U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREA J. REDD-BOLDEN and U.S. POSTAL SERVICE,
ESSEX STATION, Baltimore, MD

Docket No. 01-1847; Submitted on the Record;
Issued December 24, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant is entitled to more than a 10 percent permanent impairment for the loss of use of her right arm and a 10 percent permanent impairment for the loss of use of her left arm, for which she received a schedule award.

On March 14, 1996 appellant, then a 42-year-old letter carrier, filed an occupational disease claim alleging that on November 3, 1994 she first realized that her carpal tunnel syndrome in both her right and left hand and tendinitis were caused by factors of her federal employment. She stated that after a day's work her neck would hurt from the mailbag pulling on her shoulder.

By decision dated August 13, 1996, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty. In a January 16, 1997 letter, appellant requested reconsideration of the Office's decision.

In a January 30, 1997 decision, the Office denied appellant's request for a merit review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence, thus, it was insufficient to warrant review of its prior decision. In an August 12, 1997 letter, appellant, through her counsel, requested reconsideration of the Office's decision.

By decision dated August 20, 1997, the Office, on its own motion, vacated its August 13, 1996 decision on the grounds that the evidence of record established that appellant sustained an injury in the performance of duty. By letter of the same date, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral epicondilitis. The Office authorized right carpal tunnel release, which was performed on January 14, 1998, ulnar nerve and carpal tunnel release, medial nerve neurolysis and tenosynovectomy of the left hand, which was performed on July 8, 1998 and ulnar nerve release of the right elbow, which was performed on April 27, 2000.

On August 11, 1999 appellant filed a claim for a schedule award for the left hand and wrist.

By letters dated May 3, June 20 and August 8, 2000, the Office advised appellant to obtain an assessment of her permanent impairment from her physician based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In an August 25, 2000 letter, Dr. Kenneth R. Lippman, a Board-certified orthopedic surgeon and appellant's treating physician, provided his findings on examination of appellant's left upper extremity. He stated that based on the fourth edition of the A.M.A., *Guides*, appellant had a 15 percent impairment of the left wrist and a 15 percent impairment of the left elbow. He noted that there were no gross sensory changes, no definite atrophy and no evidence of ankylosis. Dr. Lippman further noted that appellant's motion was preserved and that she had reached maximum medical improvement.

On October 12, 2000 an Office medical adviser reviewed appellant's medical records and determined that she reached maximum medical improvement on July 8, 1999. He further determined that appellant had a 10 percent impairment of the left upper extremity for carpal tunnel syndrome and a 10 percent impairment of the left upper extremity for ulnar nerve entrapment of the elbow. The Office medical adviser determined that appellant had a 20 percent impairment of the left upper extremity.

In a January 2, 2001 decision, the Office granted appellant a schedule award for a 10 percent permanent impairment for the loss of use of her right arm and a 10 percent permanent impairment for the loss of use of her left arm.[1] The Office did not explain why it disregarded its Office medical adviser's estimate of a total of 20 percent impairment for the left upper extremity. Neither did the Office explain what medical report or evidence it used to award a 10 percent impairment for the right upper extremity.

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

The schedule award provisions of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[4] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to insure

[1] The Board notes that, subsequent to the Office's January 2, 2001 decisions, the Office received additional evidence. The Board further notes that appellant submitted new medical evidence along with her appeal. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.404.

[4] 5 U.S.C. § 8107(c)(19).

equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[5]

In this case, there is a disagreement between Dr. Lippman, appellant's treating physician, and the Office medical adviser regarding the percentage of impairment in appellant's left upper extremity caused by her accepted conditions. Appellant's physician estimated a total left upper extremity impairment of 30 percent. The Office medical adviser estimated only a 20 percent left upper extremity impairment. The Office actually awarded only 10 percent left upper extremity impairment without any explanation. When such conflicts in medical opinion arise, section 8123(a) of the Act requires the Office to appoint a third or "referee physician, also known as an "impartial medical examiner."[6] Because the Office did not refer the case to an impartial medical examiner or otherwise explain the inconsistencies regarding appellant's left upper extremity, there remains an unresolved conflict in medical opinion.

Accordingly, the case is remanded to the Office for referral of appellant, the case record and a statement of accepted facts to an appropriate impartial medical specialist selected in accordance with the Office's procedures, to resolve the outstanding conflict in medical evidence regarding the appropriate percentage of impairment in appellant's upper left extremity. On remand the Office should instruct the impartial medical examiner to provide a well-rationalized opinion, to refer specifically to the applicable tables and standards of the A.M.A., *Guides* in making his findings and rendering his impairment rating and to indicate the specific background upon which he based his opinion. After such further development of the record as it deems necessary, the Office shall issue a *de novo* decision.

[5] *Thomas D. Gunthier,* 34 ECAB 1060 (1983).

[6] Section 8123(a) of the Act provides in pertinent part, "[i]f there is a 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." *See Dallas E. Mopps,* 44 ECAB 454 (1993).

The January 2, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
December 24, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member