United States Department of Labor
Employees' Compensation Appeals Board

WENDY R. QUINONES, Appellant	)	
and	)	**Docket No. 05-1585**
	)	**Issued: January 20, 2006**
U.S. POSTAL SERVICE, REMOTE ENCODING CENTER, Glendale, AZ, Employer	)	

Appearances:
Wendy R. Quinones, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 20, 2005 appellant filed a timely appeal of the May 18, 2005 merit decision of the Office of Workers' Compensation Programs, which denied wage-loss compensation on or after September 18, 2001. Appellant also timely appealed the Office's July 5, 2005 decision, which denied an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant was disabled due to her accepted employment injury from September 18, 2001 to April 7, 2002; and (2) whether appellant is entitled to an additional schedule award for permanent impairment of her upper extremities.

FACTUAL HISTORY

Appellant, a 37-year-old data conversion operator, has an accepted occupational disease claim for bilateral tendinitis and bilateral carpal tunnel syndrome arising on or about August 2, 1999 (13-1195763). She underwent a right carpal tunnel release on November 17, 1999,

followed by a left carpal tunnel release on January 5, 2000. The Office paid appropriate wage-loss compensation and appellant returned to limited-duty work on April 26, 2000. She stopped work again in September 2000 and the Office resumed payment of wage-loss compensation. Appellant returned to part-time, limited-duty work on August 18, 2001 and she resumed her regular duties on September 1, 2001.

Appellant stopped working September 18, 2001 and claimed a recurrence of disability beginning September 7, 2001. She explained that she had difficulty keying more than four hours per day. Appellant's treating physician, Dr. Kishore Tipirneni, a Board-certified orthopedic surgeon, diagnosed cubital tunnel syndrome and ulnar neuritis and he restricted appellant to no more than four hours of keying per day. Dr. Tipirneni also indicated that appellant might require an ulnar nerve transposition. On September 21, 2001 the employing establishment advised the Office that it was unable to accommodate appellant's work restrictions in the Glendale, AZ area.[1] Appellant, therefore, remained off work.

The Office denied the recurrence claim by decision dated November 8, 2001.[2] On November 19, 2001 appellant filed an occupational disease claim for cubital tunnel syndrome and ulnar neuritis, with a date of injury of September 15, 2001. She also claimed wage-loss compensation (Form CA-7) beginning September 18, 2001. The Office denied appellant's occupational disease claim on February 27, 2002. Appellant requested an oral hearing.

While the case was pending before the Branch of Hearings and Review, appellant underwent a right ulnar nerve transposition and cubital tunnel release on August 7, 2002. A similar procedure was performed on her left upper extremity on August 28, 2002. Appellant returned to full-time, regular duty on October 5, 2002.

By decision dated January 9, 2003, the Office hearing representative reversed the February 27, 2002 decision and accepted appellant's September 15, 2001 claim for aggravation of bilateral cubital tunnel syndrome and bilateral releases. The hearing representative remanded the case to the Office with instructions to double appellant's two claims and "pay the appropriate entitled benefits."[3]

Appellant had previously filed for a schedule award on April 27, 2000 under claim number 13-1195763 and on January 14, 2003, the Office granted an award for five percent

[1] Although the employing establishment had just recently provided appellant part-time, limited-duty work in the Glendale, AZ area, this position was reportedly no longer available and the closest limited-duty position the employing establishment was prepared to offer appellant was located approximately 900 miles away in Denver, CO.

[2] The Branch of Hearings and Review affirmed the denial in an August 26, 2002 decision.

[3] On January 27, 2003 the Office advised appellant that her claim had been accepted in accordance with the hearing representative's January 9, 2003 decision. Her two claims were doubled under claim number 13-1195763.

impairment of each upper extremity. The award covered a period of 31.2 weeks from September 1, 2001 to April 7, 2002.[4]

On January 24, 2003 appellant refiled Form CA-7, claiming wage-loss compensation from September 18, 2001 to October 4, 2002.

By letter dated February 20, 2003, the Office advised appellant that because she had already received a schedule award for her bilateral upper extremity impairment she could not receive wage-loss compensation for the overlapping period of September 18, 2001 to April 7, 2002. The Office did, however, pay wage-loss compensation for temporary total disability for the period April 8 to October 4, 2002. Appellant was also informed that her file was being reviewed for a possible augmented schedule award in light of the recently accepted conditions under claim number 13-2042446.[5]

Appellant challenged the Office's determination not to pay wage-loss compensation from September 18, 2001 to April 7, 2002. She argued that the January 14, 2003 schedule award should have been paid October 5, 2002, when returned to her full-time, regular duties.

