

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

N.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
San Francisco, CA, Employer)

Docket No. 09-1171
Issued: February 25, 2010

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 31, 2009 appellant filed a timely appeal of the March 4, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for 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 a 16 percent impairment of the right upper extremity and a 9 percent impairment of the left upper extremity, for which she received schedule awards.

FACTUAL HISTORY

The Office accepted that on June 8, 2000 appellant, then a 26-year-old letter carrier, sustained bilateral carpal tunnel syndrome and de Quervain's disease while in the performance of her work duties.

On March 14, 2003 appellant filed a claim (Form CA-7) for a schedule award. By decision dated June 16, 2003, the Office granted her a schedule award for a seven percent impairment of the right upper extremity.

On April 28, 2005 appellant filed a claim for an additional schedule award after undergoing right carpal tunnel release surgery on November 13, 2003. By decision dated March 8, 2006, the Office granted her a schedule award for an eight percent impairment of the right upper extremity and a five percent impairment of the left upper extremity.

On December 13, 2006 appellant filed a claim for an additional schedule award. On July 30, 2007 the Office granted her a schedule award for a one percent impairment of the right upper extremity and a four percent impairment of the left upper extremity.

On August 6, 2008 appellant filed another claim for an additional schedule award.

On August 21, 2008 the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Joel W. Renbaum, a Board-certified orthopedic surgeon, who was asked to determine if appellant had any residual disability or permanent impairment due to her accepted employment-related injuries.

In a September 29, 2008 medical report, Dr. Renbaum reviewed a history of appellant's accepted June 8, 2000 employment injuries, medical treatment and employment background. On physical examination of the upper extremities, he reported full range of the neck and bilateral shoulders and elbows. There was a healed volar surgical incision on the right. There was no localizing tenderness to palpation. Appellant's bilateral arms measured 13 inches and her bilateral forearms measured 11 inches. A Finkelstein's test and Tinel's sign were negative. Appellant's bilateral grip strength was 40/40 on the right and left. On neurological examination of the upper extremities, Dr. Renbaum found reflexes, motor strength and sensory within normal limits. Distal vascular status was intact. Dr. Renbaum provided a diagnosis of status post carpal tunnel release of the right wrist and a repetitive stress injury of appellant's bilateral upper extremities due to her employment injuries. He noted her subjective complaints of occasional slight and moderate pain in the right hand and forearm. Dr. Renbaum stated that appellant could work eight hours per day with permanent restrictions on repetitive activities three hours per day. He stated that the restrictions precluded her from performing her regular work duties as a letter carrier. Dr. Renbaum opined that appellant continued to suffer from residuals of her accepted employment injuries. He concluded that she reached maximum medical improvement five months following her November 2003 surgery.

By letter dated October 14, 2008, the Office requested that Dr. Lisa M. Key, an attending Board-certified internist, review Dr. Renbaum's report and provide an opinion regarding appellant's bilateral wrist impairment. A copy of this letter was sent to appellant at her address of record. Dr. Key did not respond.

On December 20, 2008 an Office medical adviser reviewed appellant's medical records, including Dr. Renbaum's September 29, 2008 findings. She stated that appellant reached maximum medical improvement on September 29, 2008. The Office medical adviser found that appellant did not sustain any additional impairment due to loss of range of motion, strength or

sensory deficit or pain based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

By decision dated March 4, 2009, the Office denied appellant's claim for an increased schedule award.

On appeal, appellant contends that she was not aware that a follow-up examination with Dr. Key was necessary or that the physician failed to respond to the Office's October 14, 2008 letter. She also contends that Dr. Renbaum failed to conduct a thorough medical examination as he only examined her for 15 minutes.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.³ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴

The fifth edition of the A.M.A., *Guides*, regarding impairment due to carpal tunnel syndrome, provides:

“If, after an *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present:

1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described [in Tables 16-10a and 16-11a].
2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present and an impairment rating not to exceed [five percent] of the upper extremity may be justified.

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404.

