United States Department of Labor
Employees' Compensation Appeals Board

K.W., Appellant	)	
and	)	**Docket No. 09-131**
	)	**Issued: August 3, 2009**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Minneapolis, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 17, 2008 appellant filed a timely appeal from April 1 and September 15, 2008 decisions of the Office of Workers' Compensation Programs adjudicating her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than one percent impairment to her right upper extremity for which she received a schedule award.

FACTUAL HISTORY

On October 12, 2005 appellant, then a 45-year-old transportation security screener, filed a traumatic injury claim alleging that she injured her right arm and shoulder when she reached

out to catch an elderly woman who began to fall while stepping onto the escalator.[1] The Office accepted her claim for a lumbar sprain and strain, aggravation of right shoulder impingement and aggravation of right bicipital tenosynovitis. On July 24, 2006 it expanded the claim to include a cervical strain. On September 22, 2006 appellant underwent arthroscopic right shoulder subacromial decompression, right distal clavicle resection and median nerve decompression of the right carpal tunnel performed by Dr. Mark K. Thomas, her attending Board-certified orthopedic surgeon. On April 3, 2007 she filed a claim for a schedule award.

In clinical notes and an impairment rating dated November 13, 2007, Dr. Thomas provided findings on physical examination and diagnosed right shoulder impingement syndrome and right carpal tunnel syndrome. Appellant had frequent or constant low grade pain[2] localized to her right shoulder. Dr. Thomas provided right shoulder range of motion measurements which were all normal. There was no weakness or atrophy of her right upper extremity as a result of her right shoulder pathology. Appellant had full range of motion of the right wrist and fingers. There was no sensory loss, pain or numbness in her right wrist and hand. There was no right wrist or hand weakness. Dr. Thomas opined that appellant had reached maximum medical improvement.

On December 20, 2007 Dr. Robert Wysocki, an Office medical adviser, reviewed the November 13, 2007 report from Dr. Thomas. Based on appellant's aching soreness in her shoulder, he calculated 1 percent impairment for Grade 4 sensory deficit or pain in the distribution of the suprascapular nerve, according to Table 16-10 at page 482 and Table 16-15 at page 492 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*) (25 percent maximum for Grade 4 sensory deficit or pain multiplied by 5 percent maximum for sensory deficit or pain of the suprascapular nerve equates to 1.25 percent, rounded to 1 percent). Dr. Wysocki stated that his impairment rating did not include impairment based on a distal clavicle resection because there was no operative report establishing that this surgery occurred.

By decision dated April 1, 2008, the Office granted appellant a schedule award based on one percent right upper extremity impairment for 3.12 weeks, from November 13 to December 4, 2007.[3]

In an April 11, 2008 statement, appellant alleged that she sustained shingles, a brain seizure, and a bulging spinal disc at C3 as a result of her accepted conditions in the combined case, a lumbar sprain and strain, cervical strain, right shoulder impingement syndrome and aggravation of right shoulder impingement syndrome, right carpal tunnel syndrome and aggravation of right bicipital tenosynovitis.

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[1] Appellant also sustained a work-related right shoulder impingement syndrome in a separate claim on July 9, 2005 while lifting luggage. She sustained work-related right carpal tunnel syndrome in another claim. The Office combined the three cases involving her right upper extremity.

[2] In his November 13, 2007 clinical notes, Dr. Thomas described some aching soreness in her shoulder.

[3] The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of the upper extremity. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by 1 percent equals 3.12 weeks of compensation.

On April 15, 2008 appellant requested a review of the written record. By decision dated September 15, 2008, an Office hearing representative affirmed the April 1, 2008 schedule award decision.[4]

LEGAL PRECEDENT

Section 8107 of the Act[5] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. 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 A.M.A., *Guides*.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[7]

ANALYSIS

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

Dr. Thomas provided findings on physical examination and diagnosed right shoulder impingement syndrome and right carpal tunnel syndrome. Appellant had frequent or constant low grade pain in her right shoulder.[8] Her right shoulder and right wrist and fingers had full range of motion. There was no weakness or atrophy of her right upper extremity as a result of appellant's right shoulder pathology. There was no sensory loss, pain, numbness or weakness in her right wrist and hand.

