

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

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C.D., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Philadelphia, PA, Employer )

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**Docket No. 07-1754  
Issued: February 8, 2008**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On June 20, 2007 appellant filed a timely appeal from a June 11, 2007 decision of the Office of Workers' Compensation Programs that denied her schedule award claim and request for expansion of accepted conditions. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof in establishing that she was entitled to a schedule award for permanent partial impairment of the right upper extremity and bilateral lower extremities; and (2) whether her right shoulder rotator cuff impingement syndrome, lumbosacral degenerative disc disease, lumbar radiculopathy and left ankle strain are causally related to her accepted August 21, 2004 traumatic injury.

**FACTUAL HISTORY**

On August 21, 2004 appellant, then a 50-year-old letter carrier, sustained injury to her back, neck and face, leg and ankle, shoulder and bilateral arm injuries after being struck by a

moped. She stopped work on August 24, 2004 returned to limited duty on September 29, 2004. The Office accepted appellant's claim for lumbar strain, right wrist contusion and right ankle sprain/strain.

On August 23, 2004 appellant was treated by Jessica Hoch, a physician's assistant, who diagnosed sprains and strains of the lumbosacral and thoracic regions, ankle, foot and wrist. In a report dated the same day, Ms. Hoch noted no gross deformity or soft tissue swelling and generally normal results on physical examination of appellant's lumbar spine, right wrist and bilateral ankles, "all secondary to subjective complaints of pain." Appellant also provided August 24 and September 1, 2004 reports from her treating physician, Dr. Robert H. Woodson, a family practitioner. He diagnosed multiple severe contusions, right thumb and wrist traumatic synovitis and contusion, left lumbosacral contusion with sprain/strain, left ankle contusion and sprain, bilateral arm contusions and post-traumatic cephalgia and anxiety. On October 15, 2004 Dr. Woodson advised that appellant sustained multiple sprain/strain and bruising injuries for which the healing process could be unpredictable and protracted.

On July 10, 2006 appellant filed a schedule award claim.

By decision dated September 26, 2006, the Office denied appellant's schedule award claim on the grounds that the medical evidence did not establish that she sustained any permanent impairment of a schedule member or function of the body.

In an October 23, 2006 x-ray report of appellant's left and right ankles, Dr. Douglas Parrillo, a radiologist, diagnosed spurring at the plantar surface of the calcaneal bone at the attachment of the left Achilles tendon, as well as on the calcaneal bone itself and spurring dorsal to the first left cuneiform bone suggestive of an old tendon injury but no fractures, dislocations or soft tissue abnormalities. In an October 24, 2006 lumbar magnetic resonance imaging (MRI) scan, Dr. Howard C. Hutt, a Board-certified radiologist, diagnosed disc desiccation at L4-5 and L5-S1 with herniations at both levels, but without stenosis and without increases in the herniations upon flexion and extension. On November 2, 2006 Dr. Robert Diamond, a Board-certified diagnostic radiologist, reported that an October 31, 2006 weight bearing resonance scan of appellant's right shoulder revealed trace amounts of fluid in the glenohumeral joint, hypertrophic changes in the acromioclavicular joint, laterally down sloping acromion and supraspinatus and subscapularis tendinitis.

On January 5, 2007 appellant requested reconsideration of the September 26, 2006 decision. She provided an October 12, 2006 impairment rating from Dr. George Rodriguez, a Board-certified physiatrist, who noted appellant's complaints of right wrist, low back and bilateral ankle pain. Dr. Rodriguez diagnosed lumbosacral sprain/strain, preexisting and aggravated lumbar degenerative disc disease, lumbar radiculopathy, right hand and wrist contusions, bilateral ankle strain and right rotator cuff impingement syndrome and found that appellant reached maximum medical improvement on December 31, 2004. He addressed causal relationship noting that appellant's medical records and physical examination were consistent and that he did not find evidence of symptom magnification and concluded, "my examination of [appellant], as well as my review of her records, has convinced me that the above-listed diagnoses are, in fact, attributable to the work-related injuries" of August 21, 2004. Utilizing the

