United States Department of Labor
Employees' Compensation Appeals Board

MARK ROBERT DuPEE, Appellant	)	
and	)	**Docket No. 06-645**
	)	**Issued: July 21, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Southeastern, PA, Employer	)	

Appearances:
Mark Robert DuPee, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 25, 2006 appellant filed a timely appeal of a September 28, 2005 merit decision by the Office of Workers' Compensation denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has established entitlement to a schedule award.

FACTUAL HISTORY

On February 26, 1997 appellant, then a 39-year-old mail handler, filed an occupational disease claim alleging that he had pain and numbness in both his wrists due to "unnatural grip in steering of the tow motor and repeated handling of 12 [pound] hooks" in the course of his federal employment. The Office accepted appellant's claim for right wrist fracture and bilateral de Quervain's disease. Appropriate treatment and compensation benefits were authorized.

On February 1, 2002 appellant filed a claim for a schedule award and submitted an October 23, 2001 report from Dr. David Weiss, an osteopath. He diagnosed cumulative and repetitive trauma disorder, status post distal pole fracture to the scaphoid of the right wrist, bilateral de Quervain's tenosynovitis, median and ulnar nerve neuropathy to the right wrist, radial tunnel syndrome to the right upper extremity and median and ulnar nerve neuropathy to the left wrist. Dr. Weiss stated that the work-related injury of February 14, 1997 was the competent producing factor for appellant's subjective and objective findings. He opined that appellant had a total right upper extremity impairment of 43 percent and an upper left extremity impairment of 28 percent. Dr. Weiss calculated this based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001) as follows:

> "For the 4/5 motor strength deficit right thumb abduction = 9 percent [Table 16-15, page 492 and Table 16-11, page 484]
>
> "For the right grip strength deficit = 30 [percent] [Table 16-32 and Table 16-34, page 509]
>
> "For the sensory deficit right ulnar nerve = 6 [percent] [Table 16-15, page 492 and Table 16-10, page 482]
>
> "Combined right upper extremity = 40 [percent]
>
> "For the pain[-]related impairment = 3 [percent] [Figure 18-1, page 574]
>
> "Total right upper extremity = 43 [percent]
>
> "For the left grip strength deficit = 20 [percent] [Table 15-32 and 16-34, page 509]
>
> "For the sensory deficit left ulnar nerve = 6 [percent] [Table 16-14, page 492 and Table 16-10, page 482]
>
> "Combined left upper extremity = [25 percent]
>
> "For the pain[-]related impairment = 3 [percent] [Figure 18-1, page 574]
>
> "Total left upper extremity = 28 [percent]."

On November 13, 2002 appellant was referred to Dr. Steven Valentino, an osteopathic orthopedic surgeon, for a second opinion. In a medical report dated December 2, 2002, he listed his impression as resolved acute/chronic tendinitis of the right and left extensor policis longus tendons secondary to repetitive strain injury, healed right wrist fracture, resolved bilateral de Quervain's syndrome. Dr. Valentino stated:

> "Based on today's evaluation, review of medical records and diagnostic studies, I find [appellant] recovered from his history of work[-]related injury without residual. His comprehensive orthopedic, neurologic and spinal examinations are

> normal. The medical records indicate that his fracture has healed without consequence as have his soft tissue injuries, *i.e.,* tendinitis. As such, his impairment rating relative to the [February 14, 1997] history of work[-]related injury is zero percent. This was done using the [A.M.A., *Guides*]. He has reached maximum medical improvement. No surgical procedures were performed to the wrist. Range of motion is normal. There are no motor or sensory impairments. There is no evidence of instability, arthritis or any other factors involving the wrists which would contribute to impairment."

By decision dated December 16, 2002, the Office denied appellant's claim for a schedule award. The Office gave weight to the opinion of Dr. Valentino as his opinion was given one year after that of Dr. Weiss and was more contemporary.

By letter dated December 17, 2002, appellant requested an oral hearing, which was held on June 28, 2005. His attorney presented argument. In a statement dated June 22, 2005, appellant indicated that his hands, particularly his right hand, continued to cause him pain and discomfort during everyday use. He also stated that Dr. Valentino's examination had lasted less than 10 minutes.

In a medical report dated July 15, 2005, Dr. Weiss reviewed the A.M.A., *Guides* statement that, in compression neuropathies, additional impairment values are not given for decreased grip strength. He then stated:

> "It is my opinion in this particular case that [appellant's] only finding related to carpal tunnel syndrome was the grip strength deficit that was related, not only to the carpal tunnel syndrome, but also secondary to scaphoid fracture and de Quervain's tenosynovitis.
>
> "In conclusion, I feel that the grip strength deficit should be allowed to adequately assess the impairment rating in this particular patient."

By decision dated September 28, 2005, the hearing representative affirmed the December 6, 2002 decision denying appellant's claim for a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employee's Compensation Act[1] and its implementing regulation[2] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single sets of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*

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[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.404.

has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[3] As of February 1, 2001, schedule awards are calculated according to the fifth edition of the A.M.A., *Guides*, published in 2000.[4]

Section 8123 of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, to resolve the conflict.[5]

ANALYSIS

In the instant case, Dr. Weiss applied the A.M.A., *Guides* and determined that appellant had a 43 percent impairment of his right upper extremity and a 28 percent impairment of his left upper extremity. In so concluding, he relied, in part, on grip strength deficits. The Board notes that the A.M.A., *Guides* does not encourage the use of grip strength as an impairment rating.[6] Dr. Weiss addressed this concern, but still concluded that "grip strength deficit should be allowed to adequately assess the impairment rating in this particular patient." The Office referred appellant to Dr. Valentino for a second opinion, who indicated that he applied the A.M.A., *Guides* and determined that appellant had a zero percent impairment rating. As the opinions of Drs. Weiss and Valentino conflict with regard to whether appellant had a permanent impairment, the case will be remanded for the appointment of an impartial medical examiner to determine whether appellant has any permanent impairment pursuant to the A.M.A., *Guides*, thereby entitling him to a schedule award.

CONCLUSION

The Board finds that this case is not in posture for decision.

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[3] *Bernard A. Babcock, Jr.,* 52 ECAB 143 (2000).

[4] *See* FECA Bulletin No. 01-05 (issued January 29, 2001) schedule awards calculated as of February 21, 2001 should be evaluated according to the fifth edition of the A.M.A., *Guides*. 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.

[5] 5 U.S.C. § 8123; *see Charles S. Hamilton*, 52 ECAB 110 (2000); *Robert D. Reynolds*, 49 ECAB 561 (1998).

[6] *See Mary L. Henninger*, 52 ECAB 408 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2005 is vacated and this case is remanded for further consideration pursuant to this opinion.

Issued: July 21, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board