

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

C.S., Appellant)

and)

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

**Docket No. 08-1884
Issued: February 18, 2009**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 25, 2008 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated March 25 and May 29, 2008 finding that she was not entitled to an additional schedule award. 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 more than seven percent impairment of each upper extremity for which she received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board. On December 8, 1994 appellant, then a 47-year-old clerk, sustained injury to her neck and shoulder when she threw a box in the performance of duty. The Office accepted her claim for cervical strain. Appellant underwent a C5-6 anterior cervical discectomy and fusion on January 24, 1996. The Office approved this surgery and entered her on the periodic rolls on February 5, 1996. Appellant filed claims for

recurrence of disability accepted by the Office on July 27, 1996, July 21, 1997 and November 20, 2003. By decision dated April 21, 2004 the Office granted her schedule awards for two percent impairment of upper extremities due to her accepted cervical injuries.

On January 30, 2003 appellant filed an occupational disease claim alleging that she had developed carpal tunnel syndrome due to her federal job duties. The Office accepted her claim for bilateral carpal tunnel syndrome on March 31, 2003. Appellant underwent surgical decompression of the right median nerve on April 21, 2004 and surgical decompression of the left median nerve on July 1, 2003. She requested a schedule award due to her carpal tunnel syndrome on November 17, 2003. In a decision dated June 8, 2004, the Office granted appellant schedule awards for five percent impairment to each upper extremity due to bilateral carpal tunnel syndrome. By decision dated December 28, 2005, it denied modification of her schedule award decision. On January 19, 2007 the Office reissued its December 28, 2005 decision denying modification of the schedule award determination. Appellant appealed this decision to the Board. By decision dated September 24, 2007, the Board found that she has no more than five percent impairment of her upper extremities due to carpal tunnel syndrome for which she received a schedule award. The Board further found that there was an unresolved conflict of medical opinion regarding the extent of permanent impairment due to appellant's cervical condition and remanded the case for referral to an impartial medical examiner.¹ The facts and the circumstances of the case are set forth in the Board's prior decision and adopted herein by reference.

On September 4, 2007 appellant underwent an electromyogram. This test revealed hypalgesia/spotty hypesthesia in C5 through T1 dermatomes distal to the mid-clavicular line bilaterally, but greater on the right.

On November 5, 2007 the Office referred appellant to Dr. William Kirkpatrick, a Board-certified orthopedic surgeon, for an impartial examination. On January 2, 2008 Dr. Kirkpatrick reviewed appellant's history of injury and medical history. He noted that she had received an impairment rating of five percent due to her carpal tunnel syndrome and that there was disagreement in the medical evidence regarding the extent of any permanent impairment due to her cervical condition. Dr. Kirkpatrick reported cervical discomfort with range of motion testing as well as discomfort in the trapezius muscle on both sides, but with no evidence of muscle spasm. Appellant had full active range of motion of both shoulders and of both elbows and no tenderness with palpation over either shoulder or over either elbow. She had full active flexion and extension as well as of radial and ulnar deviation of both wrists and full range of motion of the digital joints of both hands. Appellant described a mild sense of discomfort with palpation over her palm scars. She had intact sensation in all fingertips to light touch and five millimeter two-point discrimination with no other dystrophic changes present in the fingers. Dr. Kirkpatrick found that appellant had Grade 4 sensory deficit of the C6 nerve root which resulted in two percent impairment bilaterally.

Appellant submitted a report dated January 16, 2008 from Dr. Steven J. Valentino, an osteopath, who noted that appellant reported neck pain radiating to both upper extremities with

¹ Docket No. 07-954 (issued September 24, 2007).

paresthesias and weakness as well as pain in the brachial plexus. Dr. Valentino noted appellant's history of injury and found that spurling maneuvers reproduced neck pain radiating to the upper extremities. He also found diminished sensation about the upper extremities with weakness as well as positive Phalen's and Roos tests at the wrists. Dr. Valentino recommended additional testing. Appellant underwent a magnetic resonance imaging (MRI) scan on February 11, 2008 which demonstrated mild spondylosis throughout the cervical spine as well as herniated discs at C4-5 and C6-7. The MRI scan also demonstrated moderate right C2-3, C3-4 and C4-5 facet arthritis. A cervical x-ray on February 11, 2008 demonstrated a stable anterior cervical fusion at C5-6 and minimal spondylolisthesis of the C6 on C7. In a report dated February 20, 2008, Dr. Valentino reviewed the x-ray and MRI scan and diagnosed residual cervical radiculopathy and peripheral neuropathy.

The Office medical adviser reviewed Dr. Kirkpatrick's report on March 14, 2008 and agreed with his conclusions and applications of the A.M.A., *Guides*. By decision dated March 25, 2008, the Office concluded that the weight of the medical evidence established that appellant was not entitled to an additional schedule award.

Appellant, through her attorney, requested reconsideration on May 15, 2008. She stated that she was resubmitting reports dated January 16 and February 20, 2008 from Dr. Valentino. By decision dated May 29, 2008, the Office denied modification of the March 25, 2008 decision finding that Dr. Valentino's report did not support an additional impairment rating.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ 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* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.

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 proper factual and medical background must be given special weight.⁴

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

ANALYSIS

In a prior appeal, the Board found a conflict of medical opinion evidence and remanded the case for the Office to refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician to determine the extent of her permanent impairment due to her accepted cervical condition. The Office properly referred appellant to Dr. Kirkpatrick, a Board-certified orthopedic surgeon, to resolve this conflict. In a January 2, 2008 report, Dr. Kirkpatrick provided a complete history of injury and detailed findings on physical examination. He found that appellant had distorted superficial tactile sensibility with or without minimal abnormal sensations or pain along the C6 nerve root distribution. Dr. Kirkpatrick concluded this was Grade 4 sensory deficit⁵ of the C6 nerve root which when multiplied by the value of the nerve root due to sensory impairment as provided by the A.M.A., *Guides* resulted in two percent impairment of the upper extremities bilaterally.⁶ The Office medical adviser reviewed Dr. Kirkpatrick's findings and application of that A.M.A., *Guides* and agreed with his assessment. The Board finds that Dr. Kirkpatrick's report is sufficiently detailed and based on a proper history of injury such that it is entitled to special weight. This report establishes that appellant had two percent impairment of her upper extremities bilaterally due to her accepted cervical condition for which she has already received a schedule award.

Appellant submitted reports dated January 16 and February 20, 2008 from Dr. Valentino, an osteopath, addressing her cervical conditions. Dr. Valentino did not provide his opinion regarding appellant's permanent impairment for schedule award purposes. His reports do not address the relevant issue in the case or create a conflict with the opinion of Dr. Kirkpatrick, the impartial medical specialist.

CONCLUSION

The Board finds that appellant has two percent impairment of her upper extremities bilaterally due to her accepted cervical injury for which she has received a schedule award.

⁵ A.M.A., *Guides* 482, Table 16-10.

⁶ *Id.* at 489, Table 16-13.

ORDER

IT IS HEREBY ORDERED THAT the May 29 and March 25, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 18, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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