American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>1</sup> fifth edition (A.M.A., *Guides*), Dr. Rodriguez determined that appellant had seven percent right leg impairment based on four percent for sensory nerve impairment pursuant to Table 15-2,<sup>2</sup> Figure 15-1<sup>3</sup> and Tables 15-15<sup>4</sup> and 15-18<sup>5</sup> and three percent impairment for pain pursuant to Chapter 18, section 18.3(d).<sup>6</sup> He concluded that appellant had four percent impairment of the right arm, based on two percent impairment for rotator cuff impairment syndrome pain and two percent impairment for wrist and hand pain under section 18.3(d).<sup>7</sup> Dr. Rodriguez found that appellant had one percent left leg impairment for ankle pain based on section 18.3(d). Dr. Rodriguez determined that appellant's total combined impairment was 12 percent.

The Office requested that a medical adviser address appellant's impairment rating and whether to expand acceptance to include lumbar degenerative disc disease, lumbar radiculopathy, left ankle strain and right shoulder impingement syndrome. In a February 16, 2007 report, the Office medical adviser recommended referring appellant for a second opinion examination. He noted that Dr. Rodriguez's impairment rating did not comport with the A.M.A., *Guides* and advised against accepting any new medical conditions.

In reports dated November 7, 2006 to May 15, 2007, Dr. Rodriguez diagnosed lumbosacral sprain/strain, right hand/wrist contusion, right ankle strain, right rotator cuff impingement syndrome, right tendinosis/tendinopathy, lumbar herniated nucleus pulposus and chronic pain. He stated that appellant's diagnosed conditions were secondary to her August 21, 2004 work injury. He reiterated his opinion on causal relationship in his subsequent reports.

On May 11, 2007 the Office referred appellant, together with a statement of accepted facts, to Dr. Kevin Hanley, a Board-certified orthopedic surgeon, for a second opinion examination. In a May 25, 2007 report, Dr. Hanley noted the history of appellant's work injury and her ongoing complaints of back, right wrist and right ankle injury. He noted that x-rays taken at the time of injury indicated that she did not break any bones or sustain any osseous injuries. Dr. Hanley stated that, although the "findings at the time of the original injury were relatively minor," appellant continued to claim residuals three years later. The x-rays taken at the time of injury showed that appellant had apparently preexisting degenerative disease in the foot and ankle area. Upon physical examination, Dr. Hanley noted generally normal findings, full strength and no swelling and "nothing to suggest any significant problem in the right lower extremity" as well as normal findings other than complaints of discomfort in the right hand and wrist areas. He also found that appellant's lumbar spine range of motion was somewhat limited.

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed.).

<sup>2</sup> *Id.* at 376, Table 15-2.

<sup>3</sup> *Id.* at 377, Figure 15-1.

<sup>4</sup> *Id.* at 424, Table 15-15.

<sup>5</sup> *Id.* at 424, Table 15-18.

<sup>6</sup> *Id.* at 573, § 18.3(d).

<sup>7</sup> *Id.*

Dr. Hanley diagnosed contusion and sprain/strain of the right wrist, contusion and sprain/strain of the right ankle and chronic low back pain. Because his physical examination findings concerning appellant's right arm and right leg were normal, Dr. Hanley concluded that there was no ratable impairment and that Dr. Rodriguez's impairment rating for those schedule members did not comport with the A.M.A., *Guides*. Dr. Hanley explained: "Dr. Rodriguez utilized mostly Chapter 18, the pain chapter and came up with numerical ratings which are clearly inappropriate and not allowed for by the A.M.A., *Guides*. Pain can be utilized to justify an 'add' on to an already determined disability up to three percent but in this particular case that is not the way it was done." Dr. Hanley also recommended that the "accepted conditions should not be expanded as I find nothing going on in the shoulder as a consequence of [appellant] injury and that would not be causally related to her claim at this time." He concluded that appellant's accepted conditions had "fully resolved and I believe that her objective symptomatology is not validated or supported by objective findings." In a work capacity evaluation prepared the same day, he advised that appellant had reached maximum medical improvement and could work her usual job.

By decision dated June 11, 2007, the Office denied appellant's schedule award claim and her request to expand the accepted conditions.

