

**United States Department of Labor
Employees' Compensation Appeals Board**

M.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 06-1686
Issued: October 20, 2006**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 18, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 28, 2006 merit decision concerning his entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a four percent permanent impairment of his left arm and a four percent permanent impairment of his right arm, for which he received a schedule award.

¹ The record also contains a June 22, 2006 nonmerit decision of the Office denying appellant's request for further review of the merits of his claim. Appellant did not appeal this decision to the Board and the matter is not currently before the Board.

FACTUAL HISTORY

On October 6, 2003 appellant, then a 52-year-old ramp clerk, filed an occupational disease claim alleging that he sustained bilateral carpal tunnel syndrome due to the repetitive duties of his job. He did not stop work.

Appellant submitted the findings of a magnetic resonance imaging scan and nerve conduction velocity testing, which showed that he had bilateral carpal tunnel syndrome. In a report dated June 29, 2004, Dr. Allen Gocio indicated that appellant complained of pain and tingling in his upper extremities. He noted that diagnostic testing confirmed bilateral carpal tunnel syndrome and peripheral neuropathies. Dr. Gocio indicated that there was some evidence that the peripheral neuropathies were associated with appellant's diabetes. He concluded that appellant's work activities had aggravated his upper extremity condition.

The Office accepted that appellant sustained bilateral carpal tunnel syndrome due to his work duties.² Appellant filed a claim alleging that he was entitled to schedule award compensation due to his accepted upper extremity condition.

The Office referred appellant to Dr. Anthony Margherita, a Board-certified physical medicine and rehabilitation physician, for evaluation of his upper extremity impairment. In a report dated November 9, 2005, Dr. Margherita stated that bilateral range of motion for appellant's shoulders, elbows, wrists and hand digits was normal and indicated that a range of motion worksheet was attached.³ On examination appellant did not have impingement of the shoulders or tenderness of the shoulders or elbows, carpal squeeze produced numbness in the index fingers and there was no evidence of thenar atrophy. Dr. Margherita indicated that thenar muscles demonstrated Grade 4/5 strength bilaterally and that all other muscles demonstrated Grade 5/5 strength bilaterally. He stated that sensory testing demonstrated mild abnormalities in the median distribution with two-point discrimination being three millimeters (mm) in all ulnar innervated areas of both hands and indicated that the thumb and index finger of each hand showed four mm discrimination. Dr. Margherita determined that appellant reached maximum medical improvement on June 29, 2004 and he stated:

“Using Table 16-10, page 482 for sensory impairment, the claimant demonstrates Class 4 impairment. Owing to the relatively minor impairments noted on the examination, a 10 percent sensory deficit is assigned. Similarly, using Table 16-11, page 484 for motor impairment, the claimant demonstrates Class 4 impairment. Given that the claimant had relatively minor impairments noted on motor examination, a 10 percent motor deficit is assigned. Using Table 16-15 on page 492, the maximum ratable impairment for [sic] would be 27 percent (radial palmar digital thumb (7) plus ulnar palmar digital thumb (11) plus radial palmar

² The Office approved the performance of carpal tunnel surgery but appellant declined to have such surgery.

³ An attached worksheet contains specific findings for various motions of the shoulders, elbows, wrists and hand digits. The measured motions appear to be derived from the testing standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

digital index (5) plus ulnar palmar digital index (4)). This results in a total impairment of 5 percent for each upper limb (27 percent maximum value multiplied by 20 percent for combined sensory and motor impairment)."

On January 15, 2006 Dr. Daniel D. Zimmerman, a Board-certified internist serving as an Office district medical adviser, reviewed the evidence of record. He concluded that appellant had a four percent permanent impairment of his left arm and a four percent permanent impairment of his right arm under the fifth edition of the A.M.A., *Guides*. Dr. Zimmerman stated:

"In considering the impairment ratings, Dr. Margherita discussed grade for pain and sensory change and weakness based on assessment parameters in Tables 16-10 and 16-11.

"He indicated that the sensory change and pain grade was to [be] applied to the thumb and index fingers (considering the maximum percentage of impairment as upper extremity ratings from Table 16-15 which is 27 percent).

"He offered a grade of 10 percent for weakness (motor deficit as expressed in Table 16-15). Dr. Margherita incorrectly added the grade of 10 percent from Table 16-10 to the grade of 10 percent for weakness from Table 16-11 to, thus, multiply 20 percent by 27 percent.

