United States Department of Labor
Employees' Compensation Appeals Board

RUTH V. WADE, Appellant	)	
and	)	**Docket No. 05-1334**
	)	**Issued: December 2, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Waldorf, MD, Employer	)	

Appearances:
Ruth V. Wade, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 7, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 12, 2005 granting her a schedule award for five percent impairment of her right upper extremity and a decision dated March 8, 2005 denying her request for an oral hearing as untimely. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions in this case.

ISSUES

The issues are: (1) whether appellant has more than five percent permanent impairment of her right upper extremity for which she received a schedule award; and (2) whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely.

FACTUAL HISTORY

On June 21, 2001 appellant, then a 49-year-old postal clerk, filed a recurrence of disability claim alleging that her recurrence of total disability on May 2, 2001 was due to her

August 30, 1999 employment injury. The Office reviewed appellant's claim and determined that it should be developed as a new occupational disease claim. On July 24, 2002 the Office accepted bilateral carpal tunnel syndrome, cervical radiculopathy and lumbar strain. The Office later accepted the additional condition of cervical disc herniation. Appellant retired effective February 29, 2004 and elected to receive Office of Personnel Management benefits.

Appellant requested a schedule award on March 8, 2004. By letter dated March 24, 2004, the Office requested medical evidence regarding permanent impairment from her attending physician. In a report dated April 13, 2004, Dr. Daniel Ignacio, a physician Board-certified in physical medicine and rehabilitation, diagnosed cervical and lumbar disc rupture as confirmed by magnetic resonance imaging (MRI) and electromyogram (EMG) scans as well as bilateral median neuritis. Dr. Ignacio provided findings regarding appellant's cervical and lumbar spines as well as her upper extremities. He found hypoesthesia along both arms, particularly along the right side with diminished biceps reflexes as well as tenderness along the carpal ligaments and the median nerves on both wrists with hypoesthesia along the hands. Dr. Ignacio diagnosed chronic progressive cervical disc syndrome with cervical radiculopathy, chronic progressive lumbar disc syndrome with lumbar radiculopathy, post-traumatic headaches, bilateral median neuritis, *i.e.*, carpal tunnel syndrome and chronic left shoulder capsulitis. He concluded that appellant had reached maximum medical improvement on April 13, 2004. Dr. Ignacio stated, "The degree of permanent impairment of the right upper limb due to the loss of strength is 25 percent. The degree of impairment in the right upper limb due to loss of sensory deficits and also pain discomfort is 30 percent." Dr. Ignacio indicated that he reached his impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[1]

On June 4, 2004 the Office medical adviser reviewed Dr. Ignacio's April 13, 2004 report and requested additional independent electrodiagnostic studies before rating appellant's permanent impairment based on her carpal tunnel syndrome, lumbar and cervical conditions. Specifically, he requested bilateral nerve conduction velocity (NCV) studies and EMGs of the upper extremities and MRI scans of the spine.

In a report dated July 24, 2004, Dr. Stuart J. Goodman, a Board-certified neurologist, addressed electrodiagnostic testing of appellant's right upper extremity only. He found that motor NCV studies were abnormal at the ulnar and median nerves. Dr. Goodman stated that on sensory NCV studies the median and ulnar nerve responses were abnormal. He stated that appellant's EMG of the right upper extremity was abnormal in the abductor pollicis brevis and first dorsal interosseous muscles. Dr. Goodman stated that appellant's test results were compatible with moderate medial neuropathy at the wrist with denervation, moderate ulnar neuropathy at the elbow with denervation and that a lower cervical radiculopathy could not be ruled out.

The Office medical adviser reviewed appellant's claim on October 29, 2004. He rated appellant's impairment due to right carpal tunnel syndrome.[2] The Office medical adviser stated

[1] A.M.A., *Guides* (5th ed. 2000).

[2] The Office medical adviser stated, "There is no evidence nor any indication as to why the left upper extremity was not examined as well."

that appellant's test results demonstrated "some persisting carpal tunnel syndrome on the right side." He concluded that, according to page 495 of the A.M.A., *Guides*, appellant had a five percent impairment "for persistent residuals of carpal tunnel syndrome."

By decision dated January 12, 2005, the Office granted appellant a schedule award for five percent impairment of the right upper extremity. The period of the award ran for 15.60 weeks from July 24 to November 10, 2004.

Appellant requested an oral hearing by form dated February 10, 2005 and postmarked February 14, 2005. By decision dated March 8, 2005, the Branch of Hearings and Review denied appellant's request for an oral hearing as untimely and stated that the issue could be addressed through the reconsideration process.[3]

LEGAL PRECEDENT -- ISSUE 1

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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[6]

The fifth edition of the A.M.A., *Guides*, regarding carpal tunnel syndrome, provides:

> "If, after optimal recovery time following surgical decompression, an individual continues to complain of pain, parethesias and/or difficulties in performing certain activities, three possible scenarios can be present:
>
> > 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 [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present, and an

[3] Following the Office's January 12, 2005 decision, 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. *See* 20 C.F.R. § 501.2(c).

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] 20 C.F.R. § 10.404(a).

impairment rating not to exceed five percent of the upper extremity may be justified.