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

The schedule award provision of the Federal Employees' Compensation Act<sup>8</sup> and its implementing regulations<sup>9</sup> sets 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant did not meet her burden of proof in establishing that she sustained impairment to the right arm, right leg or left leg due to the accepted injury.

With regard to the right arm, Dr. Rodriguez determined that appellant had a total of four percent impairment: two percent for right rotator cuff impingement syndrome pain and two percent for wrist and hand pain, based on section 18.3(d), page 573, of the A.M.A., *Guides*.<sup>11</sup> The Board notes that section 18.3(d) of the A.M.A., *Guides* instructs a physician to first conduct a body or organ based impairment rating and determine an impairment percentage, at which

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<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404 (1999).

<sup>10</sup> *See id.*

<sup>11</sup> A.M.A., *Guides*, 573, § 18.3(d).

point the additional percentage for pain may be added on at the physician's discretion.<sup>12</sup> However, section 18.3(b), at page 571, states that examiners should not use Chapter 18 to rate pain-related impairment "for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the A.M.A., *Guides*."<sup>13</sup> The Board has also recognized that physicians should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.<sup>14</sup> Dr. Rodriguez did not provide an impairment rating based on either the body or organ systems, but rather based the rating entirely on pain, against the direction of sections 18.3(b) and (d). His rating of two percent impairment for right shoulder rotator cuff impingement syndrome pain and wrist and hand pain does not conform to the A.M.A., *Guides* or Office protocols. The record reflects that the Office has not accepted right rotator cuff impingement. The only right arm condition accepted by the Office was right wrist contusion. Dr. Rodriguez did not adequately explain why the accepted wrist contusion caused permanent impairment. Although Dr. Rodriguez opined that the right shoulder rotator cuff impingement syndrome was related to appellant's work injury, he did not provide sufficient rationale to establish that appellant's rotator cuff impingement syndrome was work related. His opinion is insufficient to establish any employment-related permanent impairment of the right arm.

With regard to the left leg, the Office did not accept a left ankle condition. The only lower extremity condition accepted by the Office as employment related was appellant's right ankle sprain. Therefore, Dr. Rodriguez's rating of one percent impairment for left ankle pain is inappropriate under the A.M.A., *Guides*.<sup>15</sup> As to the right leg, Dr. Rodriguez determined that appellant had four percent impairment due to sensory deficit, based on Tables 15-2,<sup>16</sup> 15-15<sup>17</sup> and 15-18<sup>18</sup> and Figure 15-1<sup>19</sup> of the A.M.A., *Guides* and added an additional three percent for pain under section 18.3(d).<sup>20</sup> However, he did not provide a full description of the factors that

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 571, § 18.3(b).

<sup>14</sup> *A.G.*, 58 ECAB \_\_ (Docket No. 07-677, issued June 21, 2007), citing *Frantz Ghassan*, 57 ECAB \_\_ (Docket No. 05-1947, issued February 2, 2006) (appellant's physician improperly attributed three percent left leg impairment to Chapter 18 of the A.M.A., *Guides* but the physician did not explain why this pain-related impairment could not be adequately rated by applying Chapter 17 of the A.M.A., *Guides*).

<sup>15</sup> See *Veronica Williams*, 56 ECAB 367 (2005) (where the Board held that the Office properly denied appellant's schedule award claim where the condition for which she claimed the schedule award was not accepted as employment related and appellant had not met her burden of proof in establishing that it was causally related to her employment or her accepted conditions). Matters pertaining to causal relationship of conditions not accepted by the Office are further addressed in the issue two analysis.

<sup>16</sup> *Id.* at 376.

<sup>17</sup> *Id.* at 424.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 377.

