

**United States Department of Labor
Employees' Compensation Appeals Board**

ERIN C. BENNETT, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Belvidere, IL, Employer**

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**Docket No. 06-1014
Issued: July 25, 2006**

Appearances:
Erin C. Bennett, 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 March 27, 2006 appellant filed a timely appeal from the December 22, 2005 merit decision of the Office of Workers' Compensation Programs which denied her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of that claim.

ISSUE

The issue is whether appellant is entitled to a schedule award as a result of her accepted employment injury.

FACTUAL HISTORY

On September 15, 2003 appellant, then a 36-year-old rural letter carrier, filed a claim alleging that her left hand condition was a result of her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome and a ganglion cyst on the left middle finger. On April 2, 2004 appellant underwent a right endoscopic carpal tunnel release. On

April 12, 2004 she underwent the same procedure on the left. The Office paid compensation for temporary total disability.

On September 9, 2004 appellant filed a claim for a schedule award. On September 14, 2004 the Office wrote to Dr. M. Marc Soriano, neurosurgeon, to request an evaluation of permanent impairment. The Office informed him that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) was the standard for impairment rating purposes. The Office asked Dr. Soriano to complete the attachments provided. The Office attached three forms: one for right carpal tunnel syndrome, one for left carpal tunnel syndrome and one for the left middle finger.

On September 19, 2004 Dr. Soriano completed the attachments for left and right carpal tunnel syndrome. On both forms he indicated that the date of maximum medical improvement was September 5, 2004. Dr. Soriano reported that appellant had a 10 percent impairment of each upper extremity due to loss of function from decreased strength. He noted no impairment in either extremity due to sensory deficit, pain or discomfort.

On January 21, 2005 the Office referred the case file to its medical adviser for a determination of any permanent impairment of the right upper extremity due to the accepted condition. The Office medical adviser reviewed appellant's chart. He noted that Dr. Soriano's physical examination of appellant on June 2, 2004 demonstrated that the incisions had healed quite well. There was no mention of any residual neurological symptoms or abnormal physical findings in the right upper extremity. The Office medical adviser concluded that there was no objective evidence supporting any permanent impairment of the right upper extremity.

In a decision dated December 22, 2005, the Office denied appellant's claim for a schedule award based on the medical adviser's conclusion that the evidence did not demonstrate a permanent impairment of the right upper extremity.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.²

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.³ The Office is not a disinterested arbiter, however, but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

other, a role that imposes an obligation on the Office to see that its administrative processes are impartially and fairly conducted.⁴ While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁵ It must obtain any evidence that is necessary for the adjudication of the case which is not received when the notice or claim is submitted. The Office is responsible for providing the claimant information about the procedures involved in establishing a claim, including detailed instructions for developing the required evidence and upon initial examination of the case should request all evidence necessary to adjudicate the case.⁶

When the Office undertakes to develop the medical aspects of a case, it must exercise extreme care in seeing that its administrative processes are impartially and fairly conducted.⁷

ANALYSIS

The Office did not properly develop the medical evidence in this case. It asked Dr. Soriano, appellant's neurosurgeon, to complete the forms attached to its September 14, 2004 development letter. He did just that, completing a form for left carpal tunnel syndrome and a form for right carpal tunnel syndrome. The Office asked its medical adviser to determine permanent impairment for only the right upper extremity. The medical adviser complied, limiting his January 24, 2005 rating to the right. Appellant's claim was broader than this. The Office should have asked for a rating on both upper extremities.

When the Office medical adviser reviewed appellant's file to determine a rating for the right upper extremity, he based his opinion on a June 2, 2004 report from Dr. Soriano, who made "no mention of any residual neurological symptoms or abnormal physical findings in the right upper extremity." In his June 2, 2004 report, Dr. Soriano noted:

"I have seen [appellant] back in the office today. She is doing well on light duty and at this point has had one episode of some tingling of her left hand while riding in a car. This disappeared within a half hour. She has a pulling sensation in her left hand over the area of the scar, but otherwise is doing well. The incisions are clean and dry and at this point, I will discharge her back to work on June 5, 2004 without restriction. I believe she will reach a point of maximum medical improvement within three months. [Appellant] knows that she is free to call my office in the future if she has any further problems."

Dr. Soriano mentioned some residual neurological symptoms on the left. More importantly, he indicated that appellant's physical condition was months away from becoming stable. The Office medical adviser, therefore, should not have used this report to determine a

⁴ *Thomas M. Lee*, 10 ECAB 175, 177 (1958).

⁵ *Mary A. Barnett (Frederick E. Barnett)*, 17 ECAB 187, 189 (1965).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3.c (April 1993).

⁷ *William N. Saathoff*, 8 ECAB 769 (1956) (finding that the deficiency in the medical evidence adduced was attributable to the Office, then known as the "Bureau of Employees' Compensation").

rating of permanent impairment.⁸ The Office medical adviser did not mention the forms completed by Dr. Soriano at the Office request and did not address Dr. Soriano's impairment rating of 10 percent due to loss of strength.

The Board will set aside the Office's December 22, 2005 decision and remand the case for proper development of the medical evidence. The A.M.A., *Guides* sets forth a procedure for rating impairment of the upper extremities due to residuals of carpal tunnel syndrome.⁹ Each of the three possible scenarios is defined by positive or negative findings on physical and electrodiagnostic examination.¹⁰ After such further development as may be necessary, including review by an Office medical adviser, the Office shall issue an appropriate final decision on appellant's claim for a schedule award.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

⁸ The A.M.A., *Guides* states that a sufficient amount of time for optimal physiologic recovery and rehabilitation should elapse postoperatively before an individual qualifies for a permanent impairment rating should there be residual symptoms or clinical findings. Lesions at the wrist, the A.M.A., *Guides* notes, may take six to nine months for maximal recovery of nerve function. A.M.A., *Guides* 493. Dr. Soriano's June 2, 2004 report comes only two months after appellant's carpal tunnel release on the right and only a month and three weeks after her carpal tunnel release on the left.

⁹ A.M.A., *Guides* 495.

¹⁰ If the first scenario applies, the physician must evaluate impairment according to the sensory and motor deficits described in Table 16-10, page 482 and Table 16-11, page 484.

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: July 25, 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