United States Department of Labor
Employees' Compensation Appeals Board

HARRIET PITTS, Appellant	)	
and	)	**Docket No. 06-793**
	)	**Issued: June 23, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Westchester, IL, Employer	)	

Appearances:
Harriet Pitts, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 22, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated January 20, 2006. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a five percent impairment of her right upper extremity.

FACTUAL HISTORY

On November 19, 2001 appellant, a 41-year-old clerk, filed a Form CA-1 claim for benefits alleging that she sprained her right wrist in the performance of duty on November 17, 2001. The Office accepted the claim for right wrist strain. The claim was later expanded to include cubital tunnel syndrome (ulnar nerve) and repair. The Office also approved plate removal surgery, which occurred on October 15, 2003.

On December 30, 2003 appellant underwent a functional capacity evaluation. Toya C. Rasheed, MS, who administered the evaluation, concluded that the results were invalid due to appellant's inconsistent performance on a variety of objective tests. Appellant scored in the high category on four of the six possible pain and disability categories tested; however, her pain was considered inconsistent with her behavior and movement patterns. In a report dated January 13, 2004, appellant's treating physician, Dr. Michael Bednar, a Board-certified orthopedic surgeon, opined that she should have a permanent 10-pound weight restriction.

On March 5, 2004 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right upper extremity.

In order to determine the degree of permanent impairment causally related to her accepted conditions, the Office referred appellant to Dr. Richard H. Sidell, Jr., a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated April 28, 2004, he found no evidence of inflammation or swelling; no tenderness to palpation; and no discomfort with wrist flexion, extension or radial or ulnar deviation. Dr. Sidell observed very slight restriction of motion and no instability. Applying the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he found that appellant had a four percent impairment of the right upper extremity causally related to her accepted conditions. Referring to Figure 16-28, page 467, Dr. Sidell determined that she had a two percent impairment due to loss of wrist flexion. According to Figure 16-31, page 469, he found a two percent impairment for ulnar deviation. Using the Combined Values Chart, he concluded that appellant had a four percent impairment of the right upper extremity. Dr. Sidell recommended that she be restricted from lifting more than 20 pounds with her right upper extremity on a repetitive basis.

The Office found a conflict between the opinions of Dr. Bednar and Dr. Sidell regarding appellant's restrictions. In order to resolve the conflict, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Mansour V. Makhlouf, a Board-certified plastic surgeon, for an impartial medical evaluation. The Office also asked him to perform an impairment rating for schedule award purposes. In a December 22, 2004 report, Dr. Makhlouf opined that appellant had reached maximum medical improvement and had a four percent impairment of her right upper extremity as a result of her work injury. He stated that appellant described her pain as "throbbing" and rated the pain as 6 on a 10-point scale. Dr. Makhlouf's examination revealed extension on the right of 62 degrees and flexion of 65 degrees on the left, versus 70 degrees on the right. He found a 15 degree lack of supination on the right (compared to the left) and full pronation. Ulnar deviation was 35 degrees on the left and 32 degrees on the right. Two-point discrimination was normal. Scaphoid testing was negative. Power measurements on the right were "15-15-12 and 15 pounds," as compared with measurements on the left of "30-30-25 and 25 pounds."

On April 6, 2005 appellant accepted a position as a modified window/distribution clerk, which encompassed Dr. Bednar's 10-pound weight restrictions.

On November 9, 2005 the Office referred the case to the district medical adviser for an assessment of the degree of appellant's impairment for schedule award purposes. In a

November 20, 2005 report, Dr. Ravni Ponnappan reviewed the record and concluded that she had a five percent right upper extremity impairment, based on the fifth edition of the A.M.A., *Guides*. Referencing Figure 16-28, page 467, he determined that appellant had a two percent impairment, based upon a 10 degree loss of flexion. Referencing Figure 16-37, page 474, he found a two percent impairment, based on a 15 degree loss of supination. He found a 1 percent impairment for Grade 4 pain/sensory deficit of 20 percent in the distribution of the right medial antebrachial cutaneous nerve to the ulnar forearm, pursuant to Figure 16-48, page 488 and Table 16-15, page 492. Using the Combined Values Chart on page 604, Dr. Ponnappan determined that appellant had a five percent right upper extremity impairment. He also found that the date of maximum medical benefit was April 15, 2004, six months after appellant's latest surgery.