3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength, and nerve conduction studies: there is no objective basis for an impairment rating."[7]

The A.M.A., *Guides* further provides that, "In compression neuropathies, additional impairment values are not given for decreased grip strength."[8] Carpal tunnel syndrome is an entrapment/compression neuropathy of the median nerve.[9] Additionally, the Board has found that the fifth edition of the A.M.A., *Guides* provides that an impairment due to carpal tunnel syndrome be rated on motor and sensory deficits only.[10]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained bilateral carpal tunnel syndrome, cervical radiculopathy and lumbar strain as well as cervical disc herniation due to her employment duties. Appellant requested a schedule award due to these conditions. Appellant's attending physician, Dr. Ignacio, completed a report on April 13, 2004 and opined that she had reached maximum medical improvement regarding her accepted conditions. Dr. Ignacio provided limited findings on physical examination and concluded that appellant had a 25 percent impairment of the right upper extremity due to loss of strength and a 30 percent impairment due to sensory deficits and pain as a result of her accepted conditions of carpal tunnel syndrome and cervical disc herniation with radiculopathy. Dr. Ignacio did not correlate his impairment estimate with the A.M.A., *Guides*; consequently, his report is of diminished probative value in determining the extent of appellant's permanent impairment.[11]

The Office medical adviser requested bilateral EMG and NCV tests as well as MRI scan studies of appellant's spine to determine her impairment rating. Electrodiagnostic testing of the right upper extremity performed on July 24, 2004 revealed moderate medial neuropathy of the right wrist with denervation, moderate ulnar neuropathy at the elbow with denervation and a possible cervical radiculopathy. On October 29, 2004 the Office medical adviser reviewed the EMG and NCV results and noted that the results showed continuing carpal tunnel syndrome on the right side. He cited to page 495 of the A.M.A., *Guides* which provides that, after optimal recovery time following surgical decompression, an appellant who experienced a residual carpal tunnel syndrome as demonstrated by abnormal EMG testing of the thenar muscles would be entitled to an impairment rating of five percent of the upper extremity. The Office medical adviser determined that appellant had a five percent impairment of the right upper extremity

[7] A.M.A., *Guides* 495; *see also Silvester DeLuca*, 53 ECAB 500 (2002).

[8] *Id.* at 494; *see also* FECA Bulletin No. 01-05, issued January 29, 2001.

[9] *Id*. at 492.

[10] *Id*. at 494, *Robert V. Disalvatore*, 54 ECAB ___ (Docket No. 02-2256, issued January 17, 2003).

[11] *Derrick C. Miller*, 54 ECAB ___ (Docket No. 02-140, issued December 23, 2002).

consistent with the second criteria for rating impairments due to carpal tunnel syndrome noted on page 495 of the A.M.A., *Guides*. The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the objective findings; thus, his report constitutes the weight of the evidence and establishes that she has no more than a five percent impairment of the right upper extremity. Appellant has not submitted probative medical evidence showing more than a five percent impairment to her right upper extremity.

On appeal, appellant contends that she is also entitled to a schedule award for her right lower extremity and left upper and lower extremities. The Board's jurisdiction; however, extends only to a review of final decisions by the Office.[12] As the Office has not issued any final decisions regarding the aforementioned extremities, the Board has no jurisdiction to address the contentions raised by appellant. Appellant further contends that she is entitled to a greater award for her right upper extremity based on the report of her attending physician, Dr. Ignacio. As noted, Dr. Ignacio's April 13, 2004 report does not conform to the A.M.A., *Guides* and thus is of diminished probative value.[13]

LEGAL PRECEDENT -- ISSUE 2

Section 8124 of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of a final decision by the Office.[14] The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.[15]

Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[16] Section 10.616(a) further provides: "A claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district [O]ffice may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."[17]

Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise its discretion.[18] The Office's procedures concerning

[12] *See* 20 C.F.R. § 501.2(c).

[13] *See Derrick C. Miller*, *supra* note 11.

[14] 5 U.S.C. § 8124(b)(1).

[15] *James Smith*, 53 ECAB 188 (2001).

[16] 20 C.F.R. §§ 10.617, 10.618.

[17] 20 C.F.R. § 10.616(a).

[18] *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

untimely requests for hearings and review of the written record are found in the Federal (FECA) Procedure Manual, which provides:

> "If the claimant is not entitled to a hearing or review (*i.e.*, the request was untimely, the claim was previously reconsidered, *etc*., [Hearing and Review] will determine whether a discretionary hearing or review should be granted and, if not, will so adviser the claimant, explaining the reasons."[19]

ANALYSIS -- ISSUE 2

The Office issued a decision on January 12, 2005 granting appellant a schedule award for a five percent impairment of the right upper extremity. Appellant sought an oral hearing on a form dated February 10, 2005 and postmarked February 14, 2005. The Office denied appellant's hearing request as untimely by decision dated March 8, 2005. As appellant's request for a hearing was postmarked February 14, 2005, more than 30 days after the Office issued its January 12, 2005 decision, she was not entitled to a hearing as a matter of right.

The Office has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter of right.[20] The Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involve and had denied appellant's request for an oral hearing on the basis that the case could be resolved by submitting additional evidence to the Office in a reconsideration request. The Board has held that the only limitation on the Office's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[21] In this case, the evidence of record does not indicate that the Office committed any action in connection with its denial of appellant's request for an oral hearing which could be found to be an abuse of discretion. For these reasons, the Office properly denied her request for an oral hearing as untimely under section 8124 of the Act.

CONCLUSION

The Board finds that appellant has no more than a five percent permanent impairment of the right upper extremity for which she received a schedule award. The Board further finds that the Office properly denied appellant's request for a hearing as untimely.

---

[19] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.4(b)(3) (June 1997).

[20] *Afegalai L. Boone*, 53 ECAB 533 (2002).

[21] *See André Thyratron*, 54 ECAB ___ (Docket No. 02-1833, issued December 20, 2002).

ORDER

IT IS HEREBY ORDERED THAT the March 8 and January 12, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 2, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board