

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

L.R., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, OK, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-202
Issued: April 17, 2007**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 30 2006 appellant filed a timely appeal from a September 12, 2006 decision of the Office of Workers' Compensation Programs' adjudicating her schedule award claim. Pursuant to 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 any permanent impairment of her upper extremities causally related to her accepted medical conditions.

FACTUAL HISTORY

On July 28, 2003 appellant, then a 54-year-old management analyst, filed a traumatic injury claim alleging that on July 14, 2003 she sustained an injury to her back, neck, arms and hands while moving some computer monitors at work. On August 11, 2003 the Office accepted her claim for cervical and lumbar sprains and strains. The Office subsequently accepted bilateral wrist sprains and bilateral carpal tunnel syndrome as causally related to the July 14, 2003

employment injury. In its acceptance letter, the Office noted that Dr. Brent N. Hisey, an attending Board-certified neurosurgeon, was treating appellant for her cervical and lumbar sprains. Dr. Anthony L. Cruse, an attending physician specializing in orthopedic trauma, was treating appellant for her bilateral wrist sprains. On May 22, 2004 appellant filed a claim for a schedule award.

On July 21, 2003 Dr. Cruse provided findings on examination and diagnosed bilateral wrist sprains and strains. On August 4, 2003 he indicated that her wrist pain was worse. He noted that appellant wished to change the physician treating her cervical and lumbar conditions from Dr. C.L. Soo to another physician. On August 25, 2003 Dr. Cruse provided findings on physical examination and indicated that appellant had wrist tenderness, pain and paresthesia. On October 21, 2003 Dr. Cruse stated that appellant's left wrist was about 60 percent better and the right wrist about 50 percent better. However, there was still tenderness at the right carpal and pain with extension of both wrists. Appellant had decreased grip strength bilaterally.

On November 18, 2003 Dr. Mehdi N. Adham, an attending Board-certified plastic surgeon specializing in hand surgery, stated that appellant had tingling and numbness in the right hand with stiffness. On February 3, 2004 he diagnosed carpal tunnel syndrome and cubital tunnel syndrome. On March 30, 2004 Dr. Adham stated that appellant's symptoms on her right hand, pain, discomfort, numbness and tingling, were getting worse. On April 22, 2004 he indicated that appellant's carpal tunnel syndrome and cubital tunnel syndrome was responding to conservative treatment.

On October 14, 2003 Dr. Hisey provided findings on physical examination for appellant's accepted cervical and lumbar sprains and strains. On December 29, 2003 he indicated that appellant should undergo physical therapy for her cervical and lumbar conditions. On March 24, 2004 Dr. Hisey stated that appellant continued to have cervical and lumbar pain. He recommended additional physical therapy.

On June 4, 2004 the Office asked Dr. Hisey to provide a report explaining whether appellant had any upper extremity impairment causally related to her July 14, 2003 employment-related cervical and lumbar spine conditions. On June 14, 2004 Dr. Hisey stated that he released appellant from treatment on May 12, 2004. He found that she had a 15 percent impairment of the whole person based on moderate degenerative changes in the cervical and lumbar spine at C4-5, C5-6 and L5-S1.

The Office referred the case to a district medical adviser on January 13, 2005. The accepted conditions were listed as cervical and lumbar strains, bilateral wrist sprains and bilateral carpal tunnel. The Office asked the district medical adviser to review the June 14, 2004 report from Dr. Hisey in determining appellant's impairment of her upper extremities. On February 2, 2005 an Office medical adviser advised the Office to ask Dr. Hisey whether appellant had any impairment of the upper extremities causally related to her accepted conditions. On February 24, 2005 Dr. Hisey responded that appellant had no upper extremity impairment causally related to her July 14, 2003 employment injury.

On April 14, 2005 an Office medical adviser stated that there was no medical evidence establishing permanent impairment of appellant's upper extremities.

By decision dated April 28, 2005, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish that she had any permanent impairment of her upper extremities causally related to her July 14, 2003 employment injury.

On May 30, 2005 appellant requested an oral hearing that was held on June 26, 2006.

By decision dated September 12, 2006, the Office hearing representative affirmed the April 28, 2005 decision.¹

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

ANALYSIS

The Office accepted appellant's claim for cervical and lumbar sprains and strains, bilateral wrist sprains and bilateral carpal tunnel syndrome. In its acceptance letter, the Office noted that Dr. Hisey was treating appellant for her cervical and lumbar sprains.⁵ Dr. Cruse was treating appellant for her bilateral wrist sprains. The record shows that appellant was treated for her bilateral carpal tunnel syndrome by Dr. Adham.