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.”⁵

The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.⁶

ANALYSIS

The Office accepted appellant’s claim for bilateral carpal tunnel syndrome and de Quervain’s disease. On June 16, 2003 appellant received a schedule award for seven percent impairment of her right upper extremity. She underwent carpal tunnel release on November 13, 2003 to treat the accepted right upper extremity condition. Following her surgery, appellant received an additional schedule award on March 8, 2006 for 8 percent impairment of her right upper extremity, a total of 15 percent and 5 percent impairment of her left upper extremity. On July 30, 2007 she received a schedule award for an additional 1 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity, totaling 16 percent impairment of the right upper extremity and 9 percent impairment of the left upper extremity. The Board finds that appellant did not meet her burden of proof to establish that she sustained greater impairment.

On September 29, 2008 Dr. Renbaum, an Office referral physician, provided a thorough review of appellant’s accepted employment injuries and medical treatment. On physical examination of the upper extremities, he reported normal findings, which included full range of the neck and bilateral shoulders and elbows and a healed volar surgical incision on the right. Dr. Renbaum also found no localizing tenderness to palpation. He reported that appellant’s bilateral grip strength was 40/40 on the right and left, negative Finkelstein’s test result and Tinel’s sign and that appellant’s reflexes, motor strength and sensory were within normal limits. Dr. Renbaum also reported that the distal vascular status was intact. He advised that appellant was status post carpal tunnel release of the right wrist and she sustained a repetitive stress injury of her bilateral upper extremities due to her employment injuries. Dr. Renbaum opined that, although she continued to suffer from residuals of her accepted employment injuries, she could work with restrictions. He concluded that appellant reached maximum medical improvement five months after her November 13, 2003 surgery. The Board finds this report is thorough and well rationalized and is sufficient to establish the additional impairment.

The Office appropriately routed the case record to the Office medical adviser for review to provide an impairment rating based on the A.M.A., *Guides*.⁷ On December 20, 2008 the Office medical adviser reviewed Dr. Renbaum’s findings and opined that there was no objective basis for any additional impairment to appellant’s upper extremities under the A.M.A., *Guides*.

⁵ A.M.A., *Guides* 495; *see T.A.*, 59 ECAB ___ (Docket No. 07-1836, issued November 20, 2007).

⁶ *Kimberly M. Held*, 56 ECAB 670 (2005).

⁷ *See C.J.*, 60 ECAB ___ (Docket No. 08-2429, issued August 3, 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

She found that appellant had no impairment due to loss of range of motion, strength or sensory deficit or pain. The Office medical adviser determined that she sustained no additional impairment to either the right or left upper extremities.

The Office medical adviser based her opinion on a proper review of the record and appropriately applied the A.M.A., *Guides* in finding that appellant did not sustain any additional impairment to either upper extremity. As there is no probative medical evidence to establish that appellant sustained greater permanent impairment than that previously awarded.⁸ The Board will affirm the March 4, 2009 decision.

The Board finds that appellant's contentions that she was neither aware that a follow-up examination with Dr. Key was necessary nor that the physician failed to respond to the Office's October 14, 2008 letter are without merit. The Board notes that the Office's October 14, 2008 letter requested that Dr. Key review and provide an opinion regarding Dr. Renbaum's September 29, 2008 examination. A copy was sent to appellant's address of record. This letter was not returned as undeliverable. Under the mailbox rule, the presumption is that appellant received proper notification of the Office's request for additional information from Dr. Key.⁹

With regard to appellant's contention that Dr. Renbaum did not conduct a thorough examination, the Board notes that, in addition to examining appellant, he reviewed a history of her accepted employment injuries, medical treatment and presented findings based on a full examination of the injured members. Based upon Dr. Renbaum's examination and the Office's concurrence, the Board finds that appellant sustained no additional employment-related impairment.

CONCLUSION

The Board finds that appellant has failed to establish that she has more than a 16 percent impairment of the right upper extremity and a 9 percent impairment of the left upper extremity, for which she received schedule awards.

⁸ See *C.J.*, *supra* note 7.

⁹ Under the mailbox rule, a letter properly addressed and mailed in the due course of business, such as in the course of the Office's daily activities, is presumed to have arrived at the mailing address in due course. See *James A. Gray*, 54 ECAB 277 (2002); *Charles R. Hibbs*, 43 ECAB 699 (1992).

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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