

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

P.D., Appellant)
)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
New York City, NY, Employer)

Docket No. 12-712
Issued: September 18, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 13, 2012 appellant timely appealed a December 19, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) 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 22, 2003 employment injury.

FACTUAL HISTORY

On August 22, 2003 appellant, then a 43-year-old clerk, filed a traumatic injury claim alleging that on that day she was hit on the right side of her head by a falling shelf. She stopped work that day. OWCP accepted the claim for a cervical strain and paid appropriate benefits.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant returned to work on March 1, 2004 and stopped again on April 13, 2004. OWCP accepted a recurrence of disability March 23, 2004 and eventually placed her on the compensation rolls. Appellant subsequently retired from the employing establishment.

By decision dated January 19, 2007, OWCP terminated appellant's compensation benefits effective January 21, 2007. Determinative weight was accorded to the November 20, 2006 opinion of Dr. Norman M. Heyman, a Board-certified orthopedic surgeon selected as the impartial medical specialist,² who found appellant's cervical sprain/strain had resolved; she had neck pain with subjective complaints and a normal examination; a closed head injury with subjective complaints and normal examination; and right and left shoulder pain with subjective complaints and a normal examination. Dr. Heyman opined that she had recovered from her work-related injuries with no further disability. By decision dated August 23, 2007, an OWCP hearing representative affirmed the January 19, 2007 decision.

On March 19, 2010 appellant claimed schedule award compensation. In a November 23, 2009 permanent impairment worksheet for the upper extremity, Dr. Ranga C. Krishna, a Board-certified neurologist, opined that appellant had 30 percent impairment of the right upper extremity. In a March 4, 2008 report, he provided an impression of vestibular dysfunction and cervical and lumbar neuropathic pain syndrome.

On March 18, 2010 an OWCP medical adviser reviewed the history of injury, the medical records and Dr. Krishna's November 23, 2009 worksheet. He listed several defects in Dr. Krishna's impairment worksheet, including the lack of any diagnosis or references to pages, tables or figures from the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The medical adviser recommended OWCP refer appellant for an impairment evaluation.

In an August 4, 2010 report, Dr. Stanley Soren, a Board-certified orthopedic surgeon, noted the history of injury, his review of the record and presented examination findings. He found a resolved cervical sprain/strain and noted the June 1, 2004 electrodiagnostic studies indicated no evidence of cervical radicular dysfunction. Dr. Soren opined that maximum medical improvement occurred on July 26, 2006. Under the sixth edition of the A.M.A., *Guides*, he opined that appellant had one percent permanent impairment of the cervical spine under Table 17-2, page 564.

On October 5, 2010 an OWCP medical adviser opined that Dr. Soren's one percent impairment rating of the cervical spine was based upon the whole person and, thus, not acceptable under FECA. He noted that, since appellant's grade modifier for physical examination was zero, the peripheral nerve impairment tables could not be used as there was no radiculopathy. The medical adviser further opined that maximum medical improvement was reached on July 26, 2006.

² Dr. Heyman was selected to resolve the conflict in medical opinion between OWCP's referral physician, Dr. Jonathan D. Glassman, a Board-certified orthopedic surgeon, and Dr. Robert Copulsky, an orthopedist, and Chiropractor Alan Rosen with regarding appellant's diagnosis and whether causal relationship existed between appellant's condition and the accepted work injury and whether there was any continuing disability due to the accepted work injury.

In response to OWCP's request for clarification, Dr. Soren opined in a November 30, 2010 report that his prior rating was incorrect. He found that, since appellant had no neurological involvement, there was no impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*.

On April 5, 2011 an OWCP medical adviser reviewed Dr. Soren's November 30, 2010 supplemental report and agreed that appellant had no impairment of her upper extremities.

By decision dated June 21, 2011, OWCP denied appellant's claim for a schedule award.

On July 14, 2011 appellant requested a telephonic hearing, which was held October 4, 2011. In an October 14, 2010 report, Dr. Krishna noted that she was under his care for cervical radiculopathy and right shoulder derangement. He stated that the permanent impairment worksheet previously submitted was completed under the sixth edition of the A.M.A., *Guides*. Dr. Krishna stated that Table 15.2, Table 15.3 and Table 15.6 were used and the 30 percent impairment was calculated using the net adjustment calculation.

By decision dated December 19, 2011, an OWCP hearing representative affirmed the June 21, 2011 decision denying appellant's schedule award claim. She found that Dr. Krishna had not provided a sufficiently rationalized opinion to support that appellant had impairment of the upper extremities causally related to the accepted work injury.

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

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); 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).

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 a cervical sprain/strain. 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 cervical strain. In a permanent impairment worksheet, Dr. Krishna opined that she had 30 percent impairment of the right upper extremity. In an October 14, 2010 report, meant to accompany the permanent impairment worksheet, he advised that appellant had cervical radiculopathy and right shoulder derangement. However, OWCP has not accepted that either condition is causally related to the work injury. Dr. Krishna provided insufficient explanation or medical rationale as to how any of these conditions were causally related to the employment injury.¹⁰ Dr. Soren, an OWCP referral physician, indicated that the June 1, 2004 electrodiagnostic studies indicated no evidence of cervical radicular dysfunction. Dr. Krishna's reports are insufficient to establish a continuing employment-related disability or medical condition after January 21, 2007, the date that appellant's compensation benefits were terminated, causally related to her August 22, 2003 employment injury. It is not established that the rated impairment is causally related to an accepted work injury.

Dr. Soren opined that the cervical sprain/strain had resolved and there was no evidence of cervical radicular dysfunction on the June 1, 2004 electrodiagnostic studies. This was based on his review of the history of injury, the medical record and his examination findings. Dr. Soren opined that appellant reached maximum medical improvement July 26, 2006. In a November 30, 2010 report, he opined that his prior impairment rating was incorrect. Dr. Soren opined that, since there was no evidence of neurological involvement, appellant had no impairment of the right upper extremity under the sixth edition of the A.M.A., *Guides*.

An OWCP medical adviser reviewed the medical evidence of record and found that there was no basis on which to issue a schedule award as the accepted conditions had resolved. The medical adviser 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. While she indicated before OWCP and on appeal that she still has symptoms from the

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

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).

employment injury, an impairment rating is a medical issue which can only be resolved through the submission of probative medical evidence from a physician.¹¹

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 December 19, 2011 is affirmed.

Issued: September 18, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹¹ *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).