United States Department of Labor
Employees' Compensation Appeals Board

LORRAINE C. MOYANO-HANNELLY	)	
Appellant	)	
	)	**Docket No. 04-1454**
and	)	**Issued: October 5, 2004**
	)	
U.S. POSTAL SERVICE, POST OFFICE,	)	
Hackensack, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On May 11, 2004 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' schedule award decision dated September 12, 2003, finding 48 percent impairment of her left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

ISSUE

The issue is whether appellant has more than 48 percent impairment of her left upper extremity for which she received a schedule award.

FACTUAL HISTORY

On December 30, 1993 appellant, then a 46-year-old equal employment clerk,[1] filed a notice of traumatic injury alleging on December 23, 1993 she injured her left arm, shoulder,

[1] On March 15, 2000 appellant informed the Office that she had obtained a divorce and resumed her maiden name of Hannelly.

hand, neck and upper back when she caught a coworker who had fainted. The Office accepted appellant's claim for cervical radiculitis on February 8, 1994.

Appellant filed a notice of recurrence of disability on July 22, 1999 alleging that on July 14, 1999 she developed pain in her right hand and fingers due to overuse as a consequence of her December 23, 1993 employment injury. The Office denied this claim on September 30, 1999. Appellant, through her attorney, requested reconsideration on June 20, August 8 and 14, September 21 and November 17, 2000. The Office denied appellant's requests for reconsideration by decisions dated July 26 and November 13, 2000 and June 27, 2001.[2]

In a letter dated September 4, 2002, appellant's current attorney requested a schedule award and submitted a report from Dr. David Weiss, an osteopath dated June 26, 2002. He noted her history of injury and performed a physical examination. Dr. Weiss found that appellant held her left arm in a guarded position, that her cervical spine demonstrated muscle spasm and tenderness and that she had muscle spasms in her trapezius and splenius capaitis. He also found a positive Spurling's maneuver on the left. Appellant's left shoulder had focal acromioclavicular point and anterior cuff tenderness. Dr. Weiss provided appellant's left shoulder range of motion including: elevation, 160 degrees; abduction, 170 degrees; adduction, 75 degrees; external rotation, 90 degrees; and internal rotation to T8. He performed grip strength testing and found appellant's strength to be 32 kilograms of force strength in the right hand and 10 kilograms in the left. Dr. Weiss also did manual muscle testing which revealed on the left arm that the supraspinatus was 4/5, the deltoid was 4+/5 and the biceps was 4/5. A sensory examination revealed a deficit over the C5-6 and C7 dermatomes in the left arm.

Dr. Weiss' impairment rating included 30 percent for loss of grip strength; 4 percent for loss of strength in the supraspinatus; 9 percent for loss of strength in the deltoid; 6 percent for loss of strength in the biceps; 4 percent for sensory deficit in the C5 nerve root; 6 percent for sensory deficit in the C6 nerve root; 4 percent for sensory deficit in the C7 nerve root; for a combined left arm rating of 50 percent. He also found appellant entitled to an additional 3 percent impairment rating for pain resulting in a total impairment rating of 53 percent. Dr. Weiss concluded that appellant reached maximum medical improvement on June 26, 2002.

An Office medical adviser reviewed this report on May 8, 2003. He stated, "I question this marked motor loss especially grip strength since there was no atrophy of the lower arm." The Office medical adviser also noted that grip strength was subjective. He calculated that appellant had 30 percent impairment due to loss of grip strength; 6 percent due to loss of strength in the supraspinatus; 9 percent due to strength deficits in the deltoid; and 6 percent due to loss of strength in the biceps. The Office medical adviser also found appellant's sensory defects in C5 were 2½ percent impairment; C6 were 4 percent impairment; and C7 were 2½ percent

[2] As these decisions were issued more than one year prior to the date of appellant's appeal to the Board on May 11, 2004, the Board lacks jurisdiction to review the issue of her alleged recurrence of disability. 20 C.F.R. § 501.2(c).

impairment.[3] He reached a combined impairment rating of 48 percent. The Office medical adviser found that appellant reached maximum medical improvement on June 26, 2002.

By decision dated September 12, 2003, the Office granted appellant a schedule award for 48 percent impairment of her left upper extremity. The period of the award was for 129.76 weeks from June 26, 2002 to May 9, 2005.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] sets 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 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.

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act, nor the regulation provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.[6] However, as the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.[7]

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from her physician. In obtaining 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]

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[3] The policy of the Office is to round the calculated percentage of impairment to the nearest decimal point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b (June 2003).

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (2003).

[6] *George E. Williams*, 44 ECAB 530, 533 (1993).

