

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STACY J. WEIR and U.S. POSTAL SERVICE,
PEORIA REMOTE ENCODING CENTER, Peoria, IL

*Docket No. 03-1449; Submitted on the Record;
Issued August 8, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant is entitled to continuing compensation benefits on or after February 3, 2003; and (2) whether appellant's has established that she is entitled to a schedule award.

Appellant, a 33-year-old data conversion operator, filed a notice of occupational disease on May 8, 2002 alleging that she developed carpal tunnel syndrome due to her federal duties. The Office of Workers' Compensation Programs accepted appellant's claim for right carpal tunnel syndrome and bilateral overuse syndrome on May 21, 2002. The Office did not enter appellant on the periodic rolls, but authorized compensation benefits for total disability intermittently from February 14, 2001 to February 2, 2003 based on the submission of CA-7 forms. Appellant stopped work on September 6, 2002 and did not return. The employing establishment released appellant at the end of her transitional appointment on January 10, 2003.

Appellant underwent an authorized right carpal tunnel release and ulnar nerve transposition on September 30, 2002. On December 12, 2002 appellant's attending physician, Dr. Jeffrey R. Garst, a Board-certified orthopedic surgeon, performed an Office approved left carpal tunnel release and a left subcutaneous anterior ulnar nerve transposition.

By decision dated March 7, 2003, the Office found that the medical evidence established that appellant had no continuing medical condition or restrictions effective February 3, 2003.

Appellant requested a schedule award on February 3 and March 12, 2003. By decision dated April 17, 2003, the Office found that appellant had not established any permanent impairment as a result of her accepted employment-related injuries.¹

¹ On appeal to the Board, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

The Board finds that appellant is not entitled to continuing compensation benefits on or after February 3, 2003.

An employee seeking benefits under the Federal Employee's Compensation Act² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ As part of this burden, the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.⁴

In the present case, the Office accepted appellant's claim for right carpal tunnel syndrome and bilateral overuse syndrome and authorized compensation intermittently for the period from February 14, 2001 to February 3, 2003. As appellant received compensation based on her submission of claim forms, she maintained the burden of establishing entitlement of continuing disability which was related to her employment injury.⁵

In a note dated January 17, 2003, appellant's attending physician, Dr. Jeffrey R. Garst, a Board-certified orthopedic surgeon, stated that appellant had full range of motion in her elbows, wrists and fingers with slight weakness in her grip and elbow flexion. Dr. Garst released appellant to return to work without restriction on February 3, 2003 and stated that she had reached maximum medical improvement. He stated that appellant should return for further medical treatment only if there was a problem. This report does not support continuing disability or the need for further medical treatment due to her accepted employment injury. Therefore, the Office properly denied appellant's claim for continuing disability based on this report in its March 7, 2003 decision.

The Board further finds that the case is not in posture for a decision regarding appellant's entitlement to a schedule award.

The schedule award provisions 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

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁴ *Joseph T. Gulla*, 36 ECAB 516 (1985).

⁵ *Charles E. Robinson*, 47 ECAB 536, 538 (1996); *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (1999).

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.

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining the medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁸

In support of her claim for a schedule award, appellant submitted a report dated March 21, 2003 from Dr. Garst noting that she underwent carpal tunnel releases and ulnar nerve transpositions on both upper extremities. He stated that appellant experienced occasional paraesthesias in the ulnar nerve distribution on both sides, with full range of motion in her elbows, wrists and fingers. Dr. Garst found no atrophy but continued pain and weakness and tenderness around the scars on appellant's left hand and right elbow. He stated that appellant had decreased endurance with her arms with some chronic pain and recommended that appellant avoid a job which had a lot of repetitive activities with her arms.

Dr. Garst's March 21, 2003 report provided his findings on physical examination and noted that appellant continued to experience upper extremity pain. While this report is not sufficient to meet appellant's burden of proof as it does not provide the correlation between appellant's physical findings and the A.M.A., *Guides* and does not present sufficient detail for a claims examiner or other lay person to clearly visualize appellant's permanent impairment, it does present uncontroverted evidence of a permanent impairment as a result of her accepted employment injuries. This report is sufficient to require the Office to undertake further development of appellant's claim.⁹ On remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate physician, to determine if she has a permanent impairment of her upper extremities in accordance with the A.M.A., *Guides* which would entitle her to a schedule award. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

⁸ *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

⁹ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

The April 17, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion of the Board. The March 7, 2003 decision of the Office is hereby affirmed.

Dated, Washington, DC
August 8, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member