

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

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**F.J., Appellant**

**and**

**U.S. POSTAL SERVICE, GENERAL MAIL  
FACILITY, Baton Rouge, LA, Employer**

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**Docket No. 07-162  
Issued: June 20, 2007**

*Appearances:*  
*Appellant, pro se*  
*No appearance, for the Director*

Oral Argument May 17, 2007

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 23, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 26, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has an employment-related permanent impairment of a scheduled member of the body entitling her to a schedule award under 5 U.S.C. § 8107; and (2) whether appellant has established disability for intermittent periods from July 29 to August 4, 2004 and June 16 to August 31, 2005.

**FACTUAL HISTORY**

On September 22, 2000 appellant, then a 34-year-old mail processor, filed an occupational claim (Form CA-2) alleging that she developed bilateral wrist tendinitis as a result of her federal employment. The Office accepted bilateral wrist tenosynovitis and right carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on September 6, 2002 and

returned to work in a light-duty position. By decision dated April 17, 2003, the Office determined her actual earnings represented her wage-earning capacity pursuant to 5 U.S.C. § 8115.

In a report dated March 18, 2003, Dr. Gregory Ward, a physiatrist, opined that appellant had a 29 percent whole body impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The Office referred appellant for a second opinion examination by Dr. Christopher Cenac, an orthopedic surgeon. By report dated August 11, 2003, Dr. Cenac provided results on examination and opined that appellant had no objective basis for an impairment rating. By decision dated September 2, 2003, the Office found that appellant was not entitled to a schedule award.

Appellant continued to receive treatment from Dr. Theodore Knatt, an attending orthopedic surgeon. In a report dated July 6, 2004, Dr. Knatt stated that appellant had exacerbation of her work injuries and recent examinations revealed worsening of her condition due to repetitive motion. He stated that appellant should permanently work within the work restrictions and job duties of the modified sales clerk position. Dr. Knatt reported that appellant could not perform duties requiring repetitive use of the hands and performing such work caused her to receive periodic treatment. He completed an "excuse slip" dated July 29, 2004 indicating that appellant could return to work on August 4, 2004. Dr. Knatt also completed a slip for August 11 to 16, 2004, stating that appellant was "incapacitated from aggravated work[-]related injury." Appellant filed claims for compensation (Form CA-7) for the periods July 29 to August 3 and August 11 to 15, 2004.

With respect to the schedule award issue, an Office hearing representative found in an August 2, 2004 decision that a conflict existed between Dr. Ward and Dr. Cenac. The case was remanded for resolution of the conflict.

By decision dated September 28, 2004, the Office denied the claim for compensation from July 29 to August 3 and August 11 to 15, 2004.

To resolve the conflict regarding permanent impairment, appellant was referred to Dr. Robert Ruel, Jr., a Board-certified orthopedic surgeon. In a report dated October 12, 2004, Dr. Ruel provided a history and results on examination. He noted that there were subjective complaints of pain over the dorsum of both hands and the median nerve distribution, but pain was not present in those areas of examination. Dr. Ruel stated that appellant had received excellent treatment and a September 29, 2004 electromyogram (EMG) revealed no compression nerve neuropathy. He further stated: "Likewise there is no objective evidence that she has residual tenosynovitis or constructive tenosynovitis. Therefore, there is no residual permanent impairment as a result of her injury."

By decision dated November 9, 2004, the Office determined that appellant was not entitled to a schedule award based on the weight of the medical evidence. She requested a hearing with respect to her claim. A hearing before an Office hearing representative was held on April 6, 2005 with respect to both a schedule award and the denial of compensation for wage loss from July 29 to August 15, 2004.

In a decision dated July 7, 2005, the Office hearing representative affirmed the November 9, 2004 Office decision denying a schedule award. In a separate decision dated July 7, 2005, the hearing representative affirmed the September 28, 2004 decision denying compensation for wage loss from July 29 to August 3 and August 11 to 15, 2004.

Appellant requested reconsideration and submitted additional evidence. In a report dated June 23, 2005, Dr. Darryl Peterson, an orthopedic surgeon, diagnosed left wrist de Quervain's tenosynovitis and indicated that appellant was tentatively scheduled for surgery. In a July 11, 2005 report, Dr. Peterson indicated that appellant continued to have bilateral wrist discomfort, left worse than right. Appellant underwent left wrist tenosynovectomy surgery on September 30, 2005.

