United States Department of Labor
Employees' Compensation Appeals Board

CAFFIE L. JONES, Appellant	)	
and	)	**Docket No. 06-180**
	)	**Issued: May 2, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Petaluma, CA, Employer	)	

Appearances:
Caffie L. Jones, 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 November 1, 2005 appellant filed a timely appeal from the August 2, 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 this decision.

ISSUE

The issue is whether appellant is entitled to a schedule award.

FACTUAL HISTORY

On or about January 1989 appellant, then a 31-year-old distribution clerk, sustained a cumulative trauma to her wrists from repetitive keying and sweeping activities on the letter sorting machine and from grasping mail. The Office accepted her claim for bilateral wrist strain with flexor tenosynovitis, right thoracic outlet syndrome and right elbow epicondylitis. The Office also approved a right thoracic outlet decompression on August 25, 1992 and a right

cubital tunnel release on May 25, 1993.[1] Appellant was placed on light duty beginning March 1989. She had intermittent periods of total disability and was off work continuously from February 1, 1994 to March 6, 1995. Appellant returned to light-duty part-time work on March 7, 1995 and full time the next day, March 8, 1995.

On or about December 1997 appellant sustained a cumulative trauma injury to her neck and upper back while on modified duty. She attributed her condition to increased lifting, writing, sitting and repairing torn mail during the Christmas season. The Office accepted appellant's claim for cervical and thoracic strains.[2] She was off work from April 27 to May 28, 1998 and thereafter resumed modified duty.

On or about January 1999 appellant sustained an additional cumulative trauma to her neck and thoracic area. She attributed her condition to her modified duty, which involved the repair of torn mail and entailed prolonged sitting, flexing of the neck and repetitive hand and arm motion. Appellant also performed moderate lifting (less than 15 pounds), casing (sorting) and grasping activities. The Office accepted her claim for bilateral thoracic outlet syndrome and approved a left thoracic outlet decompression on January 11, 2001.[3] Appellant stopped work on April 17, 2000 and did not return.

On July 6, 2002 Dr. Charles W. Moulton, an attending orthopedic surgeon, reported that appellant had tenderness about the midline interscapular region and mild tenderness about the bilateral trapezial regions. He noted less than full flexion and extension of the cervical spine. Examination of the upper extremities revealed decreased sensation to light touch diffusely. Tinel's and Phalen's tests were positive about both wrists. Tinel's and elbow flexion tests were positive bilaterally. Adson's and Spurling's tests were also positive bilaterally. Dr. Moulton diagnosed probably recurrent bilateral thoracic outlet syndrome.

Dr. Jerrold M. Sherman, an orthopedic surgeon, examined appellant on July 17, 2002 at the Office's request for a second opinion. Appellant complained of constant aching pain in the mid thoracic and lower cervical spine with episodes of right posterior shoulder pain, which worsened with any pushing or pulling or lifting of weight heavier than 10 pounds. She denied any limited motion in the neck, back or joints of the upper extremities. Appellant claimed numbness involving the entire palmar aspect of both the right and left hands with bilateral weakness of grip. Her hand numbness worsened with pushing, pulling, lifting weights heavier than 10 pounds and with using her arms in an overhead position.

Dr. Sherman reported that his examination of the upper extremities revealed a 100-percent normal, pain-free range of motion of the shoulders, elbows, wrists and small joints of the hands and fingers. She easily made a tight fist bilaterally. Biceps and forearms were of equal girth bilaterally. Grip strength was 32 on the right, 40 on the left and without pain. Scars over the right medial posterior elbow, right carpal tunnel, left lower anterior neck and right anterior

[1] OWCP File No. 13-0882520 (master number).

[2] OWCP File No. 13-1150460.

[3] OWCP File No. 13-1200802.

lower neck were well healed and nontender. Dr. Sherman noted normal skin wear patterns on the hands without muscle wasting. There was no tenderness over the carpal tunnels or about the elbows. Tinel's and Phalen's signs were negative.

Dr. Sherman diagnosed status postsurgical releases of bilateral thoracic outlet syndrome, right carpal tunnel and right cubital tunnel without neurologic or mechanical deficit. He reported that appellant was permanent and stationary with no further treatment considered curative. Although appellant's subjective complaints fit no known single neurologic deficit, Dr. Sherman considered them reasonable, given her multiple syndromes and surgeries.

On August 2, 2002 the Office sent a copy of Dr. Sherman's report to Dr. Moulton for his review and comment. It received no reply.

On June 29, 2005 appellant filed a claim for a schedule award.

In a decision dated August 2, 2005, the Office denied a schedule award on the grounds that requirements for entitlement were not met. The Office noted that Dr. Sherman's medical examination on July 17, 2002 -- apparently her most recent -- concluded that there was no neurologic or objective mechanical deficit involving the neck, back or upper extremities.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[4] She must show sufficient cause for the Office to proceed with processing and adjudicating her claim. The Office has the obligation to aid in this process by giving detailed instructions for developing the required evidence.[5]

Section 8107 of the Act[6] 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[7]

To support a schedule award, the file must contain competent medical evidence which: (1) shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred; (2) describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability; and (3) gives a percentage evaluation of the impairment (in terms of the affected member or function, not the body as a whole, except for

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

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.0808.3.a (April 1993).

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

impairment to the lungs). In members with dual functions, the physician should address both functions according to the A.M.A., *Guides*.[8]

The attending physician should make the evaluation whenever possible. The report of the examination must always include a detailed description of the impairment which includes, 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 description of the impairment.[9]

ANALYSIS

Appellant has the burden of proof to establish that she is entitled to a schedule award under section 8107 of the Act, and she has the initial burden of establishing a *prima facie* case.[10] When she filed her claim for a schedule award on June 29, 2005, she submitted no medical evidence to support permanent impairment due to her accepted conditions.

Three years before she filed her claim, Dr. Moulton, her orthopedic surgeon, did report decreased sensation to light touch diffusely and some positive signs. However, Dr. Sherman, the second opinion physician, observed that appellant's subjective complaints fit no known single neurologic deficit. He diagnosed status postsurgical releases of bilateral thoracic outlet syndrome, right carpal tunnel and right cubital tunnel "without neurologic or mechanical deficit." The Office attempted further development of the medical evidence by providing Dr. Moulton an opportunity to respond to Dr. Sherman's findings, but he did not respond. Appellant has submitted nothing further.

The Board finds that appellant has not met her burden of proof. She has not made a *prima facie* case for compensation and has not shown sufficient cause for the Office to continue processing her claim. The Board will therefore affirm the Office's August 2, 2005 decision denying her claim for a schedule award.[11]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she is entitled to a schedule award. She submitted no evidence to support her claim.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.0808.6.b (August 2002).

[9] *Id*. at Chapter 2.0808.6.c(1).

[10] *Milford Martin*, 8 ECAB 631 (1956).

[11] The Office's August 2, 2005 decision, and this opinion of the Board, should give appellant notice of the kind of medical evidence that is required to support a claim for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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