

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

R.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Louisville, KY, Employer**

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**Docket No. 12-1415
Issued: December 12, 2012**

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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 18, 2012 appellant, through her attorney, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated May 17, 2012 which denied a 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 the case.

ISSUE

The issue is whether appellant established permanent impairment to a scheduled member under 5 U.S.C. § 8107.

FACTUAL HISTORY

On July 30, 1998 appellant, then a 38-year-old mail handler, sustained a shoulder injury while unloading bulk mail containers. OWCP accepted her claim for contusion of the left elbow, neck sprain and right shoulder strain. Appellant did not stop work.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant sought treatment from Dr. Sven Jonsson, a Board-certified family practitioner, from August 4 to 12, 1998. Dr. Jonsson diagnosed contusion/strain of the shoulder and right elbow. From August 19, 1998 to April 19, 1999, appellant was treated by Dr. Donna L. Metz-Dunn, a family practitioner, for right shoulder, elbow and arm pain that followed a lifting incident at work. Dr. Metz-Dunn diagnosed shoulder, elbow and arm and chronic cervical strain and mild carpal tunnel syndrome. She returned appellant to limited-duty work. A March 29, 1999 magnetic resonance imaging (MRI) scan of the cervical spine revealed no abnormalities. A May 11, 1999 electromyogram (EMG) revealed no abnormalities.

Appellant was treated by Dr. Michael G. Cassaro, a Board-certified anesthesiologist, from October 25 to November 11, 1999, for shoulder and arm pain that developed on July 30, 1998 after she pushed a container at work onto a dock and slipped and fell. Dr. Cassaro diagnosed probable causalgia in the right arm with bilateral brachial plexopathies, bilateral rotator cuff tendinitis, subacromial bursitis and chronic low back pain with muscle spasms and L4, L5 radiculitis. From March 8, 2000 to April 2, 2002, he treated her for right brachial plexopathy with complex regional pain syndrome of the right arm. Dr. Cassaro opined that there was no other etiology for appellant's symptoms than the work-related injury of July 30, 1998. In an April 2, 2002 report, he noted that appellant presented with neck pain, right arm pain, right leg pain and low back pain. Appellant reported being in an automobile accident on October 20, 2001, where she had injuries to her neck and shoulder for which she underwent physical therapy. Dr. Cassaro noted findings of antalgic gait and increased pin prick sensation in nondermatomal and nonperipheral nerve distribution of the right arm. He diagnosed right brachial plexopathy, reflex sympathetic dystrophy, lumbago and right rotator cuff tendinitis.

On November 6, 2001 Dr. Metz-Dunn diagnosed reflex sympathetic dystrophy in the absence of other definitive findings. She noted that appellant was treated by several specialists without a definite diagnoses or visible improvement in her subjective symptoms. Dr. Metz-Dunn noted that, in view of multiple treatment failures, appellant was referred for pain management. A May 17, 2001 MRI scan of the cervical spine revealed loss of cervical lordotic curvature with no evidence of disc bulge or herniation.

On November 7, 2002 appellant filed a Form CA-2a, notice of recurrence of disability, alleging that she had a recurrence of disability on October 2, 1999 causally related to her work-related injury. In a letter dated August 12, 2003, OWCP informed appellant that her case was inactive and had been retired to the federal records center. It asked appellant's attorney if he wished to proceed with a recurrence claim or file a new claim. Thereafter, the record was dormant for several years.

On September 22, 2011 appellant filed a claim for a schedule award. By letter dated October 31, 2011, OWCP advised appellant that no medical evidence had been submitted in support of the claim since May 2002. It requested that she submit a report from her physician which provided an assessment of permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).² No additional evidence was received.

² A.M.A., *Guides* (6th ed. 2008).

In a decision dated December 6, 2011, OWCP denied appellant's claim for a schedule award finding that she failed to submit sufficient medical evidence to establish permanent impairment causally related to her accepted work-related conditions.

Appellant requested an oral hearing which was held on March 21, 2012. She submitted a May 11, 2009 EMG and reports from Dr. Garnett Sweeney, a Board-certified orthopedic surgeon and OWCP referral physician, dated previously of record.³ Appellant submitted reports from Dr. Cassaro dated March 31 to May 4, 2010. Dr. Cassaro noted not treating her since 2002 and diagnosed cervical degenerative disc disease, complex regional pain syndrome of the right upper extremity, hypothyroidism and endocrinopathy. He recommended epidural steroid injections which were performed on April 6 and May 4, 2010. An MRI scan of the cervical spine dated April 2, 2010 revealed straightening of the cervical lordosis and annular disc bulges at C4-5, C5-6 and C6-7.