By decision dated December 23, 2005, the Office denied modification of the denial of a schedule award. The Office noted that appellant had submitted reports from Dr. Peterson and medical evidence with respect to the left wrist surgery. According to the Office, Dr. Ruel's opinion was entitled to special weight and established that appellant did not have a ratable permanent impairment under the A.M.A., *Guides*.

In a separate decision dated December 23, 2005, the Office reviewed the case on its merits and denied modification with respect to compensation for wage loss from July 29 to August 15, 2004. By decision dated February 7, 2006, the Office found that appellant was not entitled to compensation from June 16 to 24 and July 1 to August 31, 2005.

Appellant again requested reconsideration of the denial of a schedule award by letter dated June 26, 2006. By decision dated July 26, 2006, the Office reviewed the case on its merits and denied modification.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>1</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>2</sup>

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>2</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>3</sup> *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

## **ANALYSIS -- ISSUE 1**

The Office found a conflict on the issue of a schedule award between an attending physician, Dr. Ward and a second opinion referral physician, Dr. Cenac. In accordance with 5 U.S.C. § 8123(a), appellant was referred to Dr. Ruel.<sup>4</sup> Although appellant argued that Dr. Ruel was not properly selected as a referee examiner, there is no probative evidence supporting her contention. Dr. Ruel provided a complete report, discussing the relevant history and results on examination. He noted that the EMG did not show compression neuropathy and he found no objective evidence of a continuing tenosynovitis. Dr. Ruel provided an unequivocal opinion that appellant did not have an employment-related permanent impairment under the A.M.A., *Guides*. His report was entitled to special weight and constituted the weight of the medical evidence on the issue.

Following Dr. Ruel's report, appellant submitted additional evidence. In its December 23, 2005 decision, the Office noted that appellant had submitted additional evidence, including evidence regarding left wrist surgery on September 30, 2005. The Office, however, failed to properly consider the evidence with respect to the schedule award issue. The only finding made by the Office was that Dr. Ruel represented the weight of the evidence. Since appellant submitted new evidence, the Office must consider this evidence on its own and make a finding as to whether it establishes any employment-related permanent impairment.<sup>5</sup>

Accordingly, the case will be remanded to the Office for proper consideration of the evidence of record. After such development as the Office deems necessary, it should issue an appropriate decision.

## **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under the Act<sup>6</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>8</sup>

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<sup>4</sup> 5 U.S.C. § 8123(a) provides that if there is a disagreement between a physician making the examination for the United States and the claimant's physician, a third physician shall be appointed by the Secretary to make the examination. This is called a referee examination. See 20 C.F.R. § 10.321(b).

<sup>5</sup> A claimant who submits new medical evidence regarding his or her current condition with respect to a permanent impairment claim is entitled to a merit decision on the evidence. See *Linda T. Brown*, 51 ECAB 115 (1999).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> 20 C.F.R. § 10.5(f); see *e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>9</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>10</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>11</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>12</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>13</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The first period of disability at issue is July 29 to August 3 and August 11 to 15, 2004. In this regard the medical evidence does not contain a reasoned medical opinion on disability for this period causally related to the employment injuries. Dr. Knatt provided brief notes on July 29 and August 11, 2004 that appellant was disabled, without providing any findings on examination. He did not provide a rationalized medical opinion that appellant was disabled for her light-duty position due to an employment injury on the dates claimed. The Board, therefore, finds that appellant did not meet her burden of proof.

With respect to the claimed disability from June 16 to 24 and July 1 to August 31, 2005, the record again does not contain a rationalized medical opinion on employment-related disability. Dr. Peterson diagnosed left de Quervain's tenosynovitis on June 23, 2005, without

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<sup>9</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>13</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>14</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

discussing disability for work or the relationship of the diagnosed condition to the employment injuries. His medical reports do not establish that appellant was disabled for her light-duty job during the periods claimed in 2005 as result of an employment injury. It is appellant's burden of proof and the Board finds that she did not meet her burden of proof.

**CONCLUSION**

On the issue of a schedule award under 5 U.S.C. § 8107, the case is remanded for proper consideration of the evidence submitted after July 7, 2005. With respect to the claimed periods of disability, appellant did not meet her burden of proof.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs regarding a schedule award dated July 26, 2006 and December 23, 2005 are set aside and the case remanded for further action consistent with this decision of the Board. The decision dated December 23, 2005 with respect to claimed periods of disability in 2004 and the February 7, 2006 decision regarding disability in 2005, are affirmed.

Issued: June 20, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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