United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 06-2097**
	)	**Issued: May 31, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Hopkinsville, KY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 13, 2006 appellant filed an appeal from the schedule award decision of the Office of Workers' Compensation Programs dated August 8, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(1), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than an eight percent permanent impairment to his left arm, for which he received a schedule award.

FACTUAL HISTORY

On February 2, 2000 appellant, then a 37-year-old letter carrier, filed a traumatic injury claim, Form CA-1, alleging that he had numbness in his left hand after he turned to pick up a parcel and felt pain from his hand to his elbow. On March 23, 2000 he underwent a series of diagnostic tests, including nerve conduction and an electromyogram (EMG), which indicated left ulnar neuropathy with positive EMG findings of axonal involvement. The physical therapist who interpreted the test results noted that the nerve conduction slowing at the elbow suggested

that the cubital tunnel was a potential site of entrapment. Appellant sought treatment but nonoperative treatments provided were unsuccessful.

On September 27, 2000 Dr. Gregg W. Taylor, a Board-certified orthopedic surgeon, performed an anterior transposition to move appellant's left ulnar nerve from the cubital tunnel. On December 12, 2000 the Office accepted appellant's claim for left ulnar neuropathy. On November 27, 2001 Dr. Taylor reported that appellant's ulnar nerve symptoms were gone, that his condition did not interfere with his activities and that his elbow hurt only when bumped.

On February 16, 2005 appellant filed a claim for compensation, Form CA-7, requesting a schedule award. The Office advised that a schedule award could not be approved until the case record contained a physician's opinion establishing that he had reached maximum medical improvement (MMI). The Office also sent a letter explaining the medical information needed and enclosing a form for the physician. These letters were misaddressed and did not reach appellant.

On April 13, 2006 appellant was seen by Dr. Kimberlyn Brown[1] who made findings of tenderness on palpitation of the medial epicondyle and the ulnar collateral ligament in the left elbow. Dr. Brown noted that both elbows had full range of motion, but that movement was abnormal in the left. Appellant reported that he had experienced continual numbness in his arm since February 2006 and that he felt pain when he used his left arm for distributing mail, which aggravated his symptoms. Dr. Brown indicated that appellant would need to be seen by a physician who was certified to do functional assessments to determine the impairment rating and date of MMI.

On April 28, 2006 appellant requested that the Office schedule a second opinion examination as he had been unsuccessful at finding a physician who would conduct the impairment rating without first being paid. By letter dated June 6, 2006, the Office informed appellant that it would refer his case record to the Office medical adviser for a rating of his permanent impairment. The record was referred to the Office medical adviser Dr. James W. Dyer, a Board-certified orthopedic surgeon, together with the question of whether or not a rating could be determined based on the evidence in the record.

In a report dated June 8, 2006, Dr. Dyer found the date of MMI to be March 23, 2006 and the permanent impairment of appellant's left upper extremity to be eight percent. He noted that appellant had an anterior transposition of the left ulnar nerve from the cubital tunnel on September 27, 2000. Dr. Dyer stated that appellant now had residual symptoms and EMG findings of left ulnar neuropathy and residual cubital tunnel syndrome. He stated that he found Grade 4 motor and sensory deficits of the left ulnar nerve below the elbow and combining the results of Tables 16-10, page 482, and 16-11, page 484, with Table 16-15, page 492, in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition 2001).

[1] The Board was unable to determine Dr. Brown's specialty or Board-certification status.

On August 8, 2006[2] the Office issued an award of compensation entitling appellant to 24.96 weeks of compensation due to the eight percent permanent impairment of his left arm. The schedule award ran from March 23, 2006, listed as the date of maximum medical improvement, to July 8, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing federal 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[5] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[6]

ANALYSIS

The Board finds that this case is not in posture for a decision, as the permanent impairment rating on which the Office relied was insufficient to establish the schedule award.

In order to determine the extent and degree of impairment, the Office referred the medical evidence of record, including the reports of appellant's attending physicians Drs. Centner and Brown, to the Office medical adviser Dr. Dyer, a Board-certified orthopedic surgeon, for an impairment rating in accordance with the protocols of the A.M.A. *Guides.* The Board finds that the opinion of the Office medical adviser, Dr. Dyer, is insufficient to establish a permanent impairment rating of eight percent for appellant's left arm. While Dr. Dyer generally referenced the tables in the A.M.A., *Guides* on which he based his determination of eight percent permanent impairment he did not adequately explain his rating. In his report, he indicated that he utilized Table 16-15, "Maximum Upper Extremity Impairment Due to Unilateral Sensory or Motor Deficits or to *Combined* 100 percent Deficits of the Major Peripheral Nerves," page 492. It is unclear how Dr. Dyer applied Table 16-15 to determine the maximum impairments for either sensory or motor loss.[7] Given that the record suggests the possibility of permanent impairment to both the fingers and elbow on appellant's left arm, this ambiguity renders appellate review by the Board impossible. Additionally, Table 16-15 requires combination with

[2] This decision superceded a schedule award decision issued on August 7, 2006. The primary difference appears to be the removal of a cost-of-living adjustment.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] 20 C.F.R. § 10.404(a).

[6] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[7] A.M.A., *Guides* 492.

results from Table 16-10, page 482, sensory deficit and pain, and Table 16-11, page 484, motor and loss of power deficit, to reach an impairment rating.[8] On each of these tables, Dr. Dyer rated appellant's deficit as Grade 4, which indicates a deficit of 1 to 25 percent, but did not indicate the exact percentages he applied to Table 16-15. Without this information, the Board is unable to verify his calculation of eight percent permanent impairment.

CONCLUSION

The Board finds that the case is not in posture for decision and will be remanded for further development of the medical evidence, to be followed by an appropriate decision.[9]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 8, 2006 is set aside and the case is remanded for further development consistent with this opinion.

Issued: May 31, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

[8] *Id.*

[9] The Board notes that is unclear from the record how the Office medical adviser determined the date of maximum medical improvement. It is well established that the period covered by the schedule award commences on the date that the employee reaches MMI from the residuals of the accepted employment injury. The Board has explained that MMI means that the physical condition of the injured member of the body has stabilized and will not improve further. The determination of whether MMI has been reached is based on the probative medical evidence of record and is usually considered to be the date of the evaluation by the attending physician, which is accepted as definitive by the Office. *See Mark A. Holloway,* 55 ECAB 321 (2004). On remand, the Office should ensure that this is explained.