United States Department of Labor
Employees' Compensation Appeals Board

ANNA M. SHROPSHIRE, Appellant	)	
and	)	**Docket No. 05-1058**
	)	**Issued: December 15, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

Appearances:
Anna M. Shropshire, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 7, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated January 26, 2005, which denied her claim for intermittent compensation for the period April 8 to October 8, 2004, and February 25, 2005, which granted a schedule award for a five percent impairment of the left upper extremity.

ISSUES

The issues are: (1) whether appellant has more than a five percent impairment to her left upper extremity for which she received a schedule award; and (2) whether appellant established entitlement for wage-loss compensation for intermittent disability for the period April 8 to October 8, 2004.

FACTUAL HISTORY

On November 2, 2000 appellant, then a 46-year-old manual clerk, filed an occupational disease claim alleging that, as a result of sorting mail, she sustained carpal tunnel syndrome in both her wrists. By letter dated January 19, 2001, the Office accepted her claim for carpal tunnel

syndrome. On June 15, 2001 appellant underwent a right carpal tunnel release and on October 1, 2001 she underwent a left carpal tunnel release.

On March 27, 2002 appellant filed a claim for a schedule award and appellant submitted a medical report by Dr. Christine Huynh, a Board-certified physiatrist, who determined that appellant had a 10 percent whole person impairment rating. In a decision dated November 8, 2002, the Office issued a schedule award for a two percent impairment of the right upper extremity and noted a zero percent impairment of the left upper extremity. The Office denied reconsideration on June 26, 2003.[1] Appellant appealed and, by decision dated December 3, 2003, the Board found that the case was not in posture for decision as appellant was entitled to a hearing.[2] On remand, a hearing was held on June 22, 2004.

In a medical report dated July 15, 2004, Dr. R. Robert Ippolito, a Board-certified plastic surgeon with a specialty in surgery of the hand, diagnosed appellant as status post right carpal tunnel decompression on June 15, 2001, left carpal tunnel release on October 1, 2001 and tenosynovectomy and internal neurolysis of the median nerve of March 3, 2003. He opined:

> "Impairment Rating … is carried out according to the [f]ifth [e]dition of the A.M.A., *Guides*. Based on the findings of the physical examination the patient maintains a sensory deficit to the radial palmar digital thumb, ulnar palmar digital thumb, radial palmar digital to the index finger, ulnar palmar digital of the index finger, radial palmar digital of the middle finger … and radial … digital of the ring finger (2 point discrimination greater than 15 millimeters). These findings are consistent with a 39 percent sensory deficit of the median nerve which is combined with a 5 percent motor deficit of the median distribution to the hand is equivalent to 42 percent combined motor and sensory deficit to the left upper extremity (pages 492-493, fifth edition of the A.M.A., *Guides*).

In a decision dated August 26, 2004, the hearing representative remanded the case for the Office to consider the new medical evidence.

On October 26, 2004 the Office asked a medical adviser to provide an impairment rating pursuant to the A.M.A., *Guides*. On November 3, 2004 the Office medical adviser found that Dr. Ippolito's report was not adequate for an impairment rating. The Office medical adviser noted that the descriptions of impairment provided by Dr. Ippolito did not support the degree of sensory and/or motor loss and were not adequate to allow him to recommend an impairment rating. He stated:

> "Dr. Ippolito recommends impairment only for the [left upper extremity]. He mentions descriptions of abnormality in both hands. He recommends 39 [percent permanent impairment] for the left hand based on [greater than 15 millimeters]

[1] The Board notes that the cover letter of the decision contains a date of June 24, 2003 while the memorandum explaining the basis of the decision is dated June 26, 2003.

[2] *Anna M. Shropshire*, Docket No. 03-1293 (issued December 3, 2003). The history of the case to this point is incorporated by reference into this decision.

> two point discrimination. This would be grade [zero] sensory loss [A.M.A., *Guides*, Table 16-10] that would imply totally absent sensibility, abnormal sensations, or severe pain that prevents all activity. He recommends [five percent permanent impairment] for motor loss in the median nerve. That would imply a 50 percent loss of motor function in the hand. The descriptions provided by Dr. Ippolito do not seem to support the degree of sensory and/or motor loss."

