

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

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CATHERINE M. MASSA, Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
St. Louis, MO, Employer )

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**Docket No. 06-858**

**Issued: June 22, 2006**

*Appearances:*

*Catherine M. Massa, 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 March 3, 2006 appellant filed a timely appeal from the January 12, 2006 merit decision of the Office of Workers' Compensation Programs, finding that she was not entitled to a schedule award for her upper extremities. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has established entitlement to a schedule award for her upper extremities.

**FACTUAL HISTORY**

On February 4, 2003 appellant, then a 40-year-old mail handler, filed an occupational disease claim alleging that on August 20, 2002 she first realized that her carpal tunnel syndrome was caused by continuously picking up sacks, trays and bundles of mail and throwing and dabbing mail. By letter dated February 20, 2003, the Office accepted her claim for right mild carpal tunnel syndrome. In a June 10, 2003 letter, the Office expanded the acceptance of appellant's claim to include bilateral tendinitis of the wrists.

On November 29, 2004 appellant filed a claim for a schedule award. By letter dated December 8, 2004, the Office advised her that a physician's opinion establishing that she had reached maximum medical improvement was needed and to provide a physician's assessment of any permanent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

Appellant submitted a January 17, 2005 medical report of Dr. Stephen M. Benz, a Board-certified orthopedic surgeon. He noted that he had not seen appellant since November 18, 2003. Appellant's symptoms had not changed and she had pain and discomfort in both upper extremities. Dr. Benz reported no objective findings, swelling or duration. Appellant described pain all over and full range of motion. Dr. Benz reviewed the results of a September 2003 functional capacity evaluation. He diagnosed bilateral tendinitis and found that appellant had reached maximum medical improvement. Dr. Benz stated that there was nothing he could do for her and that her complaints of pain and discomfort were subjective. He opined that appellant had roughly a five percent impairment of each upper extremity.

On November 13, 2005 an Office medical adviser found that Dr. Benz's impairment rating was insufficient to support a schedule award as he failed to provide findings regarding her range of motion, strength and sensory changes. The Office medical adviser recommended that appellant be referred to a second opinion physician to determine the extent of permanent impairment based on the A.M.A., *Guides*.

By letter dated November 22, 2005, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Anthony J. Margherita, a Board-certified physiatrist, for a second opinion medical examination.

In a December 12, 2005 report, Dr. Margherita provided a history of appellant's upper extremity problems, medical treatment and family and social background. He noted that she underwent physical therapy for myofascial pain in her wrists in 2004. Dr. Margherita provided essentially normal findings on physical examination with respect to appellant's cervical range of motion, shoulder, elbows and wrists. He also reported normal findings on neurological examination. Dr. Margherita opined that appellant reached maximum medical improvement on September 22, 2003 and the medical treatment she received in 2004 was not related to her accepted employment injuries. Based on the findings of appellant's clinical examination, she did not manifest any evidence of impairment or dysfunction relating to her wrists. She did not manifest any clinical evidence of carpal tunnel syndrome. Appellant had some findings pertaining to her shoulder that suggested the presence of a myofascial condition which was described in her records, but this condition was not an accepted condition and, therefore, was not rated. Dr. Margherita concluded that appellant had no permanent impairment for her right carpal tunnel syndrome and wrist tendinitis.

On December 23, 2005 the Office medical adviser reviewed Dr. Margherita's December 12, 2005 report. He found that appellant reached maximum medical improvement on September 22, 2005. The Office medical adviser noted that Dr. Margherita discussed appellant's range of motion, chronic pain, sensory changes and chronic weakness and had utilized the fifth edition of the A.M.A., *Guides*. Dr. Margherita determined that appellant had a zero percent

impairment of each upper extremity. The Office medical adviser agreed that appellant had no permanent impairment of either the right or left upper extremity.

By decision dated January 12, 2006, the Office found that appellant was not entitled to a schedule award based on Dr. Margherita's December 12, 2005 report and the Office medical adviser's December 23, 2005 opinion.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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 of loss of use.<sup>3</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>4</sup>

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's 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.<sup>5</sup>

### **ANALYSIS**

Appellant contends that she is entitled to a schedule award for permanent impairment of the upper extremities. Appellant has the burden of proof to submit medical evidence establishing that she sustained permanent impairment of either upper extremity according to the protocols of the A.M.A., *Guides*.

In a January 17, 2005 medical report, Dr. Benz stated that she had a five percent impairment to each upper extremity. However, he did not provide an impairment rating based on the A.M.A., *Guides*. Dr. Benz failed to identify the pages, tables and grading schemes of the A.M.A., *Guides* used in making appellant's impairment rating. Therefore, the Board finds that

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> *See supra* note 2.

<sup>5</sup> *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

his report is of diminished probative value and insufficient to establish appellant's entitlement to a schedule award for her upper extremities.

The Office referred appellant to Dr. Margherita for a second opinion medical examination. He submitted a December 12, 2005 report, in which he provided an accurate factual and medical background. Dr. Margherita conducted a thorough medical examination, which found essentially normal range of motion of the wrists and hands on physical examination. He stated that there was a normal neurological examination. Dr. Margherita found that appellant reached maximum medical improvement on September 22, 2003. He made no objective findings of any permanent impairment to appellant's wrists or hands due to the accepted carpal tunnel syndrome and bilateral tendinitis. Although Dr. Margherita reported findings that suggested the presence of a myofascial condition of appellant's shoulder, he properly noted that the condition had not been accepted by the Office and, therefore, was not rated. Dr. Margherita concluded that appellant had no permanent impairment due to her right carpal tunnel syndrome and bilateral wrist tendinitis.

The Board finds that the weight of the medical opinion evidence is represented by Dr. Margherita's opinion that appellant did not sustain any employment-related permanent impairment of her upper extremities, as it is sufficiently rationalized and based on a proper factual and medical background. Moreover, the Office medical adviser agreed with Dr. Margherita's findings.

The Board finds that appellant submitted no rationalized medical evidence that establishes any permanent impairment to her upper extremities causally related to her accepted employment-related right carpal tunnel syndrome and bilateral tendinitis of the wrists.

#### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish entitlement to a schedule award for her upper extremities.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 12, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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