<sup>20</sup> *Id.* at 573.

led him to his impairment rating and did not explain how the findings on examination supported an impairment rating. He noted that appellant's ankle range of motion was full and complete. Dr. Rodriguez also included an additional three percent impairment for pain based on section 18.3(d) of the A.M.A., *Guides*.<sup>21</sup> However, he did not explain why appellant's pain-related impairment could not be adequately addressed by applying the body and organs impairment rating methods in other chapters. Moreover, having provided a sensory rating under Chapter 15, Dr. Rodriguez did not explain why an additional rating for pain under Chapter 18 would be warranted. In essence, his rating of right leg impairment rated sensory loss (pain) twice.<sup>22</sup>

The Office referred appellant to Dr. Hanley for a second opinion examination. Dr. Hanley examined appellant and provided a detailed, rationalized medical report on May 25, 2007. He noted that appellant did not break any bones or sustain any osseous injuries at the time of injury. She continued to claim residuals from her strains and contusions more than three years after the accident. Dr. Hanley found that appellant's arms and right leg were generally normal on examination and did not support any impairment rating under the A.M.A., *Guides*. He also explained that the use of Chapter 18 was improper as there was no objective basis upon which to base an impairment rating and appellant's examination did not support an additional impairment rating for pain. Dr. Hanley's report provides no basis upon which permanent impairment of a schedule body member may be attributed to the August 21, 2004 employment injury.

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

When an employee claims that he or she sustained an injury in the performance of duty, the employee must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The employee must also establish that such event, incident or exposure caused an injury. Once an employee establishes an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, which the employee claims compensation, is causally related to the accepted injury.<sup>23</sup> To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.<sup>24</sup> Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.<sup>25</sup>

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

The Office accepted that appellant sustained lumbar strain, right wrist contusion and right ankle sprain/strain at work when she was struck by a moped. She also claimed injuries to her

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<sup>21</sup> *Id.*

<sup>22</sup> *See E.P.*, 58 ECAB \_\_\_ (Docket No. 07-1244, issued September 25, 2007).

<sup>23</sup> *See Leon Thomas*, 52 ECAB 202 (2001).

<sup>24</sup> *See Gary J. Watling*, 52 ECAB 278 (2001).

<sup>25</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

face, neck and right shoulder. The Office found the medical evidence did not support these injuries.

The Board finds that appellant has not presented sufficient evidence to warrant expansion of her claim to include right shoulder rotator cuff impingement syndrome, lumbosacral degenerative disc disease, lumbar radiculopathy or left ankle strain, as accepted conditions. She provided numerous progress reports from Dr. Rodriguez, who diagnosed right shoulder rotator cuff impingement syndrome, but did not provide a rationalized medical opinion explaining how this condition was related to her employment injury on August 21, 2004. Rather, Dr. Rodriguez simply noted the diagnosis and appellant's history of injury and discussed physical examination findings and the course of her treatment. He did not adequately explain the basis for attributing her additional claimed conditions to the August 21, 2004 accident, nor did he explain why he believed they were caused by the accepted accident. Dr. Rodriguez' October 12, 2006 report and impairment rating merely noted that appellant's medical records and physical examination were consistent and that he did not find any evidence of symptom magnification. However, this statement is insufficient to establish a causal relationship between appellant's employment injury and accepted conditions and her claimed right shoulder rotator cuff impingement syndrome, lumbosacral degenerative disc disease, lumbar radiculopathy or left ankle strain. Dr. Rodriguez did not discuss these conditions individually and did not provide a full explanation of how and why appellant's claimed conditions were caused or contributed to by her accepted injury. Without further elaboration, his October 12, 2006 report and his progress notes are insufficient to establish that appellant's claim should be expanded to include additional diagnoses.

The Office referred appellant to Dr. Hanley for a second opinion. In his May 25, 2007 report, Dr. Hanley explained that his examination findings did not indicate that appellant's shoulder condition, additional lumbar conditions or left ankle strain were related to her accepted employment injury. He opined that "accepted conditions should not be expanded as I find nothing going on in the shoulder as a consequence of appellant's injury and that would not be causally related to her claim at this time." Dr. Hanley found no basis on which to attribute any other condition to appellant's work injury. Accordingly, the medical evidence does not support expansion of appellant's claim to include additional diagnoses. She did not meet her burden of proof in establishing that these additional diagnosed conditions are due to her August 21, 2004 employment injury.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof in establishing that she was entitled to a schedule award for permanent partial impairment of the right arm and legs. It also finds that she did not meet her burden of proof in establishing that her right shoulder rotator cuff impingement syndrome, lumbosacral degenerative disc disease, lumbar radiculopathy and left ankle strain, are causally related to her August 21, 2004 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 11, 2007 and September 26, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 8, 2008  
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