United States Department of Labor
Employees' Compensation Appeals Board

M.L., Appellant	)	
and	)	**Docket No. 10-88**
	)	**Issued: September 24, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Indianapolis, IN, Employer	)	

Appearances:
Appellant, pro se
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 October 13, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 21, 2009 which denied her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained permanent impairment related to her accepted cervical condition.

FACTUAL HISTORY

On March 20, 2006 appellant, then a 51-year-old letter carrier, injured her neck while performing her duties which included carrying a mail satchel. The Office accepted aggravation

of degenerative disc disease of the cervical spine. Appellant did not stop work, but returned to a light-duty position.[1]

Appellant came under the care of Dr. Mohammad N. Uddin, a Board-certified orthopedic surgeon, from November 11, 2005 to May 16, 2006, for neck pain, multilevel degenerative disc disease and foraminal stenosis at C5-6 and C6-7. Dr. Uddin noted a magnetic resonance imaging (MRI) scan of the cervical spine revealed multilevel degenerative disc disease at C5-6, disc osteophyte complex, mild central canal stenosis and neural foraminal narrowing at C5-6 and C6-7. Appellant was also treated by Dr. Larry M. Salberg, a Board-certified neurologist, for neck and left shoulder pain which started while carrying a mail satchel. Dr. Salberg diagnosed cervicogenic headaches with cervical degenerative disc disease, foraminal stenosis and spondylolisthesis. In a report dated November 20, 2006, he noted appellant had cervical and lumbosacral sensory radiculopathies at multiple levels secondary to degenerative changes causing central and foraminal stenosis. Dr. Salberg returned appellant to work with restrictions.

An August 16, 2006 MRI scan of the cervical spine revealed multilevel degenerative changes, mild cervical canal stenosis with left foraminal stenosis at C6-7, mild to moderate cervical canal stenosis with mild cord flattening at C5-6 and mild stenosis of the cervical canal at C4-5. A computerized tomography (CT) scan of the cervical spine dated January 15, 2007 revealed spondylotic change from C4 through T1.

On April 25, 2007 appellant filed a claim for a schedule award. On May 11, 2007 the Office requested that Dr. Salberg submit a detailed impairment evaluation pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[2] (A.M.A., *Guides*).

In a May 15, 2007 report, Dr. Salberg diagnosed spinal sensory radiculopathies at multiple levels in the cervical spine secondary to degenerative changes causing central and foraminal stenosis at multiple levels, bilateral carpal tunnel syndrome and spinal cord abnormalities at T-10 and T-12, etiology unknown. He noted appellant's work restrictions were related to her degenerative spine problems. Dr. Salberg did not address the issue of permanent impairment.

In a November 28, 2007 decision, the Office denied appellant's claim for a schedule award. Appellant requested reconsideration.

On July 31, 2008 the Office vacated the November 28, 2007 decision. It noted that the schedule award development letter of May 11, 2007 did not identify the appropriate medical evidence.

In a September 16, 2008 report, Dr. Stephen S. Karol, a Board-certified physiatrist, diagnosed cervicogenic headaches, radiculopathy, herniated disc disease, spinal stenosis and

[1] The record reflects that appellant has a claim accepted for herniated disc at L5-S1, File No. xxxxxx808, a claim for a thoracic injury accepted for thoracic strain, File No. xxxxxx688 and a claim for a left knee injury accepted for traumatic synovitis of the left knee, File No. xxxxxx366.

[2] A.M.A., *Guides* (5th ed. 2001).

cervical radiculopathy. He advised that appellant reached maximum medical improvement. Dr. Karol noted findings of limited range of motion of the neck in flexion and extension, moderate-to-severe impairment of lateral rotation and side bending, mild left grip weakness, intact sensation, intact cerebral function and normal reflexes without focal deficits. He found that she had eight percent whole person impairment under the A.M.A., *Guides*. Dr. Karol noted that appellant was a diagnosis-rated estimate (DRE) cervical category II, resulting in eight percent impairment under Table 15-5.[3]

The Office referred appellant for a second opinion to Dr. Rodrigo M. Ubilluz, a Board-certified orthopedic surgeon. In a December 12, 2008 report, Dr. Ubilluz reviewed the records provided and examined appellant. He diagnosed work-related aggravation of degenerative cervical spine disease. Dr. Ubilluz noted findings upon physical examination of limited range of motion of the neck, slight weakness in the left arm with no identifiable nerve root involvement, normal strength and sensory examination for all modalities, normal coordination, equal and symmetrical reflexes, normal gait and no trigger points in the cervical region or lumbar spine. He noted that an electromyogram revealed no cervical radiculopathy. Dr. Ubilluz opined that the degenerative disease of appellant's cervical spine had returned to its preinjury level. Appellant's complained of left arm pain, but Dr. Ubilluz could not elicit signs for carpal tunnel syndrome or clinically radiculopathy. Appellant had two lesions in the thoracic spine at T-20 and T-12 levels; however, Dr. Ubilluz found no clinical evidence consistent with multiple sclerosis. Dr. Ubilluz advised that the lesions, of undetermined etiology, would not explain appellant's symptoms in her arms and legs. He found that appellant reached maximum medical improvement with no significant motor or sensory deficits except for left arm weakness and no nerve root impairment. Dr. Ubilluz noted that appellant did not appear to give her best effort during the motor examination. He opined that, pursuant to the A.M.A., *Guides*, page, 482, 484 and 498, appellant had no impairment to the upper extremities.

