United States Department of Labor
Employees' Compensation Appeals Board

AILEEN F. SPELL-HILL, Appellant	)	
and	)	**Docket No. 03-2294**
	)	**Issued: March 29, 2004**
U.S. POSTAL SERVICE, HILLSIDE STATION, Stratford, CT, Employer	)	

Appearances:
Aileen F. Spell-Hill, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On September 16, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated July 3, 2003, which denied appellant's claim for a schedule award for her right upper extremity. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

ISSUE

The issue is whether appellant has established her entitlement to a schedule award for permanent impairment of her right upper extremity.

FACTUAL HISTORY

On June 23, 2000 appellant, then a 36-year-old letter carrier, filed an occupational disease claim alleging that she sustained right hand and wrist conditions and right de Quervain's

syndrome, in the performance of her duties. Appellant claimed that she did not realize that her right hand and wrist symptoms were not carpal tunnel syndrome.[1]

On August 1, 2000 the Office accepted that appellant had sustained right wrist de Quervain's syndrome. Appellant underwent release surgery for her de Quervain's syndrome on September 15, 2000. On October 31, 2001 appellant applied for a schedule award for impairment of her right upper extremity as per Form CA-7.

On August 21, 2001 appellant was examined by Dr. Joel W. Malin, an orthopedic surgeon, who diagnosed mild residual carpal tunnel syndrome and limited motion secondary to scaring from the de Quervain's release. He noted that examination showed about 15 degrees of abduction loss of the right thumb compared to the contralateral side, which was not improved passively and that she was close if not at maximum medical improvement at that time.

By report dated September 26, 2001, Dr. Michael R. Redler, a Board-certified orthopedic surgeon, noted that appellant claimed to have some problems with full extension, that she had a negative Finklestein test and that she lacked approximately five degrees of hyperextension of the thumb at the metaphalangeal (MP) joint, when compared with the contralateral side. He noted that appellant's carpal tunnel had been previously evaluated as a three percent permanent impairment of the right wrist and that the de Quervain's syndrome would cause an additional three percent permanent impairment of the right wrist, so that her additive impairment rating of the right wrist for both carpal tunnel syndrome and de Quervain's syndrome would be six percent.

By report dated September 18, 2002, an Office medical adviser, reviewed the statement of accepted facts, noted that an examination of appellant performed on September 26, 2001 revealed lack of five degrees of extension of the right thumb at the MP joint and noted that she had a negative Finkelstein test. He noted that, according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) Figure 16-15 on page 457, lack of 5 degrees of extension in the hyperextended position did not result in any impairment. He concluded that based on the September 26, 2001 examination and a normal neurosensory examination of the fingers on August 1, 2002 there was no ratable impairment as a result of the de Quervain's tendinitis. The medical adviser noted the date of maximum medical improvement as September 26, 2001.

By decision dated September 19, 2002, the Office advised appellant that it had accepted her claim for a ganglion and a cyst of the synovium, tendon and bursa of the right wrist. The Office noted that the medical adviser had properly applied the A.M.A., *Guide* to determine that appellant's impairment was not severe enough to be ratable under the A.M.A., *Guides.* Consequently, the Office found that appellant was not entitled to a schedule award under the Federal Employees' Compensation Act.[2]

[1] On June 20, 2000 the Office had accepted that appellant sustained carpal tunnel syndrome of the right hand and wrist, for which she underwent a carpal tunnel release.

[2] 5 U.S.C. § 8101 *et seq.*, § 8107.

By report dated September 26, 2002, Dr. Robert Dawe, a Board-certified orthopedic surgeon, noted that, upon examination, appellant appeared to have some weakness of abduction and extension of her thumb and that it was likely related to some fibrosis and adhesions from her de Quervain's release surgery. Dr. Dawe opined that appellant had a five percent disability of the use of her right thumb on the basis of limited abduction and some weakness in extension. He opined that appellant had reached maximum medical improvement.

In a November 1, 2002 decision, the Office found that appellant's accepted condition was de Quervain's syndrome, for which a tenosynovectomy was performed on September 15, 2000. The Office noted that the Office medical adviser's opinion constituted the weight of the medical evidence and established that appellant's right upper extremity permanent impairment was not severe enough to be ratable according to the A.M.A., G*uides.*

By letter dated November 13, 2002, appellant requested reconsideration and argued that Dr. Dawe had found that she had a 5 percent impairment of her thumb and that Dr. Malin found on August 21, 2001 that she lacked 15 degrees of full abduction of her thumb.

