United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 07-2136**
	)	**Issued: March 10, 2008**
U.S. POSTAL SERVICE, POST OFFICE, BULK MAIL CENTER, Dallas, TX, Employer	)	

Appearances:
Appellant, pro se
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 August 16, 2007 appellant filed a timely appeal from the December 29, 2006 and July 9, 2007 merit decisions of the Office of Workers' Compensation Programs, which denied an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant has more than a 12 percent impairment of each upper extremity.

FACTUAL HISTORY

On June 19, 2003 appellant, then a 42-year-old clerk, filed a claim alleging that her myelopathy and degenerative disc disease were a result of her federal employment: "Clerk, my responsibilities include reaching, throwing and turning when I do my job." The Office accepted appellant's claim for cervical radiculopathy, bilateral carpal tunnel syndrome and bilateral

cubital tunnel syndrome. Appellant underwent surgical releases on both wrists and both elbows. On December 16, 2005 she filed a claim for a schedule award.

Dr. Ronnie D. Shade, the attending orthopedic surgeon, found that appellant reached maximum medical improvement on November 15, 2005. He noted that a myelogram revealed a broad disc protrusion from C5-6 and C6-7, which mildly flattened the ventral spinal cord. Dr. Shade examined appellant and found, among other things, motor weakness in the left deltoid, triceps and biceps. Sensibility was also decreased in the left dermatomal distribution. Dr. Shade assessed cervical disc protrusion at C5-6 and C6-7; cervical radiculopathy, left upper extremity; an abnormal electromyogram (EMG); cubital tunnel syndrome, right surgically treated; and carpal tunnel syndrome, right surgically treated. He found that appellant had a 32 percent impairment of her left upper extremity due to cervical radiculopathy and median nerve loss. Dr. Shade found a 28 percent impairment of the right upper extremity due to ulnar and median nerve loss.

An Office medical adviser reviewed Dr. Shade's evaluation and found that a second opinion was needed. It was noted that Dr. Shade did not provide explanations for his recommendations or descriptions of abnormality adequate to allow the medical adviser to determine impairment."

On February 9, 2006 Dr. Charles E. Graham, an orthopedic surgeon, examined appellant on February 9, 2006 and evaluated her impairment. He found a five percent impairment of each upper extremity due to residual carpal tunnel syndrome and a seven percent impairment of each upper extremity due to ulnar nerve deficit. Dr. Graham concluded, therefore, that appellant had a 12 percent impairment of each upper extremity. He added: "The C5 radiculopathy, although found on the EMG, did not produce any definite atrophy or weakness in the biceps area. Therefore, there is no residual impairment as a result of that finding."

On April 6, 2006 the Office issued a schedule award for a 12 percent impairment of each upper extremity.

Dr. Shade reviewed Dr. Graham's rating and found it difficult to understand why he did not rate the cervical spine injury. He had found weakness in the right (sic) deltoid region and biceps. A cervical myelogram revealed cervical disc protrusion at C5-6 and C6-7. An EMG confirmed C5 radiculopathy. The Office accepted cervical radiculopathy. "It was my strong opinion," Dr. Shade reported, "for the cervical condition not to be rated would be unfair and unreasonable."

In a decision dated December 29, 2006, the Office reviewed the merits of appellant's case and denied modification of its prior decision. The Office found that Dr. Graham addressed Dr. Shade's findings and that appellant failed to establish that the April 6, 2006 schedule award was in error.

Dr. Shade responded that he noted weakness and sensory loss of the left upper extremity. He noted that Dr. Frank Morrison, a physiatrist, reported bilateral weakness of the upper extremities. Dr. Shade stated that Dr. Graham failed to rate an accepted condition, the cervical spine, thus invalidating his evaluation.

In a decision dated July 9, 2007, the Office reviewed the merits of appellant's case and denied modification of its prior decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[1] 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*.[2]

ANALYSIS

Neither appellant's orthopedic surgeon nor the Office referral orthopedic surgeon provided an impairment evaluation conforming to the A.M.A., *Guides*. Dr. Shade reported only summary ratings for nerve losses: deltoid losses were 12 percent, triceps losses were 14 percent, biceps losses were 9 percent, median nerve losses were 4 percent and ulnar nerve loss was 25 percent. He did not explain how he determined these ratings. Dr. Shade referred to Table 16-13, page 489, and Table 16-15, page 492, but these tables require the evaluator to grade the severity of the nerve loss according to the classifications described in Table 16-10a, page 482 and Table 16-11a, page 484 and then to perform a calculation. He did not grade the nerve losses or the percentage deficits, so a reviewer cannot confirm his ratings. This led the Office medical adviser to observe that Dr. Shade did not provide explanations for his recommendations or descriptions that would allow the medical adviser to rate appellant's impairment.

Dr. Graham rated impairment due to residual carpal tunnel syndrome according to scenario 2, page 495, but his positive clinical findings of median nerve dysfunction (positive Phalen's maneuver, positive Tinel's sign, fair to good two-point discrimination) support rating this impairment under scenario 1. He summarily reported a seven percent impairment due to ulnar nerve loss. Like Dr. Shade, he did not follow the grading scheme and procedure set forth in Table 16-10a, page 482 and Table 16-11a, page 484. Without more to explain his rating, it appears Dr. Graham simply selected the maximum possible sensory impairment shown in Table 16-15, page 492, a rating that would indicate appellant had "absent sensibility, abnormal sensations or severe pain that prevents all activity."

The Board will set aside the Office decisions denying an increased schedule award and remand the case for further development of the medical evidence by obtaining an impairment evaluation that conforms to the A.M.A., *Guides*. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for a schedule award.

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404. Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is required.

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2007 and December 29, 2006 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this opinion.

Issued: March 10, 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