United States Department of Labor
Employees' Compensation Appeals Board

MARTHA J. HANLEY, Appellant	)	
and	)	**Docket No. 03-2167**
	)	**Issued: May 10, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Law, GA, Employer	)	

Appearances:
Martha J. Hanley, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 28, 2003 appellant filed a timely appeal from the May 20, 2003 decision of the Office of Workers' Compensation Programs granting a schedule award for five percent impairment of use of her right arm. Appellant also appeals the Office's June 30, 2003 decision denying her claim for wage-loss compensation for the period beginning on or after May 7, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she has more than a five percent impairment of her right arm for which she received a schedule award; and (2) whether appellant has established that she is entitled to wage-loss compensation for the period on or after May 7, 2003.

FACTUAL HISTORY

On March 27, 2001 appellant, then a 48-year-old city letter carrier, filed a traumatic injury claim alleging that on March 26, 2001 she experienced severe pain and burning in her right shoulder, arm and elbow and neck. Appellant stated that she felt something "pop" in her shoulder. She stated that on March 27, 2001 her fingers felt numb and cold. By letter dated June 15, 2001, the Office accepted appellant's claim for a right shoulder strain, cervical strain and right elbow lateral epicondylitis.

On October 11 and 25, November 5 and December 2, 2002 and February 10 and April 30, 2003, appellant filed claims for a schedule award along with numerous medical reports, disability certificates and progress notes from Dr. Shulim Spektor, a Board-certified physiatrist, and Dr. L. Allen Bradford, a psychotherapist, providing a diagnosis of chronic pain, extensive fibromyalgia, tension headaches, anxiety and depression, her physical limitations, recommendation that she avoid stressful environments and her disability for work.

On March 24, 2003 the Office requested that an Office medical adviser review appellant's medical records and determine the extent of permanent impairment of her right arm and the date she reached maximum medical improvement. The Office advised the Office medical adviser to review the November 27, 2002 findings of a previous Office medical adviser, who indicated that appellant did not have any ratable impairment but that she may have impairment due to pain citing page 583 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On March 27, 2003 an Office medical adviser reviewed the medical record and determined that appellant had a five percent impairment of her right arm. The Office medical adviser did not indicate when appellant reached maximum medical improvement.

By decision dated May 20, 2003, the Office granted appellant a schedule award for a five percent permanent impairment for the loss of use of her right arm.

Appellant filed a claim (Form CA-7) for wage-loss compensation for the period May 7 through 19, 2003. She submitted Dr. Spektor's May 13, 2003 attending physician's report providing a description of a January 27, 1997 injury, finding that her chronic pain, fibromyalgia, tension headaches, anxiety and depression were caused by this incident and that she was currently performing limited-duty work. Dr. Bradford's May 12, 2003 medical note indicated that appellant was unable to work from May 7 through 12, 2003 and that she would be unable to work until further notice.

By letter dated May 28, 2003, the Office advised appellant that she needed to submit medical evidence establishing that she sustained disability for work during the claimed period. The Office noted that it had been advised by the employing establishment that the conditions cited in Dr. Spektor's report had not been accepted as employment related. The Office noted the accepted conditions of cervical sprain, right shoulder strain and lateral epicondylitis of the right elbow. The Office provided appellant with 30 days, in which to submit the requested information.

On June 12, 2003 appellant responded that from May 7, 2003 until her return to work on June 2, 2003 she was sick due to her injury. She stated that her supervisor told her that he entered sick leave and that the Office would get it straightened out. Appellant indicated that Jim Darranger, a supervisor, informed her that he would change the last pay period to leave without pay but that he would not change the days before that time. Appellant also stated that she experienced pain caused by high levels of stress which prevented her from working on May 7, 2003.

In a September 26, 2001 report, Dr. Bradford indicated that her neck and back pain, fibromyalgia, tension headaches and depression were caused by her January 27, 1997 and March 26, 2001 employment injuries. On May 29, 2003 he indicated that appellant was unable to work from May 7 through 29, 2003, due to her on-the-job injury. In an April 17, 2002 report, Dr. Spektor noted that appellant had been receiving pain management therapy for chronic post-traumatic neck, shoulders, upper back, mid-back and low back pain, extensive fibromyalgia and tension headaches. He stated that her chronic pain was conditioned by anxiety, tension, depression and poor sleep. He opined that appellant had reached maximum medical improvement prior to starting her pain treatment and that she had an eight percent impairment of the whole person based on the fifth edition of the A.M.A., *Guides*. He concluded by noting appellant's physical limitations and ability to perform limited-duty work. Appellant submitted Dr. Spektor's progress notes covering the period May 13 through June 4, 2003 and a May 29, 2003 disability certificate indicating that she was treated for chronic pain and excused her from work on that date.