In a December 15, 2011 impairment rating, Dr. Martin Fritzhand, a Board-certified physiatrist, noted appellant presented with cervical spine pain that radiated into the right shoulder, a swollen right hand and painful right elbow with numbness in the right forearm. Appellant continued with treatment for right elbow contusion, neck sprain and reflex sympathetic dystrophy as her musculoskeletal distress persisted over the years. Dr. Fritzhand noted diminished range of motion of the right shoulder and cervical spine, decreased muscle strength over the right shoulder abductors and rotators and diminished grip strength on the right with associated sensory loss. Appellant had difficulty using her right upper extremity during the workday, she was unable to carry heavy objects and could no longer participate in sports. Dr. Fritzhand found that maximum medical improvement occurred in January 2000. He opined that appellant had 11 percent impairment of the right arm under the A.M.A., *Guides*. Dr. Fritzhand diagnosed neck sprain and assessed impairment under *The Guides Newsletter* July/August 2009, and opined that clinical evaluation, history and physical examination revealed C8 spinal nerve impairment. Pursuant to Table 15-14, appellant had a severity of three for sensory deficit and a severity of one for mild motor deficit involving the right arm. Under Table 15-7, the grade modifier for functional history was two (*QuickDASH* of 79.5). Dr. Fritzhand noted that appellant had a sensory impairment of five percent and motor impairment of five percent of the right arm. He noted that appellant also sustained a contusion to the right elbow and forearm. Pursuant to Table 15-7, the grade modifier for functional history was one for one percent impairment to the right arm for the elbow and forearm contusion. Dr. Fritzhand used the Combined Values Chart to find a total of 11 percent permanent impairment to the right upper extremity.

In a May 17, 2012 decision, an OWCP hearing representative affirmed the December 6, 2011 decision. She found that Dr. Fritzhand did not provide a well-reasoned opinion relating appellant's current conditions and permanent impairment to her accepted conditions.

³ Dr. Sweeney's reports indicated that there was no objective evidence of appellant's accepted conditions. He also indicated that appellant had bilateral carpal tunnel syndrome which preexisted the 1998 work injury but could be related to her long-standing repetitive work activities.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing federal regulations,⁵ 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.⁷

A schedule award can be paid only for a condition related to an employment injury. 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.⁸

ANALYSIS

OWCP accepted appellant's claim for contusion to the elbow, neck sprain and right shoulder strain. On September 22, 2011 appellant filed a claim for a schedule award. OWCP denied appellant's claim for a schedule award on the grounds that the medical evidence did not support that she sustained permanent impairment as a result of the July 30, 1998 work injury. The Board finds that appellant has not submitted medical evidence to support that her accepted conditions caused permanent impairment to schedule body member.

Appellant submitted a report from Dr. Fritzhand who treated her for right elbow contusion, neck sprain and reflex sympathetic dystrophy as musculoskeletal distress. She reported that in July 1998 while she was offloading a truck her right elbow hit a mail container injuring her right arm, neck, shoulder and elbow. Dr. Fritzhand noted a diagnosis of neck sprain and that clinical evaluation and history and physical examination revealed C8 spinal nerve impairment. He found that appellant sustained 11 percent impairment of the right arm for C8 spinal nerve impairment in accordance with the A.M.A., *Guides* and *The Guides Newsletter*. Although Dr. Fritzhand generally indicated that appellant's impairment was employment related, he did provide a fully reasonable explanation of how the accepted conditions caused or contributed to appellant's C8 spinal nerve impairment. The Board notes that appellant's condition was not accepted for cervical degenerative disc disease or a C8 spinal nerve condition. Dr. Fritzhand did not adequately explain how these conditions were work related.⁹ This is

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ *Veronica Williams*, 56 ECAB 367 (2005).

⁹ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

important because appellant was involved in an automobile accident in 2001 and sustained injuries to her neck and shoulder. Furthermore, the record does not reflect that she received medical treatment from early 2002 to early 2010. Dr. Fritzhand did not address the automobile accident history or how it affected her condition. The Board notes that a medical opinion based on an incomplete history is of diminished probative value.¹⁰

Appellant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment. While preexisting impairments of the body are to be included,¹¹ the Board has held that where the claimant has not established any permanent impairment caused by the employment, the claim is not ripe for consideration of any preexisting impairment.¹² OWCP accepted that appellant sustained an elbow contusion, neck sprain and right shoulder strain as a result of the July 30, 1998 work injury. No physician has adequately explained how these accepted conditions caused permanent impairment of a scheduled body member.

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 not established that she has permanent impairment of a scheduled body member causally related to her 1998 work injury.

¹⁰ See *Cowan Mullins*, 8 ECAB 155, 158 (1955).

¹¹ *Lela M. Shaw*, 51 ECAB 372 (2000).

¹² *Thomas P. Lavin*, 57 ECAB 353 (2006).

ORDER

IT IS HEREBY ORDERED THAT May 17, 2012 Office of Workers' Compensation Programs' decision is affirmed.

Issued: December 12, 2012
Washington, DC

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

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

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