United States Department of Labor
Employees' Compensation Appeals Board

GLADYS A. TUNSTALL, Appellant	)	
and	)	**Docket No. 05-1107**
	)	**Issued: September 20, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

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
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 21, 2005 appellant filed a timely appeal from the June 4, 2004 merit decision of the Office of Workers' Compensation Programs, which denied an increased scheduled award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the schedule award issue.

ISSUE

The issue is whether appellant has more than a 25 percent permanent impairment of the right upper extremity.

FACTUAL HISTORY

On the prior appeal of this case,[1] the Board found that the physician selected to serve as an impartial medical specialist was not Board-certified, and therefore his opinion could not resolve the conflict that had arisen on the extent of the impairment to appellant's right upper extremity. The Board set aside the Office's schedule award decisions and remanded the case for

[1] Docket No. 01-0334 (issued March 12, 2002) (order remanding case).

further development and a final decision. The facts of this case as set forth in the Board's prior order are hereby incorporated by reference.

On remand the Office referred appellant, together with the case file and a statement of accepted facts, to Dr. Howard Zeidman, a Board-certified orthopedic surgeon, for an impartial medical examination. On April 29, 2002 he related appellant's history of injury, medical treatment and current complaints. Dr. Zeidman reviewed the statement of accepted facts and the medical reports involved in the conflict. He also reported his findings on examination, as follows:

> "At the time of my examination, I found the scars in the radial wrist, volar palm and the scar of the trigger finger release all well healed. There was good motion in both hands and it was symmetrical, bilaterally.
>
> "Tinel['s] sign was negative over the wrists, bilaterally.
>
> "The examination of sensory function was somewhat inconstant, although the patient did report that there was less sensation in the area of the thumb, index, and middle fingers on the palmar aspect when she was asked to compare specific areas in this distribution with the opposite hand and other areas in her hand, she was inconsistent with regard to the presence or absence of sensory functions.
>
> "In addition, x-rays of the right wrist and hand were obtained and those were unremarkable."

Noting that appellant had undergone a release of de Quervain's tenosynovitis, Dr. Zeidman reported "good residual motion" with no residuals other than the scar of the release. He noted that the statement of accepted facts specifically described appellant's carpal tunnel syndrome as unrelated to her employment, but nonetheless there appeared to be good healing and no objective signs of permanent disability other than the inconstant sensory problems reported. Finally, he noted a good recovery from appellant's trigger finger release, again with the exception of the scar. Responding to questions posed by the Office, Dr. Zeidman reported:

> "Aside from the patient's subjective symptoms, there is no specific functional loss which can be subject to evaluation. All of the scars are small, are not disfiguring, and are not of functional significance. The de Quervain's release does not produce any functional disability or other problem. In fact, her only problem is the inconstant sensory difficulty and this is related to a nonjob-related problem and, in any event, there is no specific functional objective impairment that can be defined."

In a decision dated June 10, 2002, the Office found that Dr. Zeidman's well-rationalized report supported that appellant had no permanent impairment of her right upper extremity and that appellant therefore had no more than the 25 percent impairment she was previously awarded.

In a decision dated June 4, 2004, an Office hearing representative affirmed, finding that the opinion of the impartial medical specialist represented the weight of the evidence.

LEGAL PRECEDENT

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "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."[2]

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.[3] When, however, the opinion of the impartial specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.[4] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[5]

Section 8107 of the Act authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.[6] Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[7]

To support a schedule award, the file must contain competent medical evidence that describes the impairment in sufficient detail for the adjudicator to visualize the character and degree of disability.[8] The report of the examination must always include a detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in

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[2] 5 U.S.C. § 8123(a).

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

[4] *See Nathan L. Harrell*, 41 ECAB 402 (1990).

[5] *Harold Travis*, 30 ECAB 1071 (1979).

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.b(2) (August 2002).

strength or disturbance of sensation, or other pertinent description of the impairment.[9] The Office should advise any physician evaluating permanent impairment to use the fifth edition of the A.M.A., *Guides* and to report findings in accordance with those guidelines.[10]

ANALYSIS

Evaluating the permanent impairment of the upper extremity requires a record of actual measured goniometer readings or linear measurements.[11]

Dr. Zeidman, the impartial medical specialist, reported that appellant had "good motion" in both hands; it was symmetrical bilaterally. He also noted "good residual motion" following her de Quervain's release. Although the Office interpreted these remarks to mean no loss of motion, Dr. Zeidman reported no actual measurements. This prevents the Board from using the A.M.A., *Guides* to determine as a matter of fact whether appellant has an impairment of her right upper extremity due to loss of motion.[12] The Board does not interpret Dr. Zeidman's report to mean, for example, that active wrist flexion was greater than 60 degrees from the neutral position, as measured by a goniometer.[13] A physician's description of "full" or "normal" or "good" range of motion may well be accurate, but as a reviewing and adjudicating body, the Board must be able to determine whether the clinical findings show any impairment under the protocols of the A.M.A., *Guides*. In schedule award cases the Board has observed that, "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."[14] The Board therefore cannot accept Dr. Zeidman's descriptions as "full" or "normal" or "good" range of motion without specific range of motion findings to support this stated conclusion.

Because Dr. Zeidman's April 29, 2002 report does not permit a proper application of the A.M.A., *Guides*, the Board will set aside the Office's June 4, 2004 decision and remand the case for a supplemental report from Dr. Zeidman. He should be asked to provide specific range of motion findings. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on the impairment of appellant's right upper extremity.

[9] *Id*. at Chapter 2.808.6.c(1).

[10] *Id*. at Chapter 2.808.6.a (noting exceptions).

[11] A.M.A., *Guides* at 451.

[12] If the clinical findings are fully described, any knowledgeable observer may check findings with the criteria of the A.M.A., *Guides*. *Id*. at 17.

[13] *See id*. at 467 (Figure 16-28).

[14] *E.g.*, *Charles Dionne*, 38 ECAB 306 (1986) (noting that the Office has adopted the A.M.A., *Guides* as the standard for evaluating schedule losses, and that the Board has concurred in that adoption).

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is required.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: September 20, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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