United States Department of Labor
Employees' Compensation Appeals Board

S.R., Appellant	)	
and	)	**Docket No. 07-901**
	)	**Issued: September 6, 2007**
DEPARTMENT OF THE ARMY,	)	
Fort Campbell, KY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 February 14, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 25, 2007 decision, which affirmed a June 8, 2006 schedule award.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant has met her burden of proof in establishing entitlement to a schedule award.

[1] The record contains a separate decision, also dated June 8, 2006, which denied appellant's request to change physicians and a July 17, 2006 decision, which denied reconsideration related to appellant's request to change physicians. The record also contains a July 14, 2006 decision, which denied appellant's request for a schedule award. However, appellant's representative has not indicated that they are appealing these decisions. *See* 20 C.F.R. § 501.3(c). The record also contains an October 6, 2006 decision, in which the Office reduced appellant's compensation as the position of a nurse supervisor was medically and vocationally suitable. However, appellant requested reconsideration on December 5, 2006 and the Office has not rendered a final decision. Thus, there is no appeal with respect to any interlocutory matter. *See* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On January 28, 2005 appellant, then a 46-year-old operating room nurse, filed an occupational disease claim alleging pain to her right and left thumb and wrist while in the performance of duty. She first realized the condition was related to her employment on January 31, 2004. On March 22, 2005 the Office accepted appellant's claim for bilateral de Quervain's syndrome. The Office authorized a left wrist de Quervain tenosynovitis release. Appellant received appropriate compensation benefits.

In a note dated November 2, 2005, appellant's treating physician, Dr. Keith Starkweather, a Board-certified orthopedic surgeon, opined that she could return to modified duty and provided restrictions. Dr. Starkweather opined that appellant had reached maximum medical improvement and had an impairment of zero percent. He noted that, while she had discomfort in her wrists, she had good mobility in her wrists. In a November 10, 2005 work capacity evaluation report, Dr. Starkweather opined that appellant could return to her previous position working eight hours per day with permanent restrictions of 20 to 25 pounds of occasional force, and 10 to 25 pounds of frequent force, and 10 pounds of consistent force. He also provided restrictions which included limited typing of 4 hours per day, with 1-hour typing periods followed by 15-minute breaks.

On February 3, 2006 appellant filed a claim for a schedule award.

In a report dated February 23, 2006, Dr. Starkweather opined that he could not offer appellant an assessment based on her pain. He noted that the functional capacity evaluation of May 16, 2005 demonstrated that she had a medium work physical capacity and could exert 20 to 50 pounds of force. Dr. Starkweather indicated that appellant could exert 10 to 25 pounds of force frequently with no greater than up to 10 pounds of force constantly to move objects. He noted that it was "difficult … to apply an impairment to an individual in which [he could not] demonstrate objective physical findings." Dr. Starkweather indicated that he had utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (5th ed. 2001) (A.M.A., *Guides*). He noted that the A.M.A., *Guides* did not provide for an impairment when an individual had a negative magnetic resonance imaging (MRI) scan and full range of motion of the wrist despite poor grip strength. Dr. Starkweather indicated that the A.M.A., *Guides* did not allow grip strength impairment in an individual with pain and subsequent grip weakness.

In a June 6, 2006 report, the Office medical adviser opined that an impairment rating could be made on the basis of decreased grip strength according to Chapter 16.8b of the A.M.A., *Guides*.[2] He indicated that it was to be used with Tables 16-32 and 34.[3] The Office medical adviser indicated that appellant had 50 pounds or 21.2 kilograms in the right hand and 60 pounds

[2] A.M.A., *Guides* 508.

