

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

W.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 12-593
Issued: August 13, 2012**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 24, 2012 appellant, through her attorney, timely appealed a November 2, 2011 merit decision of the Office of Workers' Compensation Programs regarding her schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant sustained permanent impairment due to her August 31, 2005 employment injury.

FACTUAL HISTORY

This case was previously before the Board. By decision dated May 3, 2010, the Board affirmed an April 17, 2009 OWCP decision terminating appellant's compensation benefits.² The

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 09-2029 (issued May 3, 2010).

Board found that OWCP met its burden of proof to terminate appellant's medical and wage-loss benefits effective April 13, 2008 on the grounds that the accepted left wrist condition of tenosynovitis had resolved. Determinative weight was accorded to the opinion of the second opinion specialist, Dr. Robert A. Smith, a Board-certified orthopedist. The Board further found that the evidence did not establish that any other conditions, including a ligament tear, bilateral median neuropathy, left radial neuropathy, left and vascular long thoracic neuritis and repetitive strain injury of both upper extremities, were related to appellant's federal employment. The facts and history contained in the prior appeal are incorporated by reference.

In an August 13, 2010 report, Dr. Arthur F. Becan, an orthopedic surgeon, noted the history of injury, presented examination findings and diagnosed cumulative and repetitive trauma disorder, right carpal tunnel syndrome, left carpal tunnel syndrome, bilateral ulnar nerve entrapment at elbows and right brachial plexus neuropathy. He opined that the August 31, 2005 work injury was the competent producing factor for appellant's subjective and objective findings. Dr. Becan opined that maximum medical improvement was reached on August 13, 2010. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), Dr. Becan opined that appellant had 16 percent impairment of the right upper extremity and five percent impairment of the left upper extremity. Right arm impairment was comprised of 13 percent impairment of the right brachial plexus and five percent impairment of the right ulnar nerve at elbow. Left arm impairment was comprised of five percent impairment of ulnar nerve entrapment neuropathy at the elbow.

On March 7, 2011 appellant claimed schedule award compensation.

In an April 3, 2011 report, an OWCP medical adviser noted the history of injury and his review of the medical records. He noted deficiencies in Dr. Becan's findings compared to other examinations of record and concluded that there did not appear to be a clinical basis for ulnar nerve entrapment in either arm as neither Dr. Becan's examination nor Dr. Smith's examination indicated decreased sensation over the ulnar nerve distribution. The medical adviser also found no evidence clinically or from the electromyogram (EMG) that there was brachial plexus involvement. He stated that there was no basis to conclude this brachial plexus involvement was based on mechanism of injury since repetitive activity would not be expected to result in brachial plexus injury. The medical adviser noted that, while repetitive activity could result in ulnar or median nerve compression, there was no evidence for those conditions based on the evaluation. He opined that maximum medical improvement was reached on August 18, 2010 and that, based on his evaluation, appellant had no impairment of the left arm based on the accepted condition of left tenosynovitis of the wrist. The medical adviser noted that Dr. Becan did not recommend any impairment for tenosynovitis of the wrist impairment in his August 13, 2010 evaluation. He further noted that, as Dr. Becan's evaluation took place four and a half years after Dr. Smith's examination, he would recommend appellant undergo another second opinion examination and additional EMG/nerve conduction studies be obtained.

By decision dated April 8, 2011, OWCP denied appellant's schedule award claim.

In an April 14, 2011 letter, appellant's attorney requested an oral hearing, which was held by video on August 17, 2011. Following the hearing, appellant submitted an August 26, 2011

report from Dr. Becan which amended his August 13, 2010 report to include one percent rating for the accepted left wrist condition in addition to the five percent left ulnar rating, for a total left upper extremity impairment rating of six percent. In a September 25, 2011 statement, appellant indicated that prior to her work injury she had the same pain in both hands as she did on the date of injury.

