U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAIL ALDRIDGE and DEPARTMENT OF THE ARMY, THIRD INFANTRY DIVISION, Fort Stewart, GA

Docket No. 03-1728; Submitted on the Record;
Issued December 2, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, A. PETER KANJORSKI

The issues are: (1) whether appellant has any permanent impairment of her right upper extremity; and (2) whether the Office of Workers' Compensation Programs properly refused to open appellant's claim for merit review.

Appellant's claim, filed on December 14, 2001, was accepted by the Office for bilateral carpal tunnel syndrome and right carpal tunnel release[1] after appellant, then a 55-year-old public affairs specialist, alleged that she sustained carpal tunnel syndrome in the performance of duty. She filed a claim for a schedule award on May 29, 2002. A May 8, 2002 report in which, Dr. Scott W. Vann, Board-certified in surgery and plastic surgery, advised that appellant had been released to return to her regular duties on April 22, 2002. He indicated that appellant was scheduled for endoscopic release surgery, which would probably keep her out of work for about two weeks. Dr. Vann opined that she would probably reach maximum medical improvement shortly thereafter and "hopefully have no permanent impairment."

By letter dated June 11, 2002, the Office requested that Dr. Vann provide a report regarding whether appellant sustained an impairment rating in accordance with the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* fifth edition. In an April 15, 2002 report, Dr. Vann indicated that appellant had a zero percent impairment of the right upper extremity.

Dr. Vann also submitted an evaluation of appellant's right upper extremity signed on May 9, 2002. He reported examination findings that appellant's wrist flexion and extension as were within the normal range. Dr. Vann noted that she had an impairment of seven percent to the right hand and four percent to the body.

[1] Appellant underwent a right open endoscopic release and median neurolysis on March 12, 2002.

By decision dated July 16, 2002, the Office denied appellant's claim for a schedule award.

On August 29, 2002 appellant requested reconsideration.

In an August 26, 2002 report, the Office medical adviser reviewed Dr. Vann's April 15, 2002 report and reported his findings that appellant had no impairment. In an August 26, 2002 report, received by the Office on September 3, 2002, Dr. Vann explained that while on April 15, 2002 he estimated that appellant had a zero percent impairment rating, that was premature as he had recently reviewed the in-depth impairment rating of May 7, 2002 and opined that appellant had a four percent total body impairment.

In an October 7, 2002 report, the Office medical adviser reviewed the May 7, 2002 report and noted findings of range of motion of seven percent of the right hand and six percent of the right upper extremity. He explained that, under the A.M.A., *Guides*, fifth edition, range of motion of the digits was not a factor in impairment due to carpal tunnel syndrome and concluded that appellant had a zero percent impairment.

By decision dated October 11, 2002, the Office denied modification of its July 16, 2002 decision. Appellant requested reconsideration on January 9, 2003 and submitted a December 23, 2002 report from Dr. Vann, wherein he indicated that the impairment rating for the right upper extremity was six percent.

By decision dated March 26, 2003, the Office denied appellant's request for reconsideration.

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

Section 8107 of the Federal Employees' Compensation Act[2] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[3] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[4] The Act's implementing regulation has adopted the A.M.A., *Guides* (5th ed.) as the appropriate standard for evaluating schedule award losses.[5]

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide: "If, after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present:

[2] 5 U.S.C. §§ 8101-8109.

[3] 5 U.S.C. § 8107.

[4] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[5] 20 C.F.R. § 10.404 (1999).

> "(1) Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier.
>
> "(2) Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present and an impairment rating not to exceed five percent of the upper extremity may be justified.
>
> "(3) Normal sensibility (two-point discrimination and Semmes-Weinstein monfilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating."[6]

In this case, the Office requested that appellant's physician evaluate appellant for a schedule award and forwarded copies of the general range of motion worksheets with respect to evaluating appellant for a schedule award. However, the Office did not forward to the physician, the form that is used to evaluate nerve dysfunction through nerve conduction velocity and electromyography tests. As appellant received the authorized carpal tunnel release, the A.M.A., *Guides* indicate that she may be entitled to an impairment rating. In this case, the physician should have been asked to respond to the carpal tunnel syndrome questions in order to determine whether there was a basis for a schedule award.[7]

It is well established that proceedings under the Act[8] are not adversarial in nature[9] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[10] The Board finds that the Office shall provide the proper worksheets and request that Dr. Vann provide any additional medical rationale deemed necessary.[11] Following development of the evidence, the Office shall issue an appropriate final decision on appellant's entitlement to a schedule award.

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[6] A.M.A., *Guides* at 495.

[7] See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating the Medical Evidence*, Chapter 2.810.5(b) (September 1993) ("The quality of attending physicians' reports will vary greatly. Sometimes reports are lacking in detail because the physician is unaware of the type of information required to meet our needs in a given case. If reports from the claimant's physician lack needed details and opinion, the CE [claims examiner] should always write back to the doctor, clearly state what is needed, and request a supplemental report."); *see also id*., Statements of Accepted Facts, Chapter 2.809.6.b (June 1995) ("The CE may elect to assist an attending physician in formulating an opinion by providing a [statement of accepted facts] when the facts as related by the physician differ from those accepted by [the Office], or when the [Office] has evidence, such as exposure data, which is not readily available to the physician.").

[8] 5 U.S.C. § 8101 *et seq.*

[9] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

[10] *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[11] *See John J. Carlone*, *supra* note 8; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.5(b) (September 1993); *see also id* at Chapter 2.810.8(a) (April 1993).

The October 11 and July 16, 2002 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this opinion.[12]

Dated, Washington, DC
December 2, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] The Board's disposition of the first issue renders the second issue moot.