United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 10-1040**
	)	**Issued: March 9, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Memphis, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 5, 2010 appellant timely appealed the February 8, 2010 merit decision of the Office of Workers' Compensation Programs, which denied an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award claim.[1]

ISSUE

The issue is whether appellant has more than 37 percent impairment of the right upper extremity or 12 percent impairment of the left upper extremity.

[1] Appellant submitted additional evidence with her March 5, 2010 appeal. The Board's review of a case is limited to the evidence in the record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1) (2010). Consequently, the Board is precluded from reviewing any evidence submitted after the February 8, 2010 decision.

FACTUAL HISTORY

This case was previously on appeal.[2] Appellant, a 59-year-old distribution clerk, has an accepted occupational disease claim for right arm strain, right wrist strain, right arm tendinitis, right de Quervain's disease, consequential left wrist strain, right shoulder impingement, bilateral carpal tunnel syndrome, bilateral arm tendinitis, depressive disorder and pain disorder associated with psychological factors and a general medical condition.[3] She has another occupational disease claim, xxxxxx482, that the Office accepted for left wrist tendinitis. Appellant's employment-related injuries relevant to these two claims arose on or about August 14, 1998.[4] Both upper extremity claims have been combined under claim number xxxxxx360.

By decision dated August 7, 2008, the Office granted a schedule award for 37 percent impairment of the right upper extremity and 12 percent impairment of the left upper extremity.[5] It based its decision on the February 13, 2008 report of appellant's treating physician, Dr. Rommel G. Childress, a Board-certified orthopedic surgeon.[6] The district medical adviser concurred with the impairment rating of Dr. Childress.[7]

On appeal, the Board set aside the Office's August 7, 2008 schedule award as neither Dr. Childress nor the district medical adviser clearly explained how the bilateral upper extremity impairment ratings were derived under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2001). Dr. Childress' report referenced the A.M.A., *Guides* (5th ed. 2001), but he did not elaborate on how his examination findings represented 37 and 12 percent impairment of the right and left upper extremities, respectively. The district medical adviser generally stated that Dr. Childress' rating was consistent with the A.M.A., *Guides*; but, he too failed to elaborate or explain. The Board instructed the Office to obtain clarification from its district medical adviser regarding the extent of any permanent

[2] Docket No. 09-267 (issued September 9, 2009).

[3] The Office also authorized three surgical procedures between August 2000 and April 2002; one each for the right wrist, right elbow and right shoulder.

[4] Appellant also has an accepted claim for prolonged depressive disorder (xxxxxx712), with a May 15, 2001 date of injury.

[5] The award represented 152.88 weeks of compensation.

[6] Dr. Childress performed all three of appellant's right upper extremity surgical procedures. His 37 percent overall right upper extremity rating included a combination of impairments for motor and sensory deficits involving the median (10 percent) and ulnar (17 percent) nerves, and loss of motion in the shoulder (16 percent) and wrist (2 percent). Regarding the left upper extremity rating of 12 percent, Dr. Childress combined impairment for loss of wrist motion (2 percent) and motor and sensory deficits involving the median (5 percent) and ulnar (5 percent) nerves.

[7] Dr. Howard "H.P." Hogshead, the district medical adviser, found that appellant reached maximum medical improvement as of February 13, 2008; the date of Dr. Childress' examination. Dr. Hogshead is a Board-certified orthopedic surgeon.

impairment of the upper extremities.[8] The Board's September 4, 2009 decision (Docket No. 09-267) is incorporated herein by reference.

On remand, the Office asked the district medical adviser to clarify his March 10, 2008 report under the A.M.A., *Guides* (5th ed. 2001). In a report dated September 23, 2009, the district medical adviser found 60 percent impairment of the right upper extremity and 12 percent impairment of the left upper extremity. The right upper extremity rating included impairments for loss of wrist motion (2 percent), loss of shoulder motion (14 percent) and motor/sensory deficits involving the ulnar (16 percent) and median (42 percent) nerves. The left upper extremity rating was a combination of impairments for loss of wrist motion (2 percent) and impairment of the median (5 percent) and ulnar (5 percent) nerves.

Because the district medical adviser's September 23, 2009 clarification resulted in a recalculation of appellant's permanent impairment rating, the Office advised him to apply the recently adopted sixth edition of the A.M.A., *Guides* (2008). In response, the district medical adviser recommended that appellant undergo a second opinion medical evaluation.[9] The Office referred appellant to Dr. Bret R. Sokoloff, a Board-certified orthopedic surgeon.