[3] *Id*. at 509.

or 27.3 kilograms on the left hand. He noted that applying the formula on page 509[4] would result in a strength loss index of zero and resulted in a zero percent impairment.[5]

By decision dated June 8, 2006, the Office denied appellant's claim for a schedule award.[6]

By letter dated June 27, 2006, appellant requested reconsideration and enclosed additional evidence. She alleged that her claim should be expanded to include cervical radiculopathy. In a June 1, 2006 report, Dr. W. Copper Beazley, a Board-certified orthopedic surgeon, diagnosed bilateral cervical radiculopathy with arthritis at the C5 level. He opined that it would be very difficult for appellant to perform her duties as a nurse with her limitations. On June 20, 2006 Dr. Beazley diagnosed a cervical herniation and opined that appellant needed a 20-pound lifting restriction at work and might eventually need surgery on her neck. A June 12, 2006 MRI scan of the cervical spine, read by Dr. Sean T. Willgruber, a Board-certified orthopedic surgeon, diagnosed discogenic disease with discogenic changes, spinal canal narrowing, a broad-based disc protrusion at C5/6 superimposed on discogenic disease which caused moderate spinal cord and mild neuroforaminal narrowing (left greater than right) and small left central herniation at C3/4 without cord or nerve root impingement.

By letter dated September 26, 2006, appellant requested reconsideration. She enclosed an August 3, 2006 report from Dr. Starkweather, who noted that appellant had severe bilateral de Quervain's tenosynovitis. Dr. Starkweather determined that appellant had good range of motion of the wrist, but significant pain and weakness of grip. He noted that she had a painful condition and should undergo a functional capacity evaluation to see if there was any change in her functional capacity "because she continues to hurt." Dr. Starkweather opined that appellant "probably has a 10 [percent] right and left upper extremity grip strength impairment, even though this does go outside the guidebook because this is grip strength impairment that is secondary to a painful condition." He indicated that it really was "not a fair evaluation for her." Dr. Starkweather recommended a functional capacity evaluation, which appellant underwent on August 21, 2006.[7]

In a September 6, 2006 report, Dr. Starkweather noted that he was going to diminish appellant's work capacity to a forward knuckle lift of 25 pounds occasional, 10 pounds frequent, knuckle to shoulder of 20 pounds, occasional and 20 pounds frequent, carrying of 15 pounds occasionally and 10 pounds frequently. He indicated that this was "basically to maintain diminished carrying capacities which had decreased over the last few years…." Dr. Starkweather indicated that appellant could not write for extended periods and that she had a

[4] *Id*.

[5] The Office medical adviser also determined that it was reasonable to request a new functional capacity evaluation and opined that the treatment that appellant received from her treating physician was reasonable, necessary and adequate.

[6] In a separate decision also dated June 8, 2006, the Office denied appellant's request for a change of physicians; however, as noted above, appellant has not appealed this decision.

[7] Appellant was found capable of medium work.

weight lifting limitation because of pain. He determined that was the reason for appellant's diminished capacity. Dr. Starkweather also indicated that typing caused her pain, that she had trouble with standing and walking and that her back was problematic. He opined that she needs to be in a more sedentary work position.

In a December 1, 2006 report, Dr. Paul R. McCombs, a Board-certified neurological surgeon, indicated that appellant should not sit for more than one half hour at a time without a break, avoid heavy lifting in excess of 12 pounds on any occasion or 10 pounds of a repetitive basis. He also recommended that appellant should avoid standing for more than a half hour without a break and opined that "[a]ny type of repetitive twisting, bending or stooping should be guarded against."

On January 23, 2007 the Office medical adviser noted appellant's history of injury and treatment. He indicated that it included a left wrist tendon release for de Quervain's tenosynovitis on August 19, 2005 and that she regained full wrist mobility with great pain relief postoperatively. Appellant underwent a functional capacity evaluation on August 21, 2006 which "failed to demonstrate any findings for rating purposes including manual muscle testing and range of motion testing on the wrists." The Office medical adviser also noted that appellant had a three-level anterior cervical discectomy fusion on October 25, 2006 for three herniated discs discovered on January 2006. This was not considered part of the accepted condition. The medical adviser opined that it may be the cause of some of the pain symptoms in the upper extremities of which appellant was complaining. He concluded that appellant had no impairment to either upper extremity.

In a January 25, 2007 decision, the Office denied modification of the June 8, 2006 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[8] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[9] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[10] The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[11]

[8] 5 U.S.C. §§ 8101-8193.

