U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT T. RAIO and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

Docket No. 02-1546; Submitted on the Record;
Issued January 13, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained more than a 30 percent impairment of his right upper extremity, for which he received a schedule award.

The Office of Workers' Compensation Programs accepted that, on or before March 23, 1990, appellant, then a 38-year-old distribution clerk and mailhandler, sustained right carpal tunnel syndrome due to repetitive lifting and carrying of bulk mail. On January 31, 1994 he claimed a schedule award.

Appellant submitted medical reports through 1994 from Dr. David A. Suber, an attending Board-certified neurologist and psychiatrist, describing treatment for chronic musculoskeletal complaints, including right wrist "popping" and pain, degenerative joint disease and back and neck pain.[1]

In a September 2, 1995 report, Dr. Suber referred to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition) in estimating the percentage of impairment due to the accepted carpal tunnel syndrome. He assigned a 40 percent impairment due to pain and weakness, describing periodically intense pain in the right hand and wrist interfering with grasping and flexion, with some loss of sensation in the median nerve distribution. Dr. Suber noted a restricted range of right wrist motion, with a loss of 30 degrees dorsiflexion, 30 degrees palmar flexion. He also found variable weakness of the right abductor pollicis brevis without atrophy, a 20 percent loss of strength and underlying degenerative joint disease. Dr. Suber found that appellant had reached maximum medical improvement as of October 1, 1996. He concluded that appellant had sustained a 30 percent impairment of the right

[1] In an April 18, 1994 report, Dr. Victor Tseng, a physician performing a fitness-for-duty examination for the employing establishment, noted that appellant had two abnormal nerve conduction velocity (NCV) studies of the right upper extremity, but opined that appellant had tendinitis and not carpal tunnel syndrome.

upper extremity due to pain, weakness and restricted motion produced by the accepted carpal tunnel syndrome.

On January 12, 1996 the Office referred Dr. Suber's September 2, 1995 report to an Office medical adviser for review. In a February 13, 1996 report, the Office medical adviser determined that entrapment of the median nerve at the wrist of a moderate to severe degree equaled a 30 percent impairment of the right upper extremity according to Table 16, page 57. The Office medical adviser concluded that appellant had sustained a 30 percent impairment of the right upper extremity.

By decision dated June 25, 1996, the Office granted appellant a schedule award equivalent to a 30 percent impairment of the right upper extremity. The period of the award ran from September 12, 1995 to June 28, 1997. Appellant continued to work as a mailhandler through March 2002.

Dr. Suber submitted periodic reports from August 1997 through July 2, 1999, noting right wrist pain, paresthesias, weakness and a positive Tinel's sign.[2]

In a July 9, 1999 report, Dr. Terry Happel, a Board-certified neurosurgeon specializing in hand surgery, provided a history of injury and treatment. He found negative Tinel's and Phalen's signs and a full range of motion, but observed clicking and popping of the wrist on circumduction and diminished pinprick discrimination. Dr. Happel opined that surgery was not indicated.

In a December 29, 1999 report, Dr. Suber noted that NCV studies showed an "absent right median sensory latency with a severely prolonged right median motor latency." He submitted reports through February 5, 2001 diagnosing right and left carpal tunnel syndrome, with continuing symptoms of pain, paresthesias and diminished pinprick sensation.

A March 7, 2000 magnetic resonance imaging (MRI) scan of the right wrist showed "minimal nonspecific fluid in the pisiform triquetum joint," "minimal nonspecific subchondral sclerosis and cyst formation in the carpals about the radial carpal joints." The median nerve was of "normal size and signal" without "mass or spur formation."

On April 27, 2001 appellant claimed an additional schedule award for permanent impairment of the right upper extremity.

In an April 27, 2001 report, Dr. Suber noted right forearm pain attributable to carpal tunnel syndrome, an overuse syndrome of the right upper extremity and osteoarthritis. He opined that appellant's examination was unchanged, with "minimal weakness of the right abductor pollicis brevis muscle." Dr. Suber stated that "[w]ork activities [we]re probably exacerbating his symptomatology."

