

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

C.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Akron, OH, Employer)

**Docket No. 09-1373
Issued: January 6, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 May 5, 2009 appellant filed a timely appeal from the April 9, 2009 merit decision of the Office of Workers' Compensation Programs, denying her claim for a schedule award. The record also contains a September 24, 2008 merit decision on the schedule award issue. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant sustained a permanent impairment to a scheduled member or function of the body entitling her to a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

On January 26, 2007 appellant, then a 42-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome as a result of repetitive hand/wrist activity in her federal employment. The Office accepted the claim for bilateral carpal tunnel syndrome. On July 7, 2008 appellant submitted a claim for a schedule award.

The Office advised appellant by letter dated July 14, 2008 of the evidence necessary to support a schedule award. By decision dated September 24, 2008, it found that appellant was not entitled to a schedule award as no supporting medical evidence was submitted to establish permanent impairment arriving from her accepted conditions.

Appellant requested a telephonic hearing before an Office hearing representative, which was held on February 11, 2009. In a March 4, 2009 report, Dr. Todd Hochman, an internist, who stated that appellant reported bilateral wrist symptomatology, but had not received any physical therapy, cortisone injection or treatment from an orthopedic surgeon. He was unable to state to a reasonable degree of medical certainty that appellant had reached maximum medical improvement.

By decision dated April 9, 2009, the hearing representative affirmed the September 24, 2008 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement (MMI) from the residuals of the injury.³ Maximum improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.⁴ The determination of such date is to be made in each case upon the medical evidence of record.⁵

ANALYSIS

The only medical evidence of record regarding any permanent impairment is Dr. Hochman's March 4, 2009 report. He did not describe a permanent impairment under the A.M.A., *Guides* and he stated that he was unable to determine whether appellant had reached MMI. As noted above, a schedule award under the Act is for a permanent impairment to a

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

² A. George Lampo, 45 ECAB 441 (1994).

³ L.H., 58 ECAB ___ (Docket No. 06-1691, issued June 18, 2007).

⁴ Adela Hernandez-Piris, 35 ECAB 839 (1984); James T. Rogers, 33 ECAB 347 (1981).

⁵ L.H., *supra* note 3.

schedule member as listed at section 8107. The medical evidence must establish that the employment-related condition has stabilized and will not improve further. Once an impairment has reached MMI, a permanent impairment rating may be performed.⁶ The Board finds that the medical evidence does not establish that appellant has reached MMI. Therefore, consideration of a schedule award is premature. The Office properly determined appellant was not entitled to a schedule award in this case.

CONCLUSION

The Board finds that the medical evidence does not establish that appellant reach MMI.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 9, 2009 and September 24, 2008 are affirmed.

Issued: January 6, 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

⁶ *Patricia J. Penny-Guzman*, 55 ECAB 757 (2004).