United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 07-101**
	)	**Issued: May 16, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, 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 October 17, 2006 appellant filed a timely appeal of the decision of the Office of Workers' Compensation Programs dated September 28, 2006 which denied her claim for an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this schedule award case.

ISSUE

The issue is whether appellant has more than a five percent impairment of her left upper extremity.

FACTUAL HISTORY

On October 27, 1999 appellant, then a 49-year-old mail carrier, filed a traumatic injury claim, File No. 25-0560145, alleging that on that date she injured both of her arms while trying to break a fall. By letter dated June 9, 2000, the Office accepted appellant's claim for carpal tunnel syndrome and carpal tunnel release surgery. Appropriate medical and compensation benefits were paid.

On January 17, 2001 the Office granted appellant a schedule award for a 10 percent impairment of her right upper extremity as a result of a work-related injury on November 24, 1993. On May 21, 2002 appellant was granted a schedule award for a five percent impairment of her left upper extremity for a November 24, 1993 employment injury.[1]

On January 9, 2004 appellant filed a claim for a schedule award.

On July 23, 2004 the Office referred appellant for a second opinion to Dr. Robert Draper, a Board-certified orthopedic surgeon. In a medical report dated August 5, 2004, Dr. Draper took various measurement with regard to motion, strength and grip, applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and determined that appellant had tendinitis of the right upper extremity (composed of right carpal tunnel syndrome and status post right carpal tunnel release) and tendinitis of the left hand and upper extremity (left carpal tunnel syndrome and status post left carpal tunnel release). He opined that appellant reached maximum medical improvement on January 1, 2004. Dr. Draper concluded:

> "An impairment rating for the left hand is specifically requested. I am using the [A.M.A., *Guides*] to determine this impairment rating. On page 495, the section is entitled "Carpal Tunnel Syndrome." The number 2 item states, "Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: A residual carpal tunnel syndrome is present and an impairment rating not to exceed five percent of the upper extremity may be justified." In this case, this paragraph is used to assign a five percent impairment of the left upper extremity associated with the patient's left carpal tunnel syndrome since the patient did not put forth maximum effort for range of motion testing and strength testing. Using the fifth [e]dition, Table 16-2, five percent impairment of the upper extremity is equal to five percent impairment of the hand.

On October 14, 2004 the Office referred appellant's case to the Office medical adviser. In a report dated October 29, 2004, the Office medical adviser stated that he was in agreement with the impairment rating of five percent to the left upper extremity provided by Dr. Draper. He noted that, based on the A.M.A., *Guides*, the maximum impairment rating for an individual with a normal examination but persistent abnormal EMG and nerve conduction studies is five percent to the upper extremity.

By decision dated October 14, 2004, the Office indicated that appellant was to be paid a schedule award for carpal tunnel syndrome in her left wrist/arm. The Office did not list the degree of impairment but indicated that an award would be paid for 15.60 weeks. In a letter to appellant's Senator dated December 3, 2004, the Office noted that appellant was previously granted a schedule award in a decision dated May 21, 2002 for a five percent permanent impairment of the left upper extremity for the same injury. The Office noted that the Act precluded appellant from being paid a schedule award twice for the same injury.

[1] The Board notes that the Office assigned this claim File No. 25-0437835.

Appellant requested an oral hearing and the Office denied her request as untimely as a matter of right. She filed an appeal with the Board. By decision dated August 28, 2006, the Board affirmed the Office's denial of appellant's hearing request. However, the Board found that the Office's delay in issuing a decision on appellant's request for an oral hearing prejudiced her appeal rights, and remanded the case, instructing the Office to issue a new decision on the merits of her claim.[2]

On remand, the Office issued a September 28, 2006 decision which duplicated the findings of the October 14, 2004 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] provides for compensation to employees sustaining permanent 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 mater 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 set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* (5th ed. 2001) has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[4]

Section 8108 of the Act[5] provides for the reduction of compensation for subsequent injury to the same member:

> "The period of compensation payable under the schedule in section 8107(c) of this title is reduced by the period of compensation paid or payable under the schedule for an earlier injury if --
>
> > (1) compensation in both cases is for disability of the same member or function or different parts of the same member or function or for disfigurement; and
> >
> > (2) the Secretary of Labor finds that compensation payable for the later disability in whole or in part would duplicate the compensation payable for the preexisting disability."

ANALYSIS

In the instant case, both Dr. Draper and the Office medical adviser are in agreement that appellant has a five percent impairment to her left upper extremity. Both physicians properly

[2] *S.C.*, Docket No. 06-837 (issued August 28, 2006).

[3] 5 U.S.C. §§ 8101-8193.

[4] *See* 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[5] 5 U.S.C. § 8108.

applied the A.M.A., *Guides* in reaching this determination. The A.M.A., *Guides* state that when normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles, a residual carpal tunnel syndrome is still present, and impairment rating not to exceed five percent of the upper extremity may be justified.[6] Both physicians determined that, based on appellant's medical findings, he had a five percent impairment of the left upper extremity. The Board finds that both physicians properly applied the A.M.A., *Guides*. There is no evidence of record that appellant sustained greater than a five percent impairment to her left upper extremity. The Office properly found that appellant had a five percent impairment to her upper extremity.

Appellant was previously issued a schedule award for a five percent impairment of her left upper extremity on May 21, 2002. Therefore, she is not entitled to any further schedule award at this time. As noted, the medical evidence of record does not establish more than five percent impairment to the left upper extremity. Appellant has not submitted medical evidence to demonstrate greater impairment to her left arm.

CONCLUSION

The Board finds that appellant does not have more than five percent impairment of her left upper extremity.

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

ORDER

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

Issued: May 16, 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