United States Department of Labor
Employees' Compensation Appeals Board

B.G., Appellant	)	
and	)	**Docket No. 09-200**
	)	**Issued: July 9, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Sequim, WA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 27, 2008 appellant filed a timely appeal of an October 2, 2008 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed an April 18, 2008 denial of her schedule award claim. 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 established that she sustained permanent impairment due to her employment injury.

FACTUAL HISTORY

On April 29, 2004 appellant, then a 48-year-old rural carrier, filed an occupational injury claim alleging that she developed soreness below her right thumb that progressed to pain from her arm to her elbow due to casing mail and repetitive movement of her right thumb and finger. She first realized her condition was caused or aggravated by employment activities on

April 22, 2004. Appellant did not stop work. The Office accepted her claim for right wrist de Quervain's and right thumb tenosynovitis.

Appellant submitted reports from Dr. Regina McGovern, a Board-certified orthopedic surgeon. On September 14, 2004 Dr. McGovern noted appellant's complaint of right thumb pain. X-rays of appellant's right thumb revealed mild carpometacarpal joint space narrowing with no subluxation. Dr. McGovern diagnosed right wrist de Quervain's tenosynovitis and provided cortisone injections. On October 14, 2004 Dr. McGovern examined appellant's right wrist and hand finding full flexion to the distal palmar crease and full extension without lag in all digits of the hand. She indicated that appellant's right wrist de Quervain's tenosynovitis had resolved.

On July 4, 2007 appellant filed a schedule award claim. In a June 14, 2007 report, Dr. McGovern noted that all metacarpal phalangeal and interphalangeal joints were stable to valgus and varus stress of the bilateral hands. She also noted sensation was intact to light-touch throughout the bilateral upper extremities. X-rays of the lateral right revealed no significant degenerative change and normal alignment. Dr. McGovern noted appellant's right wrist de Quervain's tenosynovitis was stable. She also noted that appellant had reached maximum medical improvement. Dr. McGovern recommended closure of the claim without impairment. In a work capacity evaluation form of the same date, she stated that appellant's de Quervain's tendinitis had resolved. Dr. McGovern checked a box "yes" indicating that appellant could perform her usual job. She also checked a box "yes" indicating that appellant had reached maximum medical improvement. In an undated attending physician's report, Form CA-20, Dr. McGovern noted that she had last seen appellant in 2004 for a condition which had resolved. She diagnosed resolved right de Quervain's tendinitis. Dr. McGovern checked a box "yes" indicating that appellant's condition was caused or aggravated by an employment activity and stated that the condition was now resolved. She checked a box "no" indicating no permanent effects were expected as a result of appellant's injury. Dr. McGovern also stated that appellant was seen for final maximum medical improvement on June 14, 2007 at her attorney's request.

On April 16, 2008 an Office medical adviser reviewed the medical evidence of record and noted that Dr. McGovern found no ratable impairment deficits in the right hand. Therefore, he could not identify any permanent impairment in the right upper extremity. The medical adviser also noted that appellant reached maximum medical improvement on June 14, 2007 as that was the date of Dr. McGovern's impairment rating examination.

In a decision dated April 18, 2008, the Office denied appellant's schedule award claim finding that the evidence was insufficient to establish that she had sustained permanent impairment to a scheduled member due to the accepted work injury.

Appellant requested a telephone hearing on April 22, 2008. At an August 14, 2008 hearing, an Office hearing representative allowed appellant 30 days to submit additional medical evidence.

In an October 2, 2008 decision, the hearing representative affirmed the April 18, 2008 decision denying appellant's schedule award claim finding there was no medical evidence establishing that she sustained any permanent impairment of the right arm.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations 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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[2]

Not all medical conditions accepted by the Office result in permanent impairment to a scheduled member.[3] It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.[4] Office procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement), describes the impairment in sufficient detail to include, 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 strength or disturbance of sensation or other pertinent description of the impairment and the percentage of impairment should be computed in accordance with the A.M.A., *Guides*.[5]

ANALYSIS

The Office accepted that appellant sustained employment-related right wrist de Quervain's tendinitis and right thumb tenosynovitis. Appellant subsequently claimed a schedule award due to this accepted injury; however, the medical evidence is insufficient to establish that appellant's accepted right wrist and thumb condition caused any permanent impairment to her right upper extremity.

The medical reports of record do not contain any opinion supporting that appellant's accepted conditions caused permanent impairment to her right arm. Dr. McGovern, appellant's treating physician, advised that appellant had reached maximum medical improvement but did not support that her accepted conditions caused permanent impairment of her right upper extremity. In reports dated October 14, 2004 and June 14, 2007, she noted that appellant's

[1] 5 U.S.C. §§ 8101-8193. *See* 5 U.S.C. § 8107.

[2] *See* 20 C.F.R. § 10.404; *R.D.*, 59 ECAB ___ (Docket No. 07-379, issued October 2, 2007).

[3] *Thomas P. Lavin*, 57 ECAB 353 (2006).

[4] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[5] *J.P.*, 60 ECAB ___ (Docket No. 08-832, issued November 13, 2008); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

de Quervain's tenosynovitis of the right wrist had resolved. Dr. McGovern recommended that appellant's claim be closed without impairment. Additionally, her Form CA-20 indicated that there were no permanent effects expected as a result of the accepted injury. The Board finds that Dr. McGovern does not support appellant's contention that she sustained any permanent impairment of her right arm. As noted, appellant's burden of proof requires her to establish that she sustained a permanent impairment of a scheduled member as a result of an accepted employment injury.[6]

On April 16, 2008 an Office medical adviser found that the medical evidence did not establish ratable impairment deficits to appellant's right hand. Furthermore, an Office hearing representative provided appellant the opportunity to submit additional medical evidence. However, no medical evidence supporting permanent impairment of the right arm was submitted.

Consequently, the medical evidence does not establish that appellant's accepted right wrist and thumb condition caused any permanent impairment to her right upper extremity entitling her to schedule award compensation.

CONCLUSION

The Board finds that appellant has not established that she sustained permanent impairment of her right arm due to her employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated October 2 and April 18, 2008 are affirmed.

Issued: July 9, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[6] *See supra* note 4.