries to her neck, right and left arms, shoulder, back and hips as well as headaches.

In a report dated July 19, 1999, Dr. Bill Swafford, a physician Board-certified in emergency medicine, examined appellant and diagnosed lumbar strain and left trapezius strain. He did not provide an opinion on the causal relationship between appellant's diagnosed conditions and her employment.

On August 17, 1999 Dr. Al Hattem, a physician Board-certified in preventative medicine, noted appellant's history of injury and diagnosed neck, left shoulder and lower back pain secondary to work injuries. Dr. Hattem did not provide any explanation of why he believed that appellant's unaccepted neck condition was causally related to her employment injuries. Furthermore, he did not include appellant's motor vehicle accident in her history of injury. On September 7, 1999 Dr. Hattem again diagnosed neck pain as well as low back and left shoulder pain. He did not provide an opinion on causal relationship.

In his September 13, 1999 report, Dr. Fillmore stated that appellant had a diffuse pain problem, possibly fibromyalgia. He stated that he did not see significant signs of a cervical strain, but rather a more generalized pain condition. Dr. Fillmore did not relate the diagnosis of fibromyalgia to appellant's employment.

As previously noted, Dr. Talbott examined appellant and reported on May 12, 2000 that she had no objective findings, symptom embellishment and no current work restrictions. This report does not support appellant's claim for additional employment-related injuries.

As appellant has failed to submit the necessary rationalized medical opinion evidence to establish an additional medical condition as causally related to factors of her federal employment, she has failed to meet her burden of proof and the Office properly denied her claim for additional employment-related conditions.

The June 1, 2000 decision of the Office of Workers' Compensation Programs is affirmed as to the finding of no additional employment-related conditions and remanded for further development in regard to any permanent impairment if any, due to appellant's accepted employment-related injuries.

Dated, Washington, DC  
July 11, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member