On June 12, 2003 appellant filed a Form CA-7 for wage-loss compensation covering the period May 7 through June 2, 2003. She stated that she was sick due to her March 26, 2001 employment injury and that her supervisor placed her on annual and sick leave which she was not allowed to buy back and thus, she lost that time. Appellant reiterated that she experienced pain due to work-related stress. She submitted Dr. Spektor's May 1, 2003 duty status report providing a history of the March 26, 2001 employment injury and that she could work limited duty with certain physical restrictions and avoidance of stress. In his June 12, 2003 attending physician's report, Dr. Spektor reiterated his findings as set forth in his May 13, 2003 report. Appellant resubmitted Dr. Bradford's September 26, 2001 and May 29, 2003 notes. Dr. Spektor's June 12, 2003 disability certificate indicated that appellant was treated for chronic pain and she was excused from work on that date. Appellant submitted Dr. Spektor's progress notes covering the period April 2 through June 12, 2003 and Dr. Bradford's May 29, 2003 progress notes regarding her pain.

In a June 17, 2003 letter, the employing establishment controverted appellant's claim on the grounds that she was seeking compensation for nonwork-related conditions.

In a June 30, 2003 decision, the Office denied appellant's claims on the grounds that the evidence of record was insufficient to establish that her disability from employment on the dates in question was causally related to her accepted employment injury. The Office found that the

evidence submitted by appellant indicated that her disability for work was due to conditions that had not been accepted by the Office.[1]

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[4] However, neither the Act nor the regulation specify the manner, in which the percentage of impairment shall be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[5]

ANALYSIS -- ISSUE 1

In this case, the Office medical adviser determined that appellant had a five percent permanent impairment of the right arm and the Office awarded appellant a schedule award based on this finding. The Office advised the Office medical adviser to review appellant's medical records and the findings of a previous Office medical adviser, who found that appellant did not have any ratable impairment but noted that she may have impairment due to pain and cited page 583 of the fifth edition of the A.M.A., *Guides*. In finding that appellant had a five percent impairment of the right arm, the Office medical adviser, however, did not indicate which tables or figures, with references to page numbers, of the A.M.A., *Guides* he used. It is not clear how the Office medical adviser obtained an impairment rating of five percent.

Since the Office medical adviser did not adequately explain the physical findings on which his impairment rating was based nor made specific references to the fifth edition of the A.M.A., *Guides*, his opinion is of diminished probative value and precludes the Board's review of the Office's decision.

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist to provide a fully explained medical opinion with specific references to physical findings in the record and to figures or tables, with page numbers, of

---

[1] Subsequent to the Office's June 30, 2003 decision, the Office received additional evidence. Further, appellant submitted new evidence on appeal. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c).

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.404.

[4] 5 U.S.C. § 8107(c)(19).

[5] *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

the A.M.A., *Guides* in determining the extent of permanent impairment of appellant's right arm. After further development as it deems necessary, the Office should issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Act[6] has the burden of establishing the essential elements of his or her claim including the fact that the injury was sustained in the performance of duty as alleged and that any disability or specific condition, for which compensation is claimed is causally related to the employment injury.[7] As used in the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[8] Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[9] Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.[10]

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.[11] Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.[12] However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.[13]

ANALYSIS -- ISSUE 2

In this case, the Office accepted that appellant sustained a right shoulder strain, cervical strain and right elbow lateral epicondylitis on March 26, 2001. The Office properly found that appellant had not submitted sufficient medical evidence sufficient to establish that she was disabled for work during the period for which she claimed compensation. Appellant submitted numerous medical reports, progress notes and disability certificates from her attending Board-certified physiatrist, Dr. Spektor, indicating that she suffered from neck and back pain, extensive fibromyalgia, tension headaches and depression and that she was disabled for work due to

[6] 5 U.S.C. §§ 8101-8193.

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *Patricia A. Keller*, 45 ECAB 278 (1993).

[9] *See Fred Foster*, 1 ECAB 21 (1947).

[10] *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

[11] 5 U.S.C. § 8103(a).

[12] *Vincent E. Washington*, 40 ECAB 1242 (1989).

[13] *Dorothy J. Bell*, 47 ECAB 624 (1996).

chronic pain. These conditions, however, have not been accepted by the Office. The reports, progress notes and disability certificate of Dr. Bradford, appellant's psychotherapist, indicating that appellant was disabled for work during the claimed period due to pain are insufficient to establish appellant's burden as a psychotherapist, is not a physician or clinical psychologist as defined under the Act.[14] Thus, his opinion regarding the cause of appellant's disability during the claimed period is of no probative medical value.

CONCLUSION

The Board finds that the case is not in posture for decision regarding the issue whether appellant has established that she has greater than a five percent permanent impairment for the loss of use of her right arm, for which she received a schedule award. The Board finds that appellant has failed to establish that she is entitled to wage-loss compensation for the period beginning on or after May 7, 2003.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2003 schedule award decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further consideration consistent with this decision. The Office's June 30, 2003 decision denying appellant's claim for wage-loss compensation for the period beginning on or after May 7, 2003 is herby affirmed.

Issued: May 10, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[14] 5 U.S.C. § 8101(2).