Dr. Wysocki reviewed the report from Dr. Thomas. Based on appellant's aching soreness in her right shoulder, he calculated 1 percent impairment for Grade 4 pain in the distribution of the suprascapular nerve, according to Table 16-10 at page 482 and Table 16-15 at page 492 of

[4] Subsequent to the September 15, 2008 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

[7] *I.J.*, 59 ECAB __ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] As noted, Dr. Thomas described some aching soreness in the right shoulder in his clinical notes.

the fifth edition of the A.M.A., *Guides* (25 percent maximum for Grade 4 sensory deficit or pain multiplied by 5 percent maximum for sensory deficit or pain of the suprascapular nerve equates to 1.25 percent, rounded to 1 percent). However, it is not clear whether Grade 4 is the appropriate grade for appellant's right shoulder nerve impairment. Grade 4 is described in Table 16-10 at page 482 as "Distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity." The impairment percentage range for Grade 4 is 1 to 25 percent. Grade 3 is described as "Distorted superficial tactile sensibility (diminished light touch and two-point discrimination), with some abnormal sensations or slight pain, that interferes with some activity." The impairment percentage range for Grade 3 is 26 to 60 percent. In his impairment rating, Dr. Thomas noted frequent or constant low grade pain in appellant's right shoulder. He also described "some" aching soreness in the right shoulder which seems to be inconsistent with the description of "frequent or constant" low grade pain. Dr. Thomas did not indicate if appellant's pain was forgotten during activity or interfered with some activity. Depending on whether appellant's pain was forgotten during activity or interfered with some activity, Grade 3 might be more appropriate than Grade 4. Further development is needed on whether appellant's right shoulder sensory deficit or pain should be rated Grade 4 or Grade 3. Dr. Wysocki stated that he did not include any impairment based on a distal clavicle resection because there was no operative report establishing that this surgery occurred. However, the September 22, 2006 operative report is of record and establishes that appellant underwent a distal clavicle resection. A distal clavicle resection equates to a 10 percent upper extremity impairment based on Table 16-27 at page 506 of the A.M.A., *Guides.* The Board finds that appellant has 10 percent right upper extremity impairment for her distal clavicle resection based on the A.M.A., *Guides*. On remand, the Office should determine whether appellant is entitled to more than 1 percent impairment for sensory deficit or pain of the suprascapular nerve of the right shoulder, depending on whether the impairment should be rated as Grade 4 or Grade 3. After such further development as it deems necessary, the Office should issue an appropriate decision on appellant's claim for an increased schedule award for her right upper extremity.

Appellant alleged that she sustained additional medical conditions causally related to her accepted conditions of a lumbar sprain and strain, cervical strain, right shoulder impingement syndrome and aggravation of the right shoulder impingement syndrome, right carpal tunnel syndrome and aggravation of right bicipital tenosynovitis. She alleged that her shingles, brain seizure and bulging spinal disc at C3 were causally related to her employment injuries. However, appellant submitted no medical evidence establishing that these medical conditions were caused or aggravated by her work-related conditions.[9] Therefore, the Office properly did not consider these conditions in evaluating her schedule award claim.

CONCLUSION

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required on the issue of appellant's right upper extremity impairment. On remand, the Office should refer appellant for an examination and evaluation as to whether her

[9] Appellant submitted medical reports with diagnoses of degenerative cervical disc disease at multiple levels and cervical spondylosis. However these reports did not state that the diagnosed cervical conditions were causally related to her employment-related conditions.

right shoulder sensory nerve impairment is consistent with the Grade 4 or the Grade 3 description in Table 16-10 at page 482 of the A.M.A., *Guides.* It should then refer the case record to an Office medical adviser for an impairment rating of appellant's right upper extremity based on correct application of the A.M.A., *Guides*. The impairment rating should be supported by medical rationale explaining how the impairment was calculated. After such further development as it deems necessary, the Office should issue an appropriate decision on appellant's schedule award claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 15 and April 1, 2008 are set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: August 3, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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