He recommended that the Office refer appellant to an appropriate Board-certified specialist for further evaluation with regard to impairment.

By letter dated November 26, 2004, the Office referred appellant to Dr. Robert M. Chouteau, an osteopath, for a second opinion. In a medical report dated December 14, 2004, Dr. Chouteau listed his impression as status post left median nerve decompression times two. He noted that an EMG revealed left median neuropathy at the wrist with superimposed chronic C7-8 radiculopathy. Dr. Chouteau evaluated appellant's impairment as follows:

> "Sensory impairment of the digital nerve with a caliper between 7 and 8 millimeters, the patient had normal two point discrimination noted on the volar surface of the thumb, index and middle finger of the left hand region. According to Chapter 16, upper extremities out of the [f]ifth [e]dition.
>
> "On grip strength on the left hand, the patient had an average of 21.9 pounds and on the right hand 25.3 pounds for a maximum on the left of 25.5 pounds and 35.8 in the right hand and a 13.4 percent on difference of hand grip strength. Pinch grip was a difference between the left and the right as 24.2 percent.
>
> "Motion, flexion of 60 degrees, extension of 60 degrees, ulnar deviation 30 degrees, radial deviation 20 degrees. [Appellant] showed no abnormality noted with sensory motion and/or strength deficit according to the [f]ifth [e]dition."

In a report dated January 21, 2005, an Office medical adviser noted that page 495 of the fifth edition of the A.M.A., *Guides* provides an award of five percent impairment of the upper extremity "when abnormal motor or sensory latencies" are found. The Office medical adviser concluded that appellant did qualify for that award in view of the electromyogram studies mentioned in Dr. Chouteau's report.

By decision dated February 25, 2005, the Office issued an award for a five percent impairment of the left upper extremity.

On October 15, 2004 appellant filed a claim for compensation from April 8 to October 8, 2004. Appellant claimed compensation for time that she saw her physician. Dr. Ippolito submitted a form indicating the dates and times of appellant's medical appointments

from March 4 through August 3, 2004.[3] The employing establishment submitted appellant's time records from April 5 to September 30, 2004.[4]

On November 23, 2004 the employing establishment controverted appellant's claim for disability between April 8 and October 8, 2004. It contended that on July 13, 2004 appellant's schedule showed an appointment at 2:15 p.m., however, appellant began work at 1:30 p.m. and worked straight through until 6:05 p.m. and was paid accordingly. The employing establishment noted that the rest of appellant's appointments were before her reporting time of 1:30 pm.

By letter dated December 10, 2004, the Office asked appellant for a further explanation of her claim and noted that most of her appointments were before her tour of duty began. It noted that she worked and was paid for the time that she alleged that she was at doctor's appointments on July 13, August 24, September 14 and September 21, 2004.

By decision dated January 26, 2005, the Office denied appellant's claim for intermittent compensation for the period April 8 to October 8, 2004 because the evidence was not sufficient to establish that she was disabled for work was a result of her injury.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Act[5] and its implementing regulation[6] sets 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, the Act 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 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 regulation as the appropriate standard for evaluating schedule losses.[7]

---

[3] According to Dr. Ippolito's records, appellant had doctor's appointments on the following days in 2004, *inter alia*: April 8 (10:45 a.m.), April 15 (8:45 a.m.), April 22 (9:00 a.m.), April 29 (10:45 a.m.), May 6 (11:15 a.m.), May 13 (11:30 a.m.), May 20 (10:30 a.m.), May 27 (10:45 a.m.), June 3 (9:45 a.m.), June 17 (1:30 p.m.), June 22 (1:45 p.m.), June 24 (10:45 a.m.), July 1 (2:45 p.m.), July 6 (10:30 a.m.), July 13 (2:15 p.m.), July 15 (10:45 a.m.), July 20 (1:30 p.m.), July 27 (10:30 a.m.), August 3, 2004 (11:30 a.m.), August 17 (10:45 a.m.), August 24 (2:15 p.m.), August 31 (10:30 a.m.), September 14 (2:00 p.m.), September 21 (2:30 p.m.), September 28 (10:15 a.m.) and October 8 (11:30 a.m.), 2004. The record also contains progress reports from examinations on these dates.

