United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 12-569**
	)	**Issued: August 17, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Tulsa, OK, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 17, 2012 appellant, through her representative, filed a timely appeal from the December 15, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied an additional schedule award. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 13 percent impairment of her right upper extremity or more than a 16 percent impairment of her left, for which she received schedule awards.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

In 1997 appellant, a 39-year-old window clerk, filed an occupational disease claim alleging that keying on a letter-sorting machine, manually sorting letters, throwing mail and keying zip code machines caused an injury. OWCP accepted her claim for bilateral carpal tunnel syndrome. Appellant received a schedule award for a 13 percent impairment of her right upper extremity and a 16 percent impairment of her left.[2]

In 1999 appellant sustained a traumatic injury in the performance of duty when a door struck her. OWCP accepted her claim for right wrist contusion and strain, as well as enthesopathy of the right elbow.[3]

OWCP authorized surgery for a right rotator cuff tear. In 2002 appellant underwent an arthroscopic subacromial decompression and anterior acromioplasty and a Type II rotator cuff repair. In 2003 she underwent redo surgery with acromioclavicular distal clavicle resection and arthroplasty.

Appellant filed schedule award claims.

A conflict arose between Dr. Michael S. Smith, an OWCP referral physiatrist, and Dr. Denny E. Krout, the attending osteopath and orthopedic surgeon. Applying the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides* 2001), Dr. Smith found that appellant had a 17 percent impairment of her right upper extremity related to shoulder surgery, range of motion and median sensory findings. He also found a three percent impairment of her left upper extremity for residual median sensory changes. Dr. Krout found a 25 percent impairment for right rotator cuff repair with distal clavicle resection, weakness and abnormal shoulder motion, and an additional 22 percent impairment on both sides for motor and sensory loss due to carpal tunnel syndrome.

To resolve this conflict, OWCP referred appellant, together with the case record and a statement of accepted facts, to Dr. Sami R. Framjee, a Board-certified orthopedic surgeon.

Dr. Framjee physically examined appellant and found, among other things, a dorsal ganglion on her right hand with a weakly positive Tinel's sign. He found a volar ganglion over her left wrist with a weakly positive Tinel's and Phalen's sign. Dr. Framjee took x-rays and reviewed the medical record, including a 2003 electromyogram and nerve conduction study of the right median nerve, which was normal. There was at that time no electrophysiological evidence of radiculopathy, plexopathy or entrapment neuropathy affecting the right upper extremity. Medical records from 2010 and 2011, however, revealed a diagnosis of right carpal tunnel syndrome.

[2] Appellant later received an additional award of four percent on the right, but a hearing representative set aside that decision as improper.

[3] OWCP File No. xxxxxx624.

Applying the sixth edition of the A.M.A., *Guides* (2009), Dr. Framjee found that appellant had a 10 percent diagnosis-based impairment of the right upper extremity as a result of her shoulder injury. With respect to her right wrist, he stated he was unable to find any evidence of permanent impairment.

In a supplement report, Dr. Framjee clarified that appellant's primary diagnosis following her employment injury was that of a rotator cuff tear, for which she underwent surgical intervention. Using Table 15-5 of the sixth edition of the A.M.A., *Guides*, he found that she fell within the class 1 category of shoulder impairment and thus had a 10 percent impairment to her right upper extremity.

An OWCP medical adviser reviewed Dr. Framjee's findings and confirmed that appellant had a 10 percent impairment of her right upper extremity under the sixth edition of the A.M.A., *Guides*. He reported that this was based on distal clavicle arthritis with resection, with a default grade C impairment.

In a May 23, 2011 decision, OWCP denied an additional schedule award. It found that the medical evidence did not demonstrate that appellant suffered any additional impairment.

On December 15, 2011 an OWCP hearing representative affirmed the denial of an additional schedule award.

LEGAL PRECEDENT

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.[4] Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[5]

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[6] When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[7]

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

[6] 5 U.S.C. § 8123(a).

[7] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

ANALYSIS

To resolve the conflict between Dr. Smith, OWCP's referral physiatrist, and Dr. Krout, the attending osteopath, OWCP properly referred appellant to Dr. Framjee, a Board-certified orthopedic surgeon, for an opinion on the extent of any permanent impairment resulting from the accepted employment injuries. OWCP provided Dr. Framjee an updated statement of accepted facts and appellant's medical record so he could base his opinion on a proper factual and medical history.

Dr. Framjee examined appellant and applied the sixth edition of the A.M.A., *Guides*. Under the sixth edition, diagnosis-based impairment is the primary method of evaluating the upper extremity. Impairment is determined first by identifying the most applicable diagnosis, or the one diagnosis that results in the highest causally related impairment rating. The examiner then selects the class of the impairment (no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss). This will provide a default impairment rating, which can then be adjusted slightly up or down depending on grade modifiers or nonkey factors (functional history, physical examination, clinical studies).[8]

Table 15-5, page 401 of the A.M.A., *Guides* provides upper extremity impairment values for relevant diagnoses of the shoulder region. Dr. Framjee determined that the primary diagnosis following appellant's employment injury was that of a rotator cuff tear requiring surgical intervention. According to Table 15-5, impairment rating for that diagnosis class 1 is 1 to 13 percent. Dr. Framjee did not adjust his rating for functional history, physical examination or clinical studies. According to the table, the highest impairment rating anyone can receive for this shoulder diagnosis is 13 percent, which is less than the schedule award appellant has already received for her right upper extremity. Appellant, therefore, is not entitled to an additional schedule award for her accepted right shoulder injury.

OWCP also accepted appellant's claim for bilateral carpal tunnel syndrome, but Dr. Framjee could find no evidence of permanent injury or impairment to the right wrist. Indeed, he noted a 2003 electromyogram and nerve conduction study of the right median nerve, which showed no electrophysiological evidence of radiculopathy, plexopathy or entrapment neuropathy affecting the right upper extremity. If medical records from 2010 and 2011 revealed a more recent carpal tunnel syndrome, it is not clear from the medical opinion evidence how it was causally related to the 1997 work injury, given the testing performed in 2003.

Dr. Framjee examined appellant's left upper extremity but offered no impairment rating. The Board notes that the highest impairment rating anyone can receive for carpal tunnel syndrome is nine percent of the upper extremity, according to Table 15-23, page 449 of the A.M.A., *Guides*. As appellant has already received a schedule award of 16 percent for her left upper extremity, she is entitled to nothing more for her accepted carpal tunnel syndrome.

The Board finds that the opinion of Dr. Framjee, the impartial medical specialist, is entitled to special weight and is sufficient to resolve the conflict between Dr. Smith and

[8] A.M.A., *Guides* 387, 389-90 (6th ed. 2009).

Dr. Krout on the extent of appellant's injury-related permanent impairment. Accordingly, the Board will affirm OWCP's December 15, 2011 decision to deny an additional schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has no more than a 13 percent impairment of her right upper extremity and no more than a 16 percent impairment of her left. She is not entitled to an additional schedule award.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board