"Correctly done as shown in Table 16-10 ... and Table 16-11 ... the grades must be multiplied by the maximum percentage for sensory deficit and pain (which in this case is 27 percent according to Dr. Margherita's recommendation) and the maximum percentage of impairment for motor deficit from Table 16-15 in the distribution of the median nerve below the midforearm which is 10 percent.

"Thus using the grades recommended by Dr. Margherita. The impairment ratings are --

27 percent x 10 percent = 2.7 percent for pain or sensory deficit; and
10 percent x 10 percent = 1 percent for motor deficit."⁴

By award of compensation dated February 22, 2006, the Office granted appellant a schedule award for a four percent permanent impairment of his left arm and a four percent permanent impairment of his right arm. The award ran for 24.96 weeks from June 29 to December 20, 2004.

⁴ Dr. Zimmerman added the 2.7 percent and 1 percent figures and rounded the resultant 3.7 percent figure up to 4 percent.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulation⁶ 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.⁷

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome due to his work duties. By decision dated February 22, 2006, the Office granted appellant a schedule award for a four percent permanent impairment of his left arm and a four percent permanent impairment of his right arm.

The Board finds that the Office properly relied on the opinion of Dr. Zimmerman, a Board-certified internist who served as an Office district medical adviser, to determine that appellant had four percent permanent impairment of his left arm and a four percent permanent impairment of his right arm.

Dr. Zimmerman properly noted that appellant had a 2.7 impairment of each arm due to sensory loss associated with peripheral nerves by multiplying a sensory loss deficit of 10 percent (Grade 4) times the maximum value of 27 percent for sensory loss associated with the affected nerves. The sensory loss level of 10 percent (Grade 4) was appropriate in that Dr. Margherita, a Board-certified physical medicine and rehabilitation physician who served as an Office referral physician, found relatively minor sensory deficits.⁸ The 27 percent value was correctly obtained by adding the maximum values for the affected nerves in appellant's case: 7 percent for the radial palmar digital nerve of the thumb; 11 percent for the ulnar palmar digital nerve of the thumb; 5 percent for the radial palmar digital nerve of the index finger; and 4 percent for the ulnar palmar digital nerve of the index finger.⁹ Dr. Zimmerman correctly found that appellant had a 1 impairment of each arm due to strength deficits by multiplying a strength deficit level of 10 percent (Grade 4) times the maximum value of 10 percent for weakness associated with the

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

⁸ See A.M.A., *Guides* 482, Table 16-10. Dr. Margherita stated that sensory testing demonstrated mild abnormalities in the median distribution with two-point discrimination being three mm in all ulnar innervated areas of both hands and indicated that the thumb and index finger of each hand showed four mm discrimination.

⁹ See A.M.A., *Guides* 492, Table 16-15.

median nerve below the forearm.¹⁰ He properly determined that the range of motion findings that Dr. Margherita took for shoulder, elbow, wrist and hand digit motion did not warrant the assignment of any impairment ratings.¹¹ Dr. Zimmerman then added the 2.7 percent rating for sensory loss to the 1 percent rating for weakness and rounded the resultant 3.7 percent figure up to 4 percent to conclude that appellant had a 4 percent permanent impairment of each arm.¹²

There is no other evidence which shows that appellant has more than a four percent permanent impairment of his left arm and a four percent permanent impairment of his right arm and, therefore, he has not shown that he is entitled to greater schedule award compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a four percent permanent impairment of his left arm and a four percent permanent impairment of his right arm, for which he received a schedule award.

¹⁰ See A.M.A., *Guides* 484, 492, Tables 16-11, 16-15. Dr. Margherita found relatively minor strength deficits in that the thenar muscles demonstrated Grade 4/5 strength bilaterally and that all other muscles demonstrated Grade 5/5 strength bilaterally.

¹¹ See A.M.A., *Guides* 456-79.

¹² Impairment ratings for peripheral nerve injury would not usually be added to impairment ratings for sensory loss, but Dr. Zimmerman found that adding these impairment ratings was appropriate in appellant's case. See A.M.A., *Guides* 526, Tables 17-2.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 28, 2006 decision is affirmed.

Issued: October 20, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board