On August 25, 2003 Dr. Cruse provided findings on physical examination and indicated that appellant had wrist tenderness, pain and paresthesia. On October 21, 2003 he stated that appellant still had tenderness at the right carpal and pain on extension of both wrists. She had

¹ Subsequent to the September 12, 2006 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² 5 U.S.C. § 8107.

20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁵ As noted, Dr. Cruse had indicated that appellant wished to change the physician treating her cervical and lumbar conditions from Dr. Soo. Subsequently, Dr. Hisey began treating appellant for her cervical and lumbar conditions.

decreased grip strength bilaterally. Dr. Adham treated appellant for her bilateral carpal tunnel syndrome and cubital tunnel syndrome.⁶ He found that appellant had tingling and numbness in the right hand with stiffness. On March 30, 2004 Dr. Adham stated that appellant's symptoms on her right hand, pain, discomfort, numbness and tingling, were getting worse. On April 22, 2004 he indicated that appellant's carpal tunnel syndrome and cubital tunnel syndrome were responding to conservative treatment but provided no findings on physical examination.

The record shows that Dr. Hisey was the physician treating appellant's accepted cervical and lumbar sprains and strains. The Office asked him to provide an impairment rating based on the accepted cervical and lumbar spine conditions. The Office did not ask Dr. Cruse or Dr. Adham to provide an impairment rating based on appellant's accepted upper extremity conditions, bilateral wrist sprains and bilateral carpal tunnel syndrome. Dr. Hisey found that appellant had a 15 percent impairment of the whole person based on moderate degenerative changes in the cervical and lumbar spine. While the A.M.A., *Guides* provides for impairment to the individual member and to the whole person, the Act does not provide for permanent impairment for the whole person.⁷ A schedule award is not payable for the loss or loss of use of any member of the body or function that is not specifically enumerated in section 8107 of the Act or its implementing regulation.⁸ Therefore, appellant is not entitled to a schedule award for the whole body based on her accepted cervical and lumbar sprains and strains. The Office subsequently asked Dr. Hisey whether appellant had any impairment of the upper extremities due to her accepted conditions. Dr. Hisey responded that appellant had no upper extremity impairment causally related to her July 14, 2003 employment injury. A district medical adviser stated that appellant had no impairment of the upper extremities based on Dr. Hisey's evaluation.

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required. The Office asked Dr. Hisey for an impairment rating based on the accepted spinal conditions which Dr. Hisey treated. The Office failed to ask Dr. Cruse or Dr. Adham for an impairment rating of appellant's upper extremities based on her bilateral carpal tunnel syndrome and bilateral wrist sprains. Dr. Cruse and Dr. Adham were the physicians treating appellant for her accepted bilateral hand conditions.⁹

It is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁰ The Office has an obligation to see that

⁶ It is unclear why the Office accepted bilateral carpal tunnel syndrome but not cubital tunnel syndrome. On remand, the Office should determine whether appellant's bilateral cubital tunnel syndrome is causally related to her July 14, 2003 employment injury.

⁷ *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *John Yera*, 48 ECAB 243 (1996).

⁸ *Leroy M. Terska*, 53 ECAB 247 (2001).

⁹ The Board notes that the Office hearing representative, in her September 12, 2006 decision, stated that the accepted conditions in this case were cervical and lumbar strains. She failed to mention the accepted conditions of bilateral wrist sprains and bilateral carpal tunnel syndrome.

¹⁰ See *Udella Billups*, 41 ECAB 260 (1989).

justice is done.¹¹ Once the Office undertakes development of the record, it has the responsibility to do so in a proper manner.¹² The Office obtained an impairment rating opinion from Dr. Hisey based only on appellant's accepted spinal conditions. On remand, the Office should further develop the medical evidence as to whether appellant had any permanent impairment of her upper extremities due to her accepted bilateral upper extremity conditions, wrist sprains and carpal tunnel syndrome. On remand, the Office should also determine whether appellant's bilateral cubital tunnel syndrome is causally related to her July 14, 2003 employment injury.

CONCLUSION

The Board finds that this case is not in posture for a decision. On remand, the Office should refer appellant to an appropriate medical specialist for an examination and evaluation as to whether she has any permanent impairment of the upper extremities causally related to her accepted upper extremity conditions. After such further development as the Office deems necessary, it should issue an appropriate final decision on appellant's entitlement to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2006 is remanded for further action consistent with this decision.

Issued: April 17, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *John J. Carlone*, 41 ECAB 354 (1989).

¹² *See Henry G. Flores, Jr.*, 43 ECAB 901 (1992).