By decision dated July 3, 2003, the Office denied modification. The Office considered appellant's new arguments and noted that Dr. Dawe did not provide any impairment rating in accordance with the A.M.A., *Guides,* nor did he give any indication of how he arrived at the five percent impairment rating and, therefore, his opinion was of diminished probative value.

LEGAL PRECEDENT

The schedule award provision of the Act[3] and its implementing regulation[4] 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.

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[5] However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment. Chapter 2 of the (fifth edition) A.M.A., *Guides* provides a grading scheme and procedure for determining impairment of an effected body part due to pain,

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

discomfort, or loss of sensation.[6] The element of pain may serve as the sole basis for determining the degree of impairment for schedule compensation purposes.[7]

The Federal (FECA) Procedure Manual, Chapter 2.808.6.d[8] states that after obtaining all necessary medical evidence, the case record should be referred to the Office medical adviser for an opinion concerning the nature and degree of permanent impairment. The impairment percentage should be computed in accordance with the A.M.A., *Guides* and the Office medical adviser should provide rationale for the percentage of impairment specified. The Board has held that where an Office medical adviser believes that the evaluating specialist improperly determined a specific impairment, the Office should take into consideration the opinion of the Office medical adviser in determining the percentage of impairment.[9] The Board has also held that where the Office medical adviser provides the only evaluation that conforms with the A.M.A., *Guides,* such an evaluation may constitute the weight of the medical evidence.[10]

ANALYSIS

Dr. Malin noted that appellant had some limited motion secondary to scarring from the de Quervain's release and that appellant demonstrated about 15 degrees loss of abduction of the thumb on the right when compared to the contralateral side. He did not, however, refer to the A.M.A., *Guides,* or explain how he otherwise arrived at this measurement. As this opinion was not based upon the A.M.A., *Guides,* it is of diminished probative value.[11]

Dr. Redler did not refer to the A.M.A., *Guides* when he noted that appellant's carpal tunnel had been previously evaluated as a three percent permanent impairment of the right wrist and that the de Quervain's syndrome would cause an additional three percent permanent impairment of the right wrist, for an impairment rating of six percent of the right wrist for both carpal tunnel syndrome and de Quervain's syndrome. Again, as this opinion did not refer to or apply the A.M.A., *Guides,* it is of diminished probative value.[12]

Dr. Dawe found that appellant had a five percent permanent impairment in the use of her right thumb, which he related to fibrosis and adhesions from her de Quervain's release surgery. However, he did not explain how he arrived at this percentage, merely stating that it was on the

[6] A.M.A., *Guides* (5th ed. 2001).

[7] *Paul A. Toms*, 38 ECAB 403 (1987); *Robin L. McClain*, 38 ECAB 398 (1987).

[8] Federal (FECA) Procedure Manual Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims,* Chapter 2.808.6(d) (August 2002).

[9] *Clyde Franklin Kelly*, 26 ECAB 296 (1975).

[10] *John L. McClenic*, 48 ECAB 552 (1997); *Michael C. Norman*, 42 ECAB 768 (1991); *Bobby L. Jackson*, 40 ECAB 593 (1989).

[11] *See Carolyn E. Sellers,* 50 ECAB 393 (1999) (A medical opinion regarding permanent impairment that is not based upon the A.M.A., *Guides* is of little probative value in determining the extent of a claimant's permanent impairment.)

[12] *Id.*

basis of limited abduction and some weakness in extension. As Dr. Dawe did not refer to the A.M.A., *Guides* or explain how he arrived at his impairment rating, his opinion is of diminished probative value.

However, the Office medical adviser referred to the statement of accepted facts and formulated his impairment analysis with reference to the A.M.A., *Guides*, fifth edition, Figure 16-15, page 457. The Office medical adviser took Dr. Redler's examination results, noting that appellant lacked approximately five degrees of hyperextension of the thumb and applied that finding to the Figure 16-15 on page 457, which shows that five degrees loss of hyperextension is not a great enough loss to constitute a ratable permanent impairment under the A.M.A., *Guides.* As Dr. Levine's assessment and impairment evaluation was the only medical report to conform with the A.M.A., *Guides,* it constitutes the weight of the medical evidence.

CONCLUSION

Under the facts set forth above, the Board finds that appellant is not entitled to a schedule award under the Act because her impairment is not great enough to be ratable.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 3, 2003 and November 1, 2002 are affirmed.

Issued: March 29, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member