By decision November 2, 2011, an OWCP hearing representative affirmed the denial of appellant's schedule award claim.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations³ 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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.⁴ 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.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁷ The Board notes that, before applying the A.M.A., *Guides*, OWCP must determine whether the claimed impairment of a scheduled member is causally related to the accepted work injury.⁸

ANALYSIS

OWCP accepted that appellant sustained left wrist tenosynovitis. The Board previously affirmed OWCP's termination of appellant's compensation benefits effective April 13, 2008 on the grounds that the weight of the medical evidence, as represented by the second opinion examiner, Dr. Smith, reflected that the accepted left wrist tenosynovitis condition had resolved. The Board further found that appellant's other nonaccepted upper extremity conditions were not causally related to her federal employment.

³ 20 C.F.R. § 10.404; 5 U.S.C. § 8017.

⁴ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

⁵ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ *Veronica Williams*, 56 ECAB 367, 370 (2005).

⁸ *Michael S. Mina*, 57 ECAB 379, 385 (2006).

Appellant requested schedule award compensation. She has the burden of proof to establish that the condition for which a schedule award is being sought is causally related to her employment.⁹

The Board finds that the medical evidence is not sufficient to establish permanent impairment to appellant's upper extremities due to her accepted left wrist tenosynovitis condition. Dr. Becan examined appellant on August 13, 2010. He noted that appellant's current conditions of cumulative and repetitive trauma disorder, right carpal tunnel syndrome, left carpal tunnel syndrome, bilateral ulnar nerve entrapment at elbows, and right brachial plexus neuropathy were due to the August 31, 2005 work injury. Dr. Becan provided insufficient explanation or medical rationale as to how any of these conditions were causally related to the employment injury.¹⁰ His subsequent report of August 26, 2011 failed to offer any additional rationale or explanation as to why the accepted left wrist tenosynovitis persisted and caused permanent impairment or how any of the other diagnosed conditions, which were not accepted, were employment related. Dr. Becan's subsequent report was based on his August 13, 2010 examination findings. His reports are insufficient to establish that the accepted left wrist tenosynovitis, which was found to have resolved on April 13, 2008, caused any permanent impairment. It is not established that the rated impairment is causally related to an accepted work injury.

An OWCP medical adviser reviewed the medical evidence of record and found there was no basis on which to issue a schedule award as the accepted conditions had resolved. He did not find that there was any schedule impairment causally related to appellant's accepted conditions. Appellant did not submit any other medical evidence sufficient to establish a work-related condition that caused physical impairment to a scheduled body member. She indicated in her September 25, 2011 statement that she had similar pain in both upper extremities prior to August 31, 2005. Counsel asserted that this should be considered to be a preexisting condition. However, the Board has held that, where the claimant has not shown any permanent impairment caused by the accepted occupational exposure, the claim is not ripe for consideration of any preexisting impairment.¹¹

On appeal, appellant's attorney argues that Dr. Becan's reports are sufficient to create a conflict in medical evidence with the medical adviser. As discussed, Dr. Becan's impairment evaluations are of diminished probative value as he failed to provide a fully-rationalized medical opinion explaining the issue of causal relationship of the diagnosed conditions to the August 31, 2005 employment injury. The injury was accepted for left wrist tenosynovitis that was found to have resolved. Dr. Becan did not sufficiently explain how the claimed impairment arose from the accepted work injury and his opinion is not sufficient to create a conflict in medical evidence with the medical adviser. The need for detailed medical rationale is particularly important in a

⁹ *Veronica Williams, supra* note 7.

¹⁰ Where a claimant claims that a condition not accepted or approved by OWCP was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence. *T.M.*, Docket No. 08-975 (issued February 6, 2009).

¹¹ *Thomas P. Lavin*, 57 ECAB 353 (2006).

situation such as this where OWCP found, and the Board previously affirmed, that all residuals of the accepted conditions had ceased.

The medical evidence does not establish that appellant has permanent impairment to a scheduled member of the body causally related to her accepted injury. Consequently appellant has not established entitlement to a schedule award.

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

CONCLUSION

The Board finds that appellant has not established entitlement to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated November 2, 2011 is affirmed.

Issued: August 13, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board