[2] The record indicates that appellant was in a nonoccupational automobile accident on November 6, 1997, with back and neck pain.

In a July 2, 2001 letter, the Office requested that Dr. Suber provide an evaluation of permanent impairment of the right upper extremity, using the A.M.A., *Guides*, fifth edition.

In a July 31, 2001 report, Dr. Suber related appellant's right hand and wrist pain up to 8 out of 10, with involvement of the median and ulnar nerves and weakness of flexion causing appellant to occasionally drop objects. He noted that appellant's symptoms had persisted for 8 to 10 years and had not improved. Dr. Suber also noted bursitis in the right wrist visible on an MRI scan. Regarding a schedule award rating, he found weakness of right wrist flexion and a 30 percent loss of strength. Dr. Suber stated his agreement with the previous 30 percent impairment rating.

In reports from December 28, 2001 to February 4, 2002, Dr. Suber diagnosed right carpal tunnel syndrome, chronic pain syndrome, Reiter's syndrome, degenerative joint disease, fibromyositis, cervical and lumbar radiculitis, spondylosis and disc herniations. He prescribed a right wrist splint.[3] Dr. Suber limited appellant to lifting no more than 30 pounds.

On January 28, 2002 the Office referred Dr. Suber's July 31, 2001 report to an Office medical adviser to determine if appellant was entitled to an additional schedule award.

In a February 28, 2002 report, the Office medical adviser reviewed Dr. Suber's July 30, 2001 report, finding that appellant had attained maximum medical improvement as of that date. Referring to the A.M.A., *Guides*, (fifth edition), the Office medical adviser found no impairment for loss of range of motion. She found Grade 3 impairments due to pain and weakness in the median nerve distribution, equaling a 60 percent impairment according to Tables 16-10 and 16-11, pages 482 and 484 respectively.[4] The medical adviser noted that the maximum combined impairment based on the median nerve was 45 percent according to Table 16-15, page 492.[5] She then multiplied the 60 percent impairment due to pain by 45 percent, equaling a 27 percent impairment of the right upper extremity. Regarding the ulnar nerve distribution, the Office medical adviser found a Grade 3 impairment due to pain, equaling a 60 percent impairment according to Table 16-10, page 482.[6] The medical adviser noted that, according to Table 16-15,

[3] The Board notes that pages 164 to 170 of the case record pertain to claim No. 85382-130915019.

[4] Table 16-10, page 482, entitled "Determining Impairment of the Upper Extremity Due to Sensory Deficits or Pain Resulting From Peripheral Nerve Disorders," provides that a Grade 3 impairment constituted between a 26 and 60 percent impairment of the upper extremity, characterized by "[d]istorted superficial tactile sensibility (diminished light touch and two-point discrimination), with some abnormal sensations or slight pain, that interferes with some activities." Table 16-11, page 484, entitled "Determining Impairment of the Upper Extremity Due to Motor and Loss-of-Power Deficits Resulting From Peripheral Nerve Disorders Based on Individual Muscle Rating," characterizes a Grade 3 impairment as "[c]omplete active range of motion against gravity only, without resistance," connoting a 26 to 50 percent motor deficit.

[5] Table 16-15, page 492, entitled "Maximum Upper Extremity Impairment Due to Unilateral Sensory or Motor Deficits or to *Combined* 100 percent Deficits of the Major Peripheral Nerves," provides that the maximum percentage of impairment to the upper extremity due to combined sensory deficit or pain and motor deficit is 45 percent.

[6] *Id.*

page 492, the maximum impairment for the ulnar nerve is 7 percent.[7] The Office medical adviser then multiplied the 60 percent impairment due to pain in the ulnar nerve distribution by 7 percent, to equal a 4 percent impairment of the right upper extremity. She then used the Combined Values Chart on page 604 to combine the 27 percent and 4 percent impairments, resulting in a 30 percent impairment of the right upper extremity.[8] The medical adviser stated that there was no additional impairment since the June 25, 1996 schedule award determination.

