

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCES P. LONERGAN and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, CA

*Docket No. 01-251; Submitted on the Record;
Issued September 25, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant's accepted January 16, 1990 right shoulder injury resulted in more than a six percent impairment of her right upper extremity, for which she received a schedule award; and (2) whether appellant met her burden of proof to establish her claims for continuing compensation and for a schedule award for her accepted June 11, 1993 work-related wrist injury.

The case has been on appeal previously.¹ On January 18, 1990 appellant, then a 52-year-old information specialist and data transcriber, filed a claim for a traumatic injury stating that on January 16, 1990, she injured her right shoulder and neck area due to lifting large binder books and pulling files all day. The Office of Workers' Compensation Programs accepted appellant's claim for temporary aggravation of a preexisting right shoulder/cervical strain and paid appropriate compensation benefits. On November 17, 1992 the Office accepted appellant's claim for a recurrence of disability.

On March 4, 1993 appellant filed a claim for a schedule award. In a decision dated April 12, 1994, the Office found that the weight of the medical evidence rested with Dr. Harle B. Grover, a Board-certified orthopedic surgeon and Office second opinion physician and Dr. Leonard A. Simpson, an orthopedic surgeon and granted appellant a schedule award for a six percent permanent impairment of the right shoulder.

By letter dated April 22, 1994, appellant requested an oral hearing before an Office representative. Subsequent to the hearing, held on October 26, 1994, appellant submitted a report from her attending physician, Dr. Santiago O. Carin, a general practitioner.

In a decision dated January 25, 1995, the Office hearing representative affirmed the Office's April 12, 1994 decision, finding that the weight of the medical evidence, represented by

¹ Docket No. 95-2814 (September 17, 1998).

Drs. Grover and Simpson, established that appellant had no more than a six percent permanent impairment of the right upper extremity, for which she had received a schedule award. The hearing representative additionally found that while Dr. Carin provided measurements regarding appellant's strength, he did not appropriately apply the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, nor could the information provided in his report be appropriately applied to the A.M.A., *Guides*.

By letter dated March 25, 1995, appellant requested reconsideration of the Office's January 25, 1995 decision and submitted a medical report from Dr. Carin, dated February 17, 1995, in support of her request.

In a merit decision dated May 4, 1995, the Office affirmed its prior decisions, finding that Dr. Carin's report was insufficiently rationalized to overcome the weight of the medical evidence as represented by the well-reasoned reports of Drs. Grover and Simpson.

In its September 17, 1998 decision, the Board set aside the Office's decision, finding that the Office failed to review all of the medical evidence of record, specifically an additional report from Dr. Carin dated March 31, 1995, prior to the issuance of its decision. Accordingly, the Board remanded the case to the Office to properly consider all the relevant evidence submitted prior to the issuance of its May 4, 1995 decision, to be followed by a *de novo* decision.

Also on appeal to the Board was the issue of whether the Office properly denied appellant's claims for continuing compensation and for a schedule award for her accepted June 11, 1993 work-related wrist injury, on the grounds that all residuals from the injury had ceased. The facts relevant to appellant's right wrist claim are that on June 14, 1993 appellant, while still employed as an information specialist and data transcriber, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on June 11, 1993 she injured her right wrist while performing time keeping duties. Following development of the medical evidence, the Office accepted appellant's claim for a right wrist strain.

On February 17, 1994 appellant filed a claim for a schedule award.

On March 15, 1994 the Office referred appellant to Dr. Grover for a second opinion examination and evaluation. The Office additionally requested that he evaluate appellant pursuant to the A.M.A., *Guides* (fourth edition), for the purpose of determining appellant's eligibility for a schedule award.

In a decision dated May 30, 1995, which incorporated a memorandum summarizing the evidence, the Office denied appellant's claim for continuing compensation benefits and her claim for a schedule award on the grounds that the weight of the medical evidence, as represented by the report of Dr. Grover, established claimant had no continuing disability or impairment causally related to the June 11, 1993 work injury.

