United States Department of Labor
Employees' Compensation Appeals Board

JEFFREY WARFEL, Appellant	)	
and	)	**Docket No. 05-700**
	)	**Issued: June 14, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Newark, DE, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 31, 2005 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' schedule award decision dated October 18, 2004 finding a 12 percent impairment to his left upper extremity. 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 had more than a 12 percent permanent impairment of his left upper extremity for which he received a schedule award.

FACTUAL HISTORY

On January 10, 2002 appellant, then a 32-year-old letter carrier, filed an occupational disease claim alleging that on December 4, 2001 he became aware of his carpal tunnel syndrome condition and attributed it to his federal work duties. Dr. Peter F. Townsend, a Board-certified orthopedic surgeon, performed an ulnar nerve transposition and carpal tunnel release on appellant's left wrist on January 31, 2002.

The Office accepted that appellant had sustained left carpal tunnel syndrome and left ulnar nerve entrapment and authorized surgery on March 15, 2002.

Appellant requested a schedule award on October 23, 2002 and submitted a report from Dr. David Weiss, a Board-certified osteopath, dated September 3, 2002. Dr. Weiss found tenderness over the medial epicondyle and the medial flexor mass of the left elbow. He also noted a positive Tinel's sign and full range of motion. Dr. Weiss found thenar atrophy and positive Tinel's sign at appellant's left wrist with resisted thumb abduction at three of five. He performed grip strength testing and found 50 kilograms of force in appellant's right hand and only 34 kilograms of force in his left hand for a strength deficit of 32 percent. Dr. Weiss diagnosed cumulative and repetitive trauma disorder, left ulnar nerve neuropathy at the cubital tunnel and left carpal tunnel syndrome. He listed his subjective findings as numbness, pins and needles in appellant's left hand, weakness in the left upper extremity and increased pain with weather changes. Dr. Weiss cited generally to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, and found that appellant had 20 percent impairment due to loss of grip strength, 9 percent impairment due to motor strength deficit in left thumb abduction, and an additional 3 percent impairment due to pain for total of 30 percent impairment of the left upper extremity.

The Office referred Dr. Weiss' report to the Office medical adviser on October 31, 2002. In a note of that date, he found that appellant was not entitled to an impairment rating for decreased grip strength under the A.M.A., *Guides* due to his compression neuropathies and that appellant had a 12 percent permanent impairment of his left upper extremity.

The Office granted appellant a schedule award for a 12 percent impairment of his left upper extremity on December 18, 2003.

Appellant requested an oral hearing on December 19, 2003. Appellant's attorney appeared at the oral hearing on July 21, 2004. By decision dated October 18, 2004, the hearing representative affirmed the Office's December 18, 2003 decision finding that the A.M.A., *Guides* did not provide for impairment ratings based on loss of grip strength when the accepted condition was a compression neuropathy.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] sets 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. Effective

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[3]

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, 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 descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[4]

The A.M.A., *Guides* do not provide for additional impairment due to decreased grip strength in evaluating compression neuropathies such as ulnar nerve neuropathy and carpal tunnel syndrome.[5] In evaluating carpal tunnel syndrome, the A.M.A., *Guides* provide that, if after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paraesthesias or difficulties in performing certain activities three possible scenarios can be present. The first situation is: "Positive clinical finding 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."[6] In this situation, the impairment due to residual carpal tunnel syndrome is evaluated by multiplying the grade of severity of the sensory or motor deficit by the respective maximum upper extremity impairment value resulting from sensory or motor deficits of each nerve structure involved. When both sensory and motor functions are involved the impairment values derived for each are combined.[7] In the second scenario: "Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles: a residual CTS [carpal tunnel syndrome] is still present, and an impairment rating not to exceed five percent of the upper extremity may be justified." In the final situation: "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."[8]

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter; in a case where the Office "proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner."[9] Once the Office has begun an

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

[4] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

[5] *Robert V. Disalvatore*, 54 ECAB ___ (Docket No. 02-2256, issued January 17, 2003).

[6] A.M.A., *Guides* at 495.

[7] *Id*. at 494, 481.

[8] *Id.* at 495.

[9] *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

investigation of a claim, it must pursue the evidence as far as reasonably possible.[10] The Office has an obligation to see that justice is done.[11]

ANALYSIS

In this case, appellant submitted a report from Dr. Weiss, an osteopath Board-certified orthopedic surgeon, in support of his request for a schedule award. Dr. Weiss did not provide a description of the impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations as required above. He found a motor strength deficit in appellant's left thumb abduction, but did not specify whether he found that this deficit was due to appellant's ulnar or median nerve. Dr. Weiss did not explain how he reached his three percent impairment rating for pain. He also made findings regarding appellant's grip strength impairment in contradiction of the A.M.A., *Guides.* Dr. Weiss did not follow the protocols of the A.M.A., *Guides* in evaluating appellant's permanent impairment due to his accepted condition of carpal tunnel syndrome. Dr. Weiss' report is not sufficient to constitute the weight of the medical evidence.

The Office medical adviser properly found that appellant was not entitled to an impairment rating for decreased grip strength under the A.M.A., *Guides*, and accepted the loss of strength and pain estimates of Dr. Weiss. However, he did not correlate these impairment estimates to the protocols of the A.M.A., *Guides*.

On remand, the Office should refer appellant to an appropriate physician to determine the extent of permanent impairment to his left upper extremity. After this and such other development as the Office deems necessary, the Office should issue and appropriate decision.

CONCLUSION

The Board finds that this case requires additional development of the medical evidence to determine the extent of appellant's permanent impairment for schedule award purposes.

[10] *Edward Schoening*, 41 ECAB 277, 282 (1989).

[11] *Lourdes Davila*, 45 ECAB 139, 143 (1993).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2004 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: June 14, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member