United States Department of Labor
Employees' Compensation Appeals Board

K.F., Appellant	)	
and	)	**Docket No. 07-1321**
	)	**Issued: October 22, 2007**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Boston, MA, Employer	)	

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 March 18, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 6, 2006 and March 22, 2007 merit decisions regarding her entitlement to schedule award compensation. 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 met her burden of proof to establish that she has more than a 14 percent permanent impairment of her left arm, for which she received schedule awards.

FACTUAL HISTORY

On February 15, 1994 appellant, then a 42-year-old claims examiner, filed an occupational disease claim alleging that she sustained injury due to the repetitive duties of her job which included typing for prolonged periods. She indicated that she had pain, numbness and tingling in both hands and wrists. The Office accepted that appellant sustained bilateral carpal

tunnel syndrome. She began performing limited-duty work and the Office paid compensation for periods of disability. On April 20, 1994 appellant underwent a right carpal tunnel release which was authorized by the Office.

In February 14 and June 4, 1996 reports, Dr. Prescott Cheney, a Board-certified orthopedic surgeon, who served as an Office referral physician, indicated that on examination appellant exhibited 45 degrees of dorsiflexion and 60 degrees of palmar flexion in each wrist but that she did not have any muscle weakness. He indicated that appellant had a Grade 3 or 26 percent sensory loss associated with her median nerves in both arms according to Table 16-10 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

On November 3, 1996 Dr. David D. Zimmerman, a Board-certified orthopedic surgeon, who served as a district medical adviser, reviewed Dr. Cheney's findings and stated that appellant's 45 degrees of dorsiflexion in each wrist entitled her to a three percent impairment rating in each arm under Table 16-28 of the A.M.A., *Guides*. He noted that Dr. Cheney properly found that appellant had a Grade 3 or 26 percent sensory loss associated with her right and left median nerves. Dr. Zimmerman multiplied this 26 percent figure times the 39 percent maximum value for sensory loss associated with the median nerve below the midforearm (according to Table 16-15) to obtain a 10 percent impairment rating for sensory loss in each arm. He concluded that appellant had a 13 percent permanent impairment of her left arm and a 13 percent permanent impairment of her right arm.

In a November 19, 1996 decision, the Office granted appellant a schedule award for a 13 percent permanent impairment of her left arm and a 13 percent permanent impairment of her right arm. The award ran for 81.12 weeks from February 14, 1996 to September 3, 2007.

On December 17, 1999 appellant underwent a left carpal tunnel release. On August 22, 2002 appellant underwent a repeat left carpal tunnel release with excision of extensive scar tissue and on September 19, 2002 she underwent a repeat right carpal tunnel release with resection of scar tissue. All these surgical procedures were authorized by the Office.

In November 2004, the Office accepted that appellant sustained employment-related bilateral cubital tunnel syndrome. On July 25, 2005 appellant underwent a left submuscular transposition of the ulnar nerve which was authorized by the Office. On January 5, 2006 Dr. Crawford C. Campbell, an attending Board-certified orthopedic surgeon, stated that in terms of appellant's left ulnar nerve submuscular transposition she was improving but did have occasional dysesthesia and pain. He noted that "the amount of pain and sensory dysfunction that still exist because of the ulnar neuropathy, results in a five percent upper extremity impairment, which translates to a three percent whole person impairment."

The Office referred appellant to Dr. Nabil Basta, a Board-certified orthopedic surgeon, for evaluation of the permanent impairment of her left arm due to the accepted condition of left cubital tunnel syndrome. Dr. Zimmerman indicated that he only assembled records pertaining to appellant's left cubital tunnel syndrome to give to Dr. Basta. On October 23, 2006 Dr. Basta provided a brief history of appellant's upper extremity condition and indicated that she reported occasional pins and needles sensations and tingling in her left arm. He indicated that, upon

