United States Department of Labor
Employees' Compensation Appeals Board

ALETHEA V. COTTON, Appellant	)	
and	)	**Docket No. 04-1242**
	)	**Issued: October 29, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Monroe, LA, Employer	)	

Appearances:
Alethea V. Cotton, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 12, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated February 3, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

ISSUE

The issue is whether appellant has more than a seven percent permanent impairment of her right upper extremity and a five percent impairment of her left upper extremity for which she received a schedule award.

FACTUAL HISTORY

On February 15, 2000 appellant, then a 30-year-old part-time distribution clerk, filed an occupational disease claim alleging that in October 1999 she began having pain in her right shoulder, arm and hand due to lifting heavy bags of mail and throwing magazines. The Office

accepted appellant's claim for bilateral wrist tendinitis. Subsequently, the Office also accepted bilateral carpal tunnel syndrome.

By letter dated December 13, 2001, the Office asked Dr. Douglas N. Liles, appellant's attending orthopedic surgeon, to provide a report with an assessment of her work-related permanent impairment of her upper extremities. It appears from the record that the Office did not receive a response from Dr. Liles.

On July 9, 2003 appellant submitted a claim for a schedule award.

On October 28, 2003 the Office referred appellant, together with copies of medical records and a statement of accepted facts, to Dr. John P. Sandifer, a Board-certified orthopedic surgeon, for an examination and evaluation of the impairment of her upper extremities due to her work-related carpal tunnel syndrome and tendinitis.

In a report dated December 16, 2003, Dr. Sandifer provided findings on examination and diagnosed bilateral carpal tunnel syndrome, worse on the right. He stated:

> "[I]n 1999 [appellant] started having problems with numbness in her right hand and pain in her right arm that radiated up toward her right shoulder.… She started having trouble with her job because it required a good bit of repetitive lifting. It finally got to the point where [appellant] was unable to do her regular job. She was waking up at night with her right hand asleep and subsequently started having problems on her left side too.… [Appellant] admits that since she has stopped working for the [employing establishment] her symptoms have gotten better although she still wakes up at night occasionally with her hands asleep. If she overdoes it such as doing housework she has problems with pain and numbness in both hands and wrists. The right hand and wrist is worse than the left."
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> "*RECOMMENDATION*: I feel that at the present time [appellant] probably is unable to return to her prior employment because of the amount of repetitive lifting that is necessary. I would refer you to the [work capacity evaluation] [form] that I filled out regarding specific restrictions as far as future employment is concerned. With regard as to how the effects of the work injury may limit [appellant's] daily activities I feel that she would be able to: travel to and from work; walk without assistance/feed herself without assistance; get out of bed without assistance, get out of doors without assistance and sit in a chair intermittently with frequent rest breaks."

Dr. Sandifer stated that appellant had full range of motion of all joints in the upper extremities with equal reflexes bilaterally and no motor weakness that he could detect. He advised that appellant had slightly decreased sensation at the tip of the long finger on the right hand and a positive Tinel's sign and Phalen's test for the right wrist but no thenar wasting or weakness. He noted normal sensation of the left wrist with a negative Tinel's sign and positive

Phalen's test but no thenar wasting or weakness. Dr. Sandifer determined that appellant had a five to seven percent impairment of the right upper extremity due to her work-related carpal tunnel syndrome and a three to five percent impairment of the left upper extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) at pages 494 and 495.

In a report dated January 19, 2004, the Office medical adviser indicated that he had reviewed Dr. Sandifer's report. He found that appellant had a 7 percent permanent impairment of the right upper extremity for sensory deficit according to Table 16-15 at page 492 of the A.M.A., *Guides* and Table 16-10 at page 482 based on a maximum 39 percent impairment for the median nerve below the midforearm multiplied by a Grade 4 impairment of 18 percent inferred from Dr. Sandifer's report (39 percent multiplied by 18 percent equals 7 percent) and a 5 percent impairment of the left lower extremity for sensory deficit (39 percent multiplied by 13 percent equals 5 percent).

By decision dated February 3, 2004, the Office granted appellant a schedule award for 37.44 weeks based on a seven percent impairment of the right upper extremity and a five percent impairment of the left upper extremity, for the period December 15, 2003 to September 2, 2004.[1]

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] 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]

ANALYSIS

The Board finds that this case is not in posture for a decision. Dr. Sandifer, the Office referral physician, estimated that appellant had a five to seven percent impairment of the right upper extremity and a three to five percent impairment of the left upper extremity based on the A.M.A., *Guides*. However, he did not explain his assessment with reference to specific tables or figures of the A.M.A., *Guides.* Dr. Sandifer indicated that his assessment was based on pages 494 and 495 of the A.M.A., *Guides*; however, those pages contain general information about

[1] Section 8107(b)(1) of the Act provides that for total or 100 percent loss of use of the hand an employee is entitled to 312 weeks of compensation. 5 U.S.C. § 8107(b)(1). A 12 percent impairment of the right and left upper extremity (7 plus 5 percent) equals 37.44 weeks of compensation (312 weeks multiplied by 12 percent).

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id*.

entrapment/compression neuropathies and a sample fact pattern illustrating the correct application of Table 16-10, 16-11 and 16-15. Dr. Sandifer did not apply these tables to his specific findings relating to appellant's condition as described in his report.

The Office medical adviser indicated that he had reviewed Dr. Sandifer's report and found a seven percent permanent impairment of the right upper extremity and a five percent impairment of the left upper extremity for sensory deficit according to Table 16-15 at page 492 of the A.M.A., *Guides* and Table 16-10 at page 482. He indicated his selection of the Grade 4 classification in Table 16-10 regarding sensory deficit for both upper extremities. The Grade 4 classification in Table 16-10 at page 482 of the A.M.A., *Guides* is described as "distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity" with an impairment percentage range of 1 to 25 percent.[5] The physical findings and statements regarding appellant's activities in Dr. Sandifer's December 16, 2003 report are not consistent with the description of the Grade 4 classification of sensory deficit in Table 16-10 of the A.M.A., *Guides.* He stated that appellant's symptoms had improved since she left her job at the employing establishment but that she still woke up at night occasionally with her hands asleep. Dr. Sandifer noted that if appellant "overdoes it" with such activities as housework she had problems with pain and numbness in both hands and wrists. He opined that she could not return to her prior employment because of the amount of repetitive lifting that is necessary. Dr. Sandifer's report describing appellant's impairment of her upper extremities does not appear consistent with the Grade 4 description of "diminished light touch, with or without minimal abnormal sensations or pain that is forgotten during activity as found by the Office. Consequently, further development is necessary on the issue of appellant's impairment of her upper extremities.

CONCLUSION

The Board finds that further development on the issue of appellant's impairment of her upper extremities is required in this case. On remand, the Office should refer appellant to an appropriate medical specialist for an evaluation of the impairment of her upper extremities in accordance with the fifth edition of the A.M.A., *Guides* and a thorough rationalized report explaining how the impairment assessment was determined with reference to appropriate sections of the A.M.A., *Guides.* The report should include an explanation of how the physician's choice of grade from Table 16-10 at page 482 of the A.M.A., *Guides* correlates with the extent to which daily activities are affected and with specific physical findings on examination.

[5] Grade 5 is used for no sensory deficit (0 percent impairment); Grade 3 ranges from 26 to 60 percent impairment; Grade 2 from 61 to 80 percent; Grade 1 from 81 to 99 percent; and Grade 0 is for 100 percent impairment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 3, 2004 is set aside and the case is remanded for further development consistent with this decision.

Issued: October 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member