[9] 5 U.S.C. § 8107.

[10] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[11] 20 C.F.R. § 10.404.

ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to a schedule award in accordance with the fifth edition of the A.M.A., *Guides*. The Board finds that appellant did not submit any medical reports from a physician explaining how her accepted conditions for bilateral de Quervain's syndrome and the left wrist de Quervain tenosynovitis release caused a permanent impairment to any scheduled member of her upper extremities.

In a treatment note dated November 2, 2005, Dr. Starkweather, a Board-certified orthopedic surgeon, opined that appellant had reached maximum medical improvement and had zero percent impairment. He explained that, despite the discomfort to her wrists, appellant had good mobility in her wrists. On February 23, 2006 Dr. Starkweather opined that he could not offer appellant an assessment based on her pain. He noted that appellant had a medium work physical capacity and could exert 20 to 50 pounds of force and that she could exert 10 to 25 pounds of force frequently with no greater than up to 10 pounds of force constantly to move objects. Dr. Starkweather noted that it was "difficult to apply impairment to an individual in which [he could not] demonstrate objective physical findings. He indicated that he had utilized the A.M.A., *Guides* but it did not provide for an impairment when an individual had a negative MRI scan and full range of motion of the wrist despite poor grip strength. Dr. Starkweather noted that the A.M.A., *Guides* did not allow a grip strength impairment in an individual with pain and subsequent grip weakness. The Board notes that this report does not provide any support that appellant is entitled to a schedule award as Dr. Starkweather opined that he could not note her impairment. In an August 3, 2006 report, he noted that appellant had continued problems and significant grip strength impairment. Dr. Starkweather opined that appellant "probably has a 10 percent right and left upper extremity grip strength impairment," but noted that this rating went outside the guidebook because it was rating grip strength impairment secondary to a painful condition. He indicated that it really was "not a fair evaluation for her." However, Dr. Starkweather's opinion is speculative. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.[12] Furthermore, Dr. Starkweather did not apply the protocols of the A.M.A., *Guides.* The Board has held that not only should the physician's opinion explain the physician's reasoning it should include a specific reference to the A.M.A., *Guides.*[13] Thus, this report does not support entitlement to a schedule award.

In a June 6, 2006 report, the Office medical adviser noted that a rating impairment could be made on the basis of decreased grip strength according to Chapter 16.8b of the A.M.A., *Guides*.[14] He noted that it was to be used with Tables 16-32 and 34.[15] The Office medical

[12] *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[13] *See Paul R. Evans, Jr*., 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed). *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

[14] A.M.A., *Guides* 508.

[15] *Id*. at 509.

adviser indicated that appellant had 50 pounds or 21.2 kilograms in the right hand and 60 pounds or 27.3 kilograms on the left hand and referred to page 509.[16] He concluded that appellant would be entitled to a strength loss index of zero and this resulted in a zero percent impairment.[17] The Board finds that this report does not indicate that appellant is entitled to any schedule award.

In a January 23, 2007 report, the Office medical adviser noted that appellant had regained full wrist mobility following surgery. Appellant's functional capacity evaluation of August 21, 2006 failed to demonstrate any findings for rating purposes including manual muscle testing and range of motion testing on the wrists. The Office medical adviser noted that appellant had an cervical surgery on October 25, 2006 for three herniated discs, that were not an accepted condition. He opined that her cervical condition might be the cause of appellant's pain symptoms in the upper extremities. The medical adviser concluded that appellant had no impairment to the upper extremities.

As noted above, the Office evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Appellant has the burden of proof to submit medical evidence supporting that she has permanent impairment of a schedule member of the body.[18] As such, evidence has not been submitted and appellant has not established entitlement to a schedule award.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a schedule award.

[16] *Id*.

[17] The Office medical adviser also determined that it was reasonable to request a new functional capacity evaluation and opined that the treatment that appellant received from her treating physician was reasonable, necessary and adequate.

[18] *See Annette M. Dent*, 44 ECAB 403 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 25, 2007 is affirmed.

Issued: September 6, 2007
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