[7] *Id.*

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

Grip strength is used to evaluate power weaknesses related to the structures in the hand wrist or forearm.[9] The A.M.A., *Guides* do not encourage the use of grip strength as an impairment rating because strength measurements are functional tests influenced by subjective factors that are difficult to control and the A.M.A., *Guides* for the most part is based on anatomic impairment. Thus, the A.M.A., *Guides* does not assign a large role to such measurements. Only in rare cases should grip strength be used and only when it represents an impairing factor that has not been otherwise considered adequately.[10] The A.M.A., *Guides* state, "*Otherwise, the impairment ratings based on objective anatomic findings take precedence.*"(Emphasis in the original.)[11]

ANALYSIS

The impairment rating of Dr. Weiss included 30 percent for loss of grip strength; 4 percent for loss of strength in the supraspinatus; 9 percent for loss of strength in the deltoid; 6 percent for loss of strength in the biceps; 4 percent for sensory deficit in the C5 nerve root; 6 percent for sensory deficit in the C6 nerve root; 4 percent for sensory deficit in the C7 nerve root; for a combined left arm rating of 50 percent. He also found appellant entitled to an additional 3 percent impairment rating for pain resulting in a total impairment rating of 53 percent.

Dr. Weiss provided his impairment ratings in detail, but failed to provide the necessary physical findings to support this rating. He found that appellant had a loss of grip strength and awarded a 30 percent impairment based on this loss. Dr. Weiss did not explain why he felt that appellant's left arm condition warranted this additional impairment due to loss of strength. The Office medical adviser questioned this impairment rating, but did not request additional information. Such information is necessary given the finding of loss of strength in specific peripheral nerves.

Regarding appellant's peripheral nerve impairment, Dr. Weiss also failed to provide any grading of appellant's loss of strength in accordance with the A.M.A., *Guides.* He is required to determine the grade of severity of loss of function and the relative maximum upper extremity impairment value of the nerve structure involved.[12] Dr. Weiss did not express appellant's impairment in the terms of the A.M.A., *Guides'*[13] rating system and the Board is unable to clearly visualize the impairments.

Neither Dr. Weiss nor the Office medical adviser applied the appropriate table in assessing appellant's impairment due to the spinal nerve root impairment. Both physicians used the table for unilateral spinal nerve root impairment.[14] The A.M.A., *Guides* provide that in

[9] *Id.*

[10] *Mary L. Henninger*, 52 ECAB 408, 409 (2001).

[11] A.M.A., *Guides*, 508.

[12] A.M.A., *Guides*, 484.

[13] A.M.A., *Guides*, 484, Table 16-11, 492, Table 16-15.

[14] A.M.A., *Guides*, 424, Tables 15-15 and 15-17.

multiple spinal nerve involvement, the impairment is evaluated under the brachial plexus values rather than combining the individual spinal nerve values.[15] This is because the loss of function is greater with the involvement of two or more spinal nerves transmitting fibers to the same peripheral nerve that with the involvement of a single spinal nerve.[16]

Finally, Dr. Weiss failed to provide an explanation for his award of an additional three percent impairment due to pain. He did not identify the nerve involved and did not provide any findings such that a determination of the grade of the impairment could be made in accordance with the A.M.A., *Guides*.[17] The Office medical adviser did not include this impairment in his rating for schedule award purposes. As the Board is unable to clearly visualize how Dr. Weiss reached his impairment rating regarding pain, he did not establish this element of appellant's permanent impairment rating.

Proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter; in a case where the Office "proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner."[18] In this case, appellant submitted medical evidence establishing permanent impairment due to her accepted cervical radiculopathy. The Office referred this medical evidence to the Office medical adviser, who reviewed the report and determined that appellant had permanent impairment. However, the Office medical adviser disagreed with the impairment rating for loss of grip strength, but did not seek any additional evidence. He did not offer any further explanation of how the impairment ratings were reached by either himself or Dr. Weiss. He also failed to apply the appropriate provisions of the A.M.A., *Guides* to reach appellant's impairment due to multiple spinal nerve root involvement. The Board will remand the case to the Office to undertake additional development of the medical evidence to appropriately determine appellant's impairment rating for schedule award purposes.

On remand the Office should refer appellant to an appropriate physician to determine the extent of her permanent impairment due to her accepted employment injury. The physician should consider any impairment due to pain, sensory loss, motor strength deficits and any other impairment rating appropriate under applicable provisions of the A.M.A., *Guides*.

CONCLUSION

The Board finds that this case is not in posture for decision. The record is not sufficiently detailed to establish appellant's impairment rating due to loss of grip strength, peripheral nerve motor deficiencies, pain or sensory defects of the spinal nerve roots in accordance with the applicable provisions of the A.M.A., *Guides* and must be remanded for additional development of the medical evidence.

[15] A.M.A., *Guides*, 488.

[16] *Id.*

[17] A.M.A., *Guides*, 482, Table 16-10, 488, Figure 16-48, 490, Figure 16-49.

[18] *Walter A. Fundinger, Jr.* ,37 ECAB 200, 204 (1985).

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2003 decision of the Office of Workers' Compensation Programs is set aside and remanded for additional development consistent with this decision of the Board.

Issued: October 5, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member