On January 20, 2006 the Office granted appellant a schedule award for a five percent permanent impairment of the right upper extremity for the period April 15 to August 2, 2004, for a total of 15.6 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] sets forth the number of weeks of compensation to be paid for permanent loss or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[2] However, the Act does not specify the manner in which the percentage of loss of use, of a member is to be determined. For consistent results and to Ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* as the standard to be used for evaluating schedule losses.[3]

The Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[4]

ANALYSIS

The Board finds that this case is not in posture for a decision. After obtaining medical reports and opinions from Dr. Bednar, Dr. Sidell and Dr. Makhlouf, the Office properly directed appellant's file to the district medical adviser for an opinion concerning the percentage of appellant's right upper extremity impairment in accordance with the A.M.A., *Guides*. However, Dr. Ponnappan's opinion is insufficient to establish the degree of appellant's impairment, as he did not report the physical findings on which he relied or provide an adequate rationale for his conclusion.

[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 5 U.S.C. § 8107(c)(19).

[3] 20 C.F.R. § 10.404.

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

In his November 20, 2005 report, Dr. Ponnappan opined that appellant had a five percent upper extremity impairment. However, from the information provided, it is impossible to determine the basis for his conclusion. Dr. Sidell determined that appellant had a two percent impairment due to loss of wrist flexion pursuant to Figure 16-28, page 467 and a two percent impairment for ulnar deviation according to Figure 16-31, page 469. Using the Combined Values Chart, he concluded that she had a four percent impairment of the right upper extremity. Dr. Makhlouf also found that appellant had a four percent right upper extremity impairment. He stated that she described her pain as "throbbing," and rated the pain as 6 on a 10-point scale. Dr. Makhlouf's examination revealed extension on the right of 62 degrees and flexion of 65 degrees on the left, versus 70 on the right. He found 15 degrees lack of supination on the right (compared to the left) and full pronation. Ulnar deviation was 35 degrees on the left and 32 degrees on the right. Two-point discrimination was normal. Scaphoid testing was negative. Power measurements on the right were "15-15-12 and 15 pounds," as compared with measurements on the left of "30-30-25 and 25 pounds."[5] Dr. Ponnappan stated in conclusory fashion that appellant was awarded impairment ratings of 2 percent for a 10 degree loss of flexion; 2 percent for a 15 degree loss of supination; and 1 percent for Grade 4 pain/sensory deficit of 20 percent in the distribution of the right medial antebrachial cutaneous nerve to the ulnar forearm. However, he did not explain how his proposed impairment rating related to the physical findings on which he relied. While he referred to Table 16-15 and Figures 16-28, 16-37 and 16-48 in assessing appellant's impairment, the district medical adviser failed to provide an adequate narrative to explain his impairment rating. The Board notes that, pursuant to Table 16-28, at page 467 of the A.M.A., *Guides*, 65 degrees of flexion of the wrist would rate a 0 percent impairment. Also Figure 16-37 measures loss of supination of the elbow, not the wrist.

The case will be remanded for the Office to seek clarification from its medical adviser regarding appellant's impairment.

CONCLUSION

The Board finds that this case is not in posture for a decision and will be remanded for further development of the medical evidence. After such further development as the Office deems necessary, it should issue an appropriate merit decision.

[5] The Board notes that Dr. Makhlouf served as an impartial medical examiner for purposes of resolving a conflict between the opinions of appellant's treating physician and the second opinion examiner regarding her recommended restrictions. However, he did not serve in that capacity regarding the schedule award issue. Therefore, his opinion is not entitled to special weight.

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: June 23, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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