[4] These records note, *inter alia*, that appellant worked the following dates and times in 2004: April 8 (13.47 to 17.47), April 15 (13.47 to 17.50), April 22 (13.42 to 17.51), April 29 (13.42 to 17.48), May 6 (13.5 to 18.08), May 13 (13.45 to 17.5), May 20 (13.42 to 20.03), May 27 (13.45 to 19.5), July 13 (13.5 to 18.08), July 27 (13.47 to 19.7), August 3 (13.45 to 20.00), August 17 (13.42 to 18.00), August 24 (13.45 to 18.71), August 31 (13.45 to 19.24), September 14 (13.42 to 18.65), September 21 (13.49 to 18.50), and September 28, 2004 (13.49 to 18.5).

[5] 5 U.S.C. §§ 8101-8193.

[6] 20 C.F.R. § 10.404(2003).

[7] *See id.; James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

ANALYSIS -- ISSUE 1

The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to determine that appellant had a five percent impairment to her upper left extremity. Dr. Ippolito found that appellant had a 42 percent combined motor and sensory deficit to the left upper extremity. He stated that he based this conclusion on pages 492-93 of the A.M.A., *Guides*. Dr. Ippolito indicated that his physical examination yielded findings that were consistent with a 39 percent sensory deficit of the median nerve which he combined with a 5 percent motor deficit of the median distribution to the hand to find a 42 percent total combined motor and sensory deficit to the left upper extremity.

This rating, however, does not conform with the protocols of the A.M.A., *Guides*. It is apparent that Dr. Ippolito utilized Table 16-15 to note the maximum impairment values for sensory and motor deficits of the median nerve. However, he failed to grade the sensory and motor deficits under Tables 16-110a and 16-11a as directed. For this reason, his impairment rating is of diminished probative value.

The Office referred Dr. Ippolito's report to an Office medical adviser, who noted that the impairment rating did not meet the Office's requirements. Accordingly, the Office referred appellant to Dr. Chouteau for examination. Dr. Chouteau did not recommend an impairment rating, however, the physician did thoroughly discuss appellant's findings. He noted sensory impairment of the digital nerve, the grip strength of the left hand, the pinch grip of the left hand, and motion of flexion. He noted that appellant showed no sensory motion and/or strength deficit according to the A.M.A., *Guides*. In a report dated January 21, 2005, an Office medical adviser reviewed Dr. Chouteau's report. He noted that page 495 of the fifth edition of the A.M.A., *Guides* provides for a five percent impairment rating of the upper extremity "when abnormal motor or sensory latencies" are found. He stated that appellant qualified for that award because of the electrophysiologic evidence of the median nerve neuropathy at the wrist. As this is the only report that properly applies the A.M.A., *Guides*, and clearly explains how the impairment rating was made, the Board finds that the Office granted a schedule award for a five percent impairment of the left upper extremity. As noted, incases of compression neuropathies, additional impairment values are not given for decreased grip strength.[8]

LEGAL PRECEDENT -- ISSUE 2

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.[9] Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.[10] 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 effects of any

[8] *See* A.M.A., *Guides* 494.

[9] 5 U.S.C. § 8103(a).

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

employment-related condition. Appellant has the burden of proof to submit supporting rationalized medical evidence.[11] The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[12]

ANALYSIS -- ISSUE 2

The Board finds that appellant has failed to establish that she was disabled for the time claimed for medical appointments. The record indicates that appellant did have numerous appointments with Dr. Ippolito, as noted. However, the record does not support that appellant missed any time from work for these appointments. For the dates July 13, August 24, and September 14 and 21, 2004 appellant was paid her salary for working at the employing establishment during time that she claimed she was at the physician's office. For April 8, 15, 22 and 29; May 6, 13, 20 and 27; July 27, August 3, 17 and 31 and September 28, 2004, the doctor's appointments were before appellant was scheduled to work. Therefore, appellant has not shown that she missed any time from work for these medical appointments. Accordingly, the Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant did not establish that she had greater than five percent impairment to her left upper extremity and that she also did not establish that she was entitled to compensation for intermittent periods of disability between April 8 and October 8, 2004.

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

[12] *See Fereidoon Kharabi*, 52 ECAB 29 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 25 and January 26, 2005 be affirmed.

Issued: December 15, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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