In a February 10, 2009 report, an Office medical adviser opined that there was no basis for rating any impairment based on appellant's accepted cervical condition. He agreed with Dr. Ubilluz, who found no impairment of either the right or left upper extremity under the A.M.A., *Guides*. The medical adviser noted that appellant did not demonstrate objective findings of sensory, motor or range of motion deficits consistent with the accepted condition.

On April 21, 2009 the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulations[5] 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

[3] *Id. at* 392, Table 15-5.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

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 regulations as the appropriate standard for evaluating schedule losses.[6]

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.[7] As neither the Act nor the implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole, no claimant is entitled to such a schedule award.[8] The Board notes that the Act specifically excludes the back from the definition of "organ."[9] Aclaimant may be entitled to a schedule award for permanent impairment to an upper extremity even though the cause of the impairment originates in the neck or spine.[10]

ANALYSIS

The Office accepted appellant's claim for aggravation of degenerative disc disease of the cervical spine. As noted, the Act does not provide for a schedule award based on impairment to the back or spine. Appellant may only receive a schedule award for impairment to the upper extremities if such impairment is established as being due to her accepted cervical condition. Furthermore, a schedule award can be paid only for a condition related to an employment injury.[11]

In a report dated September 16, 2008, Dr. Karol addresses appellant's cervical condition and provided an impairment rating pertaining to the cervical spine under Table 15-5. He noted limited range of motion of the neck for flexion and extension, moderate-to-severe impairment of lateral rotation and side bending, mild left grip weakness, sensation intact for light touch, cerebral function intact and reflexes normal without focal deficits. Dr. Karol opined that pursuant to the A.M.A., *Guides* appellant was a DRE cervical category II with eight percent whole person impairment to the cervical spine.[12] As noted, however, there is no statutory basis for the payment of a schedule award for whole body impairment or for impairment of the cervical spine. Therefore, this rating does not conform to the standards of the Office. Dr. Korol offered no other basis under the A.M.A., *Guide* on which to rate impairment to a scheduled

[6] *See id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[7] *Thomas J. Engelhart*, 50 ECAB 319 (1999).

[8] *See Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[9] 5 U.S.C. § 8101(19).

[10] *Thomas J. Engelhart*, *supra* note 7.

[11] *Veronica Williams*, 56 ECAB 367 (2005).

[12] A.M.A., *Guides* 392, Table 15-6.

member. This rating is of limited probative value and is insufficient to establish permanent impairment of either upper extremity.[13]

The Office further developed appellant's claim and referred her to Dr. Ubilluz for a second opinion. In a December 12, 2008 report, Dr. Ubilluz noted limited range of motion of the neck, slight weakness in the left arm with no identifiable nerve root involvement, normal strength and sensory examination, equal and symmetrical reflexes and no trigger points in the cervical region or lumbar spine. He found that appellant reached maximum medical improvement and that the accepted degenerative disease of her cervical spine had returned to its preinjury level. Dr. Ubilluz found no motor or sensory deficit, no cervical radiculopathy and no nerve root impairment. He advised that appellant did not give her best effort on the motor examination. Dr. Ubilluz opined that appellant had no permanent impairment to the upper extremities. He advised that no sensory deficit was identified and that no specific nerve root was identified with regard to any motor impairment. Dr. Ubilluz found no basis on which to attribute any permanent impairment to the accepted aggravation of cervical degenerative disc disease.

In a February 10, 2009 report, the Office medical adviser concurred with Dr. Ubilluz that there was no ratable impairment to the right or left upper extremity under the A.M.A., *Guides*. Appellant did not demonstrate objective findings of sensory, motor or range of motion deficit consistent with the accepted condition. Impairment to the upper extremities was not established and an electromyogram revealed no radiculopathy was present. The medical adviser concluded that appellant did not have any permanent impairment the accepted cervical injury. The Board finds that the weight of medical evidence establishes no permanent impairment to any scheduled member of the body pursuant to the A.M.A., *Guides.*

CONCLUSION

The Board finds that appellant did not establish that she sustained any permanent impairment due to her accepted cervical condition.

[13] *See Carl J. Cleary*, 57 ECAB 563, 568 at note 14 (2006) (an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's impairment).

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2010
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