On March 1, 2004 the Office issued a formal decision denying appellant's claim for wage-loss compensation for the period September 18, 2001 to April 7, 2002. The Office explained that appellant was not entitled to receive dual benefits involving the same body parts.

Appellant requested an oral hearing, which was held on November 16, 2004. In a decision dated May 18, 2005, the Office hearing representative affirmed and modified the March 1, 2004 decision. The hearing representative affirmed the prior finding that appellant was not entitled to dual benefits for the period September 18, 2001 to April 7, 2002. She further found that appellant had not established that she was totally disabled from September 18, 2001 to April 7, 2002.

In a July 5, 2005 decision, the Office denied an additional schedule award. The Office based its decision on the June 29, 2005 report of its medical adviser, Dr. Ellen Pichey, who found that appellant had five percent impairment in each upper extremity due to sensory deficit or pain involving the ulnar and median nerves. Dr. Pichey found no additional impairment due to loss of strength or range of motion. According to Dr. Pichey, appellant reached maximum medical improvement on October 31, 2002. Because appellant had already received a schedule award for five percent bilateral upper extremity impairment on January 14, 2003, the Office found that she was not entitled to an additional award.

[4] The medical evidence that formed the basis of the schedule award identified May 8, 2000 as the date when appellant reached maximum medical improvement, however, the Office selected September 1, 2001 as the commencement date of the schedule award because appellant had resumed full-time work that day and she was no longer receiving wage-loss compensation.

[5] Appellant formally filed a claim for an additional schedule award on February 21, 2003. She submitted a February 13, 2003 report from Dr. Tipirneni, who found five percent bilateral upper extremity impairment secondary to pain. The Office subsequently referred appellant for a second opinion examination by Dr. Borislav Stojic, a Board-certified orthopedic surgeon.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act[6] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.[7] Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.[8] Whether a particular injury causes disability for work is a medical question, which must be resolved by competent medical evidence.[9]

ANALYSIS -- ISSUE 1

Contrary to the hearing representative's May 18, 2005 finding, the record establishes that appellant was disabled from September 18, 2001 to April 7, 2002, due to her accepted condition of aggravation of bilateral cubital tunnel syndrome. Dr. Tipirneni placed appellant on part-time, limited duty when he saw her on September 17, 2001 and he continued to limit her to part-time work until she underwent bilateral cubital tunnel releases in August 2002. Dr. Tipirneni reiterated in a June 24, 2002 report that he placed appellant on part-time, limited duty beginning September 17, 2001. The hearing representative found this evidence unpersuasive, however, this is the same record upon which the Office awarded total disability compensation beginning April 8, 2002. The Board finds Dr. Tipirneni reports sufficient to establish that appellant was only capable of working four hours per day due to her bilateral cubital tunnel syndrome. The record further reveals that the employing establishment did not have any local part-time, limited-duty positions available for appellant, which the Office was aware of as early as October 5, 2001. Accordingly, the Board finds that appellant was disabled due to her accepted condition for the period September 18, 2001 to April 7, 2002.

Compensation for a schedule award and total disability benefits cannot be paid concurrently for injury to the same part of the body.[10] Because the Office paid appellant's 31.2 week schedule award beginning September 1, 2001, it could not also pay her for wage-loss compensation for the period September 18, 2001 to April 7, 2002. However, the Office was not

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[6] 5 U.S.C. § 8101 *et seq*.

[7] 20 C.F.R. § 10.115(e), (f) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[8] 20 C.F.R. § 10.5(f) (1999).

[9] *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.5(a) (March 1995).

obligated to pay appellant's January 14, 2003 schedule award retroactive to September 1, 2001. This was an administrative determination by the Office that ultimately worked to appellant's detriment. The Office delayed processing appellant's schedule award for more than 2½ years and in the interim appellant filed another occupational disease claim and she sought wage-loss compensation beginning September 18, 2001. The hearing representative incorrectly stated that the claim for bilateral cubital tunnel syndrome was approved after the Office had already processed the schedule award payment under appellant's bilateral carpal tunnel syndrome claim. The decision accepting the claim preceded the January 14, 2003 schedule award by five days.

In January 2003, the Office should have recognized that appellant had a pending claim for wage-loss compensation for the same time period it anticipated paying her a schedule award. On January 14, 2003, when the Office ultimately granted appellant's April 27, 2000 claim for a schedule award, it should have been aware of the hearing representative's January 9, 2003 acceptance of appellant's other claim for aggravation of bilateral cubital tunnel syndrome, with bilateral releases. The Board finds that appellant's schedule award should be recomputed to commence with her return to duty effective October 5, 2002. The Office should also pay appellant wage-loss compensation for total disability from September 18, 2001 to April 7, 2002. Accordingly, the Office hearing representative's May 18, 2005 decision is reversed. The case will be remanded to the Office for the issuance of an appropriate order and payment of benefits.