examination of the right wrist and hand appellant had negative Tinel's and Phalen's tests, no sensory changes or motor weakness and 5/5 motor power in all the flexors in the hand. Dr. Basta indicated that elbow motion consisted of flexion of 140 degrees, extension of 0 degrees, pronation of 80 degrees and supination of 80 degrees but did not indicate whether these findings were for the right or left elbow. He stated that upon examination of the left wrist and hand appellant had negative Tinel's and Phalen's tests, no motor weakness and positive two-point discrimination. Appellant was observed to have sensory changes in the form of hypoesthesia along the ulnar side of the ring finger and one-half of the index finger and, upon ulnar nerve testing of the left wrist, she had a negative Froman's test with no clawing of the wrist or any weakness of the intrinsic or lumbrical muscles. Dr. Basta indicated that there was a negative Tinel's test at the level of the left elbow and that there was a negative Tinel's test anteriorly on the elbow as well as where the nerve was transposed with no tenderness in the ulnar nerve groove. He stated:

> "Based on my clinical evaluation, history as presented and review of the above mentioned records from the above mentioned doctors, it is my orthopedic opinion that as far as the carpal tunnel syndrome is concerned, [appellant] had been assessed at 15 percent impairment as a result of the first surgeries and there are no new findings of limitations as far as the carpal tunnel is concerned right now. There are no motor symptoms, there are no sensory changes and the range of motion in both wrist was normal as far as orthopedic measurements are concerned. [Appellant's] only impairment and residual symptoms at the moment are focused and geared to the transposition of the left ulnar nerve on the left elbow. It is my assessment that the only residual symptoms are the sensory changes and the tingling of the ulnar nerve distribution which in my opinion is related to the surgery and the transposition. According to the A.M.A., *Guides*, appellant is entitled to sensory deficit of one percent of the upper extremity which is comparable to one percent whole body."

In October 23 and November 19, 2006 reports, Dr. Zimmerman indicated that Dr. Basta's evaluation showed that appellant was only entitled to an additional schedule award for a one percent permanent impairment of her left arm based on a one percent rating for sensory loss associated with the left ulnar nerve. He indicated that Dr. Basta did not explain what grade of sensory loss he used to find this level of total sensory loss impairment, but indicated that a 1 percent sensory loss value could be obtained by multiplying a 15 percent grade for sensory loss times 7 percent, the maximum impairment for ulnar nerve sensory loss. Dr. Zimmerman stated that appellant had previously received a schedule award for a 13 percent impairment related to her carpal tunnel syndrome and was not entitled to any further compensation for this condition.

In a December 6, 2006 decision, the Office granted appellant a schedule award for an additional one percent permanent impairment of her left arm. The award ran for 3.12 weeks, from September 27 to October 18, 2006. Appellant submitted a December 8, 2006 report of Dr. Campbell which contained an impairment rating which was similar to that contained in his January 5, 2006 report. In a March 22, 2007 decision, the Office affirmed its December 6, 2006 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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 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.[3]

It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[4]

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and authorized two carpal tunnel release surgeries on each side. It also accepted that she sustained bilateral cubital tunnel syndrome and authorized a left submuscular transposition of the ulnar nerve. Appellant received a November 19, 1996 schedule award for a 13 percent permanent impairment of her left arm and a 13 percent permanent impairment of her right arm.

In a December 6, 2006 decision, the Office granted appellant a schedule award for an additional one percent permanent impairment of her left arm such that she was compensated for a total left arm impairment of 14 percent. It based this award on the opinion of Dr. Basta, a Board-certified orthopedic surgeon, who served as an Office referral physician. The Board notes, however, that there are aspects of Dr. Basta's opinion that require clarification and which require that the medical evidence be further developed.

In his October 23, 2006 report, Dr. Basta concluded that, according to the A.M.A., *Guides* appellant was entitled to a one percent impairment rating due to sensory deficit associated with the ulnar nerve.[5] However, it is unclear how Dr. Basta applied the relevant standards found in Tables 16-10 and 16-15 of the A.M.A., *Guides* to reach this conclusion.[6] For example, he did not provide a grade for appellant's sensory loss under the specific standards of

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *Id*.

[4] *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[5] Dr. Basta indicated that appellant had sensory changes in the form of hypoesthesia along the ulnar