

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD D. PEARSON and DEPARTMENT OF THE AIR FORCE,
NORTH CAROLINA AIR NATIONAL GUARD, Charlotte, NC

*Docket No. 02-1547; Submitted on the Record;
Issued January 22, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a three percent impairment for each upper extremity impairment for which he had received a schedule award.¹

On January 5, 2001 appellant, then a 57-year-old supervisor, filed a claim for occupational disease alleging that his carpal tunnel syndrome was caused by factors of his federal employment.

On February 15, 2001 the Office of Workers' Compensation Programs accepted that appellant's bilateral carpal tunnel syndrome was work related.

On March 12, 2001 Dr. John Ternes, appellant's treating physician and a Board-certified orthopedic surgeon, performed right carpal tunnel release, and on April 23, 2001, left carpal tunnel syndrome was performed.

In a report dated June 19, 2001, Dr. Ternes stated that appellant was released to return to full-time duty on that date, and that he had a three percent impairment rating of his right hand and a three percent impairment of his left hand.

On June 20, 2001 appellant filed a claim for a schedule award.

On July 3, 2001 the Office asked Dr. Ternes to evaluate appellant regarding his bilateral carpal tunnel syndrome using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition 2001).

In a report dated July 13, 2001, Dr. Ternes stated that appellant had three percent right and three percent left hand impairment based on the North Carolina Workers' Compensation Evaluation Guidelines as of June 19, 2001. He added that appellant's rating based on the

¹ The record includes documents that do not relate to this claim.

A.M.A., *Guides* (fifth edition 2001) for median nerve sensibility was 39 percent of the extremity. He noted that soreness of the palm and mild sensory changes of the thumb, index and long finger relate to a 25 percent impairment rating. He then stated that appellant had a 10 percent impairment of the right and 10 percent impairment of the left hand.

In a report dated January 4, 2002, the Office medical adviser reviewed Dr. Ternes' report and determined that appellant had a three percent right and three percent left hand impairment, based on the A.M.A., *Guides*.

By decision dated January 18, 2002, the Office awarded appellant a three percent impairment for each upper extremity for a total of six percent impairment.

By letter dated February 12, 2002, appellant requested reconsideration. In support of his request, appellant submitted a July 13, 2001 report from Dr. Ternes in which he rated appellant's bilateral upper extremities range of motion findings as 20 degrees of radial deviation, 35 degrees of ulnar deviation, 65 degrees of dorsiflexion and 70 degrees of palmar flexion. He noted that there was added impairment due to weakness, atrophy, pain or discomfort which resulted in a rating of 10 percent for each upper extremity.

On April 9, 2002 the Office denied modification of the scheduled award.

The Board finds that appellant has not established that he has more than a three percent impairment for each upper extremity, for which he had received a schedule award.

The schedule award provisions of the Act² and its implementing regulation³ 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 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.⁴

Office procedures direct the use of the fifth edition of the A.M.A., *Guides* for schedule awards determined on and after February 1, 2001.⁵ The procedures specifically provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.⁶

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.*

⁵ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁶ FECA Bulletin No. 01-05 (issued January 29, 2001).

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

“If, after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present--

(1) Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier.

(2) Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: a residual CTS is still present and an impairment rating not to exceed 5 percent of the upper extremity may be justified.

(3) Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.”⁷

In a June 19, 2001 report, Dr. Ternes indicated that appellant had “additional impairment of function of the arm due to weakness, atrophy, pain or discomfort,” but that he also found essentially normal range of motion findings. In a January 4, 2002 report, the Office medical adviser utilized the fifth edition of the A.M.A., *Guides* and found that, following surgical decompression, residual symptoms rated no more than a five percent impairment.

As stated above, the fifth edition of the A.M.A., *Guides* provides three guidelines for interpreting carpal tunnel syndrome.⁸ The findings in the instant case fall into the second scenario, which states that the impairment rating is not to exceed five percent.⁹ The Board finds that appellant has not established that he is entitled to more than the three percent impairment of the right and three percent impairment of the left upper extremity previously awarded.

⁷ A.M.A., *Guides*, *supra* note 5 at 495.

⁸ *See supra* note 5.

⁹ A.M.A., *Guides*, *supra* note 5 at 495.

Accordingly, the April 9 and January 18, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 22, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member