In the prior appeal, the Board found that Dr. Grover's report was too equivocal on the issue of causal relationship to represent the weight of the medical evidence. The Board remanded the case to the Office for referral to another appropriate specialist for a determination of whether appellant had any continuing medical condition causally related to her wrist injury

and if so, whether appellant had any permanent impairment resulting from that condition such that she would be entitled to a schedule award.

On remand, on December 3, 1998 the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Robert S. Ferretti, a Board-certified orthopedic surgeon, for an examination. The Office specifically asked Dr. Ferretti to determine whether appellant suffered from any residuals of either her January 16, 1990 right shoulder injury or her June 11, 1993 right wrist injury and to additionally determine whether appellant had any permanent impairment as a result of these conditions, for which she would be entitled to a schedule award.²

In a January 7, 1999 report, Dr. Ferretti noted that appellant had full range of motion of her wrists and shoulder, negative Finklestein's and Tinel's signs and normal sensory and motor reflexes. He diagnosed appellant with a history of a January 16, 1990 work-related right shoulder and cervical sprain, a history of March 24, 1993 work-related left thumb injury and history of June 11, 1993 work-related right thumb and wrist strain. Dr. Ferretti stated that appellant continued to suffer from subjective residuals from all three employment-related injuries, specifically pain and stiffness of the neck, right shoulder and both wrists and thumbs, but noted that there were no objective findings to support her complaints. He further added that the prognosis for all symptomatic regions related to the multiple employment injuries is poor in that chronic symptomatology would continue indefinitely. Dr. Ferretti further noted that appellant had stopped work on September 2, 1993 because of treatment for nonwork-related cancer and that in the absence of this condition she would have been able to continue with her modified duty job. On an accompanying work capacity evaluation form, he concluded that appellant could work 8 hours a day, within the physical restrictions of no repetitive forceful gripping or twisting, no lifting, pushing or pulling over 15 pounds with either extremity and no repetitive or sustained overhead reaching with the right upper extremity. On an accompanying form report, Dr. Ferretti recorded range of motion measurements for appellant's wrists, thumbs and shoulders, as compared with the normal ranges of motion for each body part as set forth in the relevant portions of the A.M.A., *Guides*.

The Office forwarded the medical evidence of record to Dr. Ellen Pichey, an Office medical consultant, for application of Dr. Ferretti's measurements and findings to the appropriate tables in the A.M.A., *Guides*. Based on the description of appellant's right wrist pain by Dr. Ferretti, Dr. Pichey recommended assigning an additional one percent permanent impairment of the right upper extremity for subjective complaints, in addition to the six percent impairment previously awarded for appellant's right shoulder.

In a decision dated March 5, 1999, the Office accepted that appellant had continuing impairment causally related to her June 11, 1993 right wrist strain, entitling her to medical treatment for this condition, but had no disability for work due to this injury and, therefore, was not entitled to wage-loss compensation.

² The Office also asked Dr. Ferretti to discuss a March 24, 1993 accepted left wrist injury, which was not part of the original appeal to the Board.

In a decision dated March 17, 1999, the Office granted appellant a schedule award for a one percent permanent impairment of her right upper extremity, based on her right wrist condition, which the Office noted was in addition to the six percent previously awarded for her January 16, 1990 right shoulder injury.

By letter dated April 5, 1999, appellant requested an oral hearing before an Office representative and submitted additional medical evidence in support of her claim.

In a decision dated November 5, 1999, an Office hearing representative affirmed the Office's March 5 and March 17, 1999 decisions.

The Board initially finds that appellant has no more than a total of a seven percent permanent impairment of her right upper extremity, for which she has received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,⁴ including that he or she sustained an injury in the performance of duty as alleged and that his or her disability, if any, was causally related to the employment injury.⁵ Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁶ The schedule award provision of the Act⁷ and its implementing regulation⁸ 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In his February 17, 1995 report, Dr. Carin, appellant's attending physician at the time, concluded that appellant had a combined upper extremity impairment of 34 percent. On remand, in order to obtain a more current picture of appellant's condition, the Office referred appellant to Dr. Ferretti for a complete upper extremity evaluation. In his report dated January 7, 1999, Dr. Ferretti recorded detailed range of motion measurements for appellant's right shoulder, wrist, thumb and fingers and noted that each of these measurements represented normal range of motion pursuant to the A.M.A., *Guides*. While he specifically noted that appellant did have

³ 5 U.S.C. §§ 8101-8193.