In reports dated November 24, 2009 and January 21, 2010, Dr. Sokoloff found two percent impairment of both the left and right upper extremities due to carpal tunnel syndrome.[10] He stated there was no impairment based on appellant's shoulder issues. Dr. Sokoloff's diagnoses included degenerative disease -- cervical spine, mild bilateral carpal tunnel syndrome, and symptom magnification. A November 25, 2009 right shoulder x-ray revealed mild to moderate arthritis. A December 30, 2009 nerve conduction study and electromyography showed mild bilateral carpal tunnel entrapment but no denervation.

Dr. Hogshead, the district medical adviser, reviewed the reports of Dr. Sokoloff and concurred with the finding of two percent bilateral upper extremity impairment due to carpal tunnel syndrome.

Dr. Childress continued to treat appellant following his February 13, 2008 evaluation. In treatment notes dated June 26, 2008 to January 5, 2010, he documented ongoing complaints with respect to both upper extremities regarding appellant's wrists, hands, elbows, neck and right shoulder. Dr. Childress' October 6, 2009 treatment note found "some crepitus and restricted mobility of the right shoulder" and "some diminished sensation in both the ulnar and median distribution on the right." He also provided range of motion measurements with respect to appellant's right shoulder.

[8] In response to one of appellant's arguments, the Board also noted that the Act did not authorize schedule awards for emotional conditions.

[9] Dr. Hogshead commented that there was some important information absent from Dr. Childress' February 13, 2008 report that made "accurate analysis difficult" under the sixth edition of the A.M.A., *Guides* (2008).

[10] Dr. Sokoloff's initial report did not address appellant's left upper extremity or her accepted right shoulder condition. Therefore, the Office asked him to provide a supplemental report addressing those two issues.

In a decision dated February 8, 2010, the Office denied appellant's claim for increased schedule awards. It found that the medical evidence did not establish more than the previous awards of 37 percent impairment of the right upper extremity and 12 percent impairment of the left upper extremity. The Office based its determination on the opinion of Dr. Sokoloff and the district medical adviser.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[11] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[12] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).[13]

The Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.[14]

ANALYSIS

The district medical adviser initially agreed with Dr. Childress' February 13, 2008 impairment rating, but it was unclear how either physician found 37 percent impairment of the right upper extremity and 12 percent impairment of the left upper extremity. When the Office returned the case to the district medical adviser seeking clarification, he calculated an even higher impairment of the right upper extremity. The Office then advised the district medical adviser to recalculate appellant's impairment under the sixth edition of the A.M.A., *Guides* (2008). Instead of applying the latest version of the A.M.A., *Guides* to Dr. Childress' February 13, 2008 examination findings, the district medical adviser recommended obtaining a second opinion.

The Office referral physician, Dr. Sokoloff, found two percent impairment of both the left and right upper extremities due to carpal tunnel syndrome. He specifically found there was no impairment based on appellant's shoulder issues. However, Dr. Sokoloff provided no explanation for this latter finding. Appellant's physician, Dr. Childress, found impairment due to

[11] For a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks of compensation. 5 U.S.C. § 8107(c)(1) (2006).

[12] 20 C.F.R. § 10.404.

[13] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Example 1 (January 2010).

[14] 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321(b); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

bilateral carpal tunnel syndrome. He also found right upper extremity impairment due to loss of motion in the shoulder, bilateral ulnar nerve impairment and loss of wrist motion, bilaterally. At one point, the district medical adviser agreed that appellant's overall impairment included bilateral carpal tunnel syndrome, loss of right shoulder motion, bilateral ulnar nerve involvement and bilateral loss of motion in the wrist.

As previously noted, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.[15] For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[16] The Board finds there is an unresolved conflict in medical opinion between Dr. Childress and Dr. Sokoloff. While there is general agreement that appellant has impairment due to bilateral carpal tunnel syndrome, appellant's physician and the Office referral physician disagree as to the extent of impairment attributable to the right shoulder. Dr. Childress continued to report complaints of pain and loss of mobility, Dr. Sokoloff found no impairment based on appellant's shoulder issues. The Board finds their respective viewpoints to be of comparable weight. Because of the unresolved conflict in medical opinion between Dr. Childress and Dr. Sokoloff, the case will be remanded to the Office for referral to an impartial medical examiner. After such further development of the case record as the Office deems necessary, a *de novo* decision shall by issued.

CONCLUSION

The Board finds that the case is not in posture for decision.

[15] 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321(b).

[16] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2010 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further action consistent with this decision.

Issued: March 9, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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