By decision dated March 14, 2002, the Office denied appellant's claim for an additional schedule award. The Office found that appellant's physician, Dr. Suber, opined that appellant had no greater than a 30 percent permanent impairment of the right upper extremity, with no increase in impairment from the time of the June 25, 1996 schedule award.[9]

The Board finds that appellant has not established that he has more than a 30 percent impairment of the right upper extremity.

The schedule award provisions of the Federal Employees' Compensation Act[10] and its implementing regulation[11] 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, the Act does not specify how 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 and guidelines so that there are uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* as the appropriate standard for evaluating scheduled losses. As of February 21, 2001, the Office uses the fifth edition of the A.M.A., *Guides* to calculate new claims for a schedule award or to

[7] Table 16-15, page 492 provides that the maximum percentage of impairment of the upper extremity due to pain or sensory deficit in the ulnar nerve distribution below the midforearm is seven percent

[8] According to the Combines Values Chart on page 604, the larger value of 27 percent, read on the left side of the chart, when combined with the lesser 4 percent value located on the bottom of the chart, results in a 30 percent impairment.

[9] Following issuance of the March 14, 2002 decision, appellant submitted additional medical and factual evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404 (1999).

recalculate prior schedule awards pursuant to an appeal, request for reconsideration or decision of an Office hearing representative.[12]

The standards for evaluation the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.[13] Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.[14]

Pursuant to appellant's April 27, 2001 request for an additional schedule award, the Office requested that Dr. Suber, appellant's attending Board-certified neurologist, submit an updated report referencing the fifth edition of the A.M.A., *Guides* to determine if appellant had greater than the 30 percent permanent impairment of the right upper extremity for which he received the June 25, 1996 schedule award. In a July 31, 2001 report, Dr. Suber related appellant's severe right hand and wrist pain in the median and ulnar nerve distributions and weakness of right wrist flexion representing a 30 percent loss of strength. Although he did not specifically reference the A.M.A., *Guides* as the Office requested, Dr. Suber stated his agreement with the previous 30 percent impairment rating, noting that appellant's symptoms were unchanged over the past eight to ten years.

The Office then referred Dr. Suber's July 31, 2001 report to an Office medical adviser for calculation of any additional schedule award. In a February 28, 2002 report, the Office medical adviser referred to the fifth edition of the A.M.A., *Guides*, finding that the pain and weakness Dr. Suber observed in the median nerve distribution constituted Grade 3 impairments, equaling a 60 percent impairment of the right upper extremity, multiplied by the 45 percent maximum value for the median nerve, equaling a 27 percent impairment of the right upper extremity. Regarding the ulnar nerve distribution, the Office medical adviser found a Grade 3 impairment due to pain, equaling a 60 percent impairment, multiplied by the maximum 7 percent value for the ulnar nerve, resulting in a 4 percent impairment of the right upper extremity. She then used the Combined Values Chart on page 604 to combine the 27 percent and 4 percent impairments, resulting in a 30 percent impairment of the right upper extremity.

In this case, the Board finds that the Office medical adviser properly applied the appropriate tables and grading schemes of the A.M.A., *Guides* in determining that appellant had a 30 percent permanent impairment of the right upper extremity due to pain and weakness in the

[12] *See* FECA Bulletin 01-05 (issued January 29, 2001) (awards calculated according to any previous edition should be evaluated according to the edition originally used; any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001).

[13] *See Paul A. Toms*, 28 ECAB 403 (1987).

[14] A.M.A., *Guides*, Chapter 16, "The Upper Extremities," pp. 433-521 (5th ed. 2001).

median and ulnar nerve distributions. The medical evidence of record does not support a greater impairment.

Appellant has not established that he sustained greater than a 30 percent permanent impairment of the right upper extremity, for which he received a schedule award.

The decision of the Office of Workers' Compensation Programs dated March 14, 2002 is hereby affirmed.

Dated, Washington, DC
January 13, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member