⁴ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ 5 U.S.C. § 8107(a).

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404 (1999).

impairment of her right wrist due to pain, he did not calculate a specific degree of impairment pursuant to the A.M.A., *Guides*. The Office medical adviser Dr. Pichey, reviewed Dr. Ferretti's observations regarding appellant's pain and graded the pain complaints as per the grading scheme found in Chapter three, fourth edition of the A.M.A., *Guides*. The Office medical adviser found that appellant had pain and/or altered sensation, which is forgotten with activity and, under Grade 2 of Table 11a, multiplied a 25 percent sensory deficit of the radial nerve with the 5 percent maximum allowed for the radial nerve at Table 15 of the A.M.A., *Guides*.⁹ This equaled a one percent impairment of the right upper extremity for the subjective complaints of pain.¹⁰ The Office medical adviser indicated that maximal medical improvement with respect to the wrist was reached by June 11, 1994.

In the instant case, the Office medical adviser properly interpreted the data in Dr. Ferretti's report and determined that appellant had a one percent impairment of her right arm due pain. There is no other medical evidence of record indicating that, pursuant to the A.M.A., *Guides*, appellant has a greater degree of impairment.

Appellant subsequently submitted medical reports dated April 7 and May 15, 1998, from Dr. B.C. Marar, a Board-certified orthopedic surgeon, who took over appellant's care from Dr. Carin. Dr. Marar noted that on physical examination, appellant's range of motion in her shoulder, wrist and elbow joints was within normal limits and while he noted that appellant complained of shoulder and neck pain, Dr. Marar further noted that this pain was much improved after physical therapy and prescribed ibuprofen as needed.

It is appellant's burden to submit sufficient evidence to establish her claim.¹¹ In the instant case, appellant failed to submit any rationalized medical evidence which establishes that she has more than a total of a seven percent permanent impairment of her right upper extremity. In contrast, Dr. Ferretti, the Office second opinion physician, provided a complete, rationalized medical opinion with sufficient detail to allow proper application of the A.M.A., *Guides* by an Office medical examiner. As there is no rationalized medical evidence in the record, based on a proper application of the A.M.A., *Guides*, supporting more than a total of a seven percent permanent impairment of appellant's right upper extremity, the Board finds that appellant has no more than a seven percent permanent impairment of her right left upper extremity.

The Board further finds that appellant has failed to meet her burden of proof to establish that she has any disability for work causally related to her June 11, 1993 work-related right wrist injury.

Appellant's right wrist injury occurred on a Friday afternoon and she returned to work the following Monday morning and, therefore, did not lose any time from work. At the time of her injury she was performing modified duty due to her March 24, 1993 left thumb injury, which is not part of the instant claim. Appellant was initially treated for her injury on June 13, 1993, by a

⁹ A.M.A., *Guides*, pp. 48-49 (4th ed. 1993).

¹⁰ A.M.A., *Guides*, pp. 48, 54 (4th ed. 1993).

¹¹ See *Annette M. Dent*, 44 ECAB 403 (1993).

Dr. R. Reeve, a physician with the Kaiser Permanente Medical Group. In a report dated June 15, 1993, Dr. Reeve diagnosed probable strain of the right wrist, prescribed the use of a splint and released appellant to return to her regular work. Appellant continued to perform her light-duty job until September 2, 1993, when she underwent surgery for nonemployment-related ovarian cancer. In finding that appellant is not entitled to wage-loss compensation for her right wrist injury, the Office properly relied on the well reasoned opinion of the Office second opinion physician, Dr. Ferretti, who stated that in the absence of her ovarian cancer, appellant would have been able to continue performing her modified duty job indefinitely. Dr. Ferretti's opinion is further supported by the fact that appellant continued to perform her regular job until she stopped work to undergo surgery for a nonwork-related condition.

The November 5, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 25, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member