LEGAL PRECEDENT -- ISSUE 2

A claim for an increased schedule award may be based on new employment exposure; however, additional occupational exposure is not a prerequisite.[11] Absent additional employment exposure, an increased schedule award may also be based on evidence demonstrating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.[12]

Section 8107 of the Act 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.[13] 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the appropriate standard for

[11] A claim for an increased schedule award based on additional exposure constitutes a new claim. *Paul Fierstein*, 51 ECAB 381, 385 (2000).

[12] *Linda T. Brown*, 51 ECAB 115 (1999).

[13] The Act provides that, for a total or 100 percent loss of use of an arm, an employee shall receive 312 weeks compensation. 5 U.S.C. § 8107(c)(1).

evaluating schedule losses.[14] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[15]

ANALYSIS -- ISSUE 2

The Office medical adviser, Dr. Pichey relied upon the March 16, 2004 physical examination findings from Dr. Stojic.[16] Based upon this information, Dr. Pichey found no impairment due to loss of range of motion or loss of strength. The Office medical adviser calculated appellant's upper extremity impairment by applying Tables 16-10 and 16-15, A.M.A., *Guides* 482 and 492. She classified appellant's bilateral upper extremity impairment as Grade 4, which represented a 10 percent deficit.[17] Dr. Pichey also found that appellant's impairment involved both the median and ulnar nerves. According to Table 16-15, 39 percent is the maximum upper extremity impairment for sensory deficit or pain involving the median nerve (below midforearm).[18] Seven percent is the maximum impairment for sensor deficit or pain involving the ulnar nerve.[19] Dr. Pichey multiplied the 10 percent deficit she found under Table 16-10 by the combined 46 percent deficits for the median and ulnar nerves found under Table 16-15. This resulted in 5 percent bilateral upper extremity impairment (10 percent x 46 percent = 4.6 percent). Dr. Tipirneni offered a similar assessment in his February 13, 2003 report.[20]

As the Office medical adviser's June 29, 2005 impairment rating conforms to the A.M.A., *Guides* (5th ed. 2001), her finding constitutes the weight of the medical evidence.[21] Appellant has not submitted any credible medical evidence indicating that she has greater than five percent impairment of the left and right upper extremities. Because appellant previously

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[14] 20 C.F.R. § 10.404 (1999).

[15] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (issued January 29, 2001).

[16] Dr. Stojic diagnosed status post bilateral carpal tunnel release and status post surgery for bilateral cubital tunnel syndrome. Physical examination revealed full range of motion in the elbows, wrists, fingers and thumbs. He noted "slight discomfort" on palpation over the medial epicondylar area of the left and right elbow. Also, Tinel's sign over the left elbow was slightly positive. Dr. Stojic indicated that maximum medical improvement was obtained when appellant returned to her regular duties in October 2002.

[17] With respect to sensory deficits or pain, a Grade 4 classification is characterized by "[d]istorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensation or pain, that is forgotten during activity." This classification represents a 1 to 25 percent deficit. Table 16-10, A.M.A., *Guides* 482.

[18] A.M.A., *Guides* 492, Table 16-15.

[19] *Id.*

[20] When Dr. Tipirneni examined appellant on February 13, 2003 he noted that she claimed to be doing well and reported no numbness. Appellant did, however, report occasional pain with strenuous activity. On physical examination, Dr. Tipirneni noted that both incisions were well healed. He also noted no tenderness to palpation of the arms, full range of motion and a normal neurovascular examination. Based on his findings, Dr. Tipirneni calculated five percent bilateral upper extremity impairment secondary to pain.

[21] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

received an award for five percent impairment of the left and right upper extremity, the Office properly found that she was not entitled to an additional schedule award.[22]

CONCLUSION

The Board finds that appellant is entitled to wage-loss compensation for total disability from September 18, 2001 to April 7, 2002. Furthermore, payment on appellant's January 14, 2003 schedule award should commence October 5, 2002. The Board also finds that appellant failed to establish entitlement to an increased schedule.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2005 decision of the Office of Workers' Compensation Programs is affirmed and the May 18, 2005 decision is reversed. The case is remanded to the Office for further consideration consistent with this decision.

Issued: January 20, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[22] *See Mike E. Reid*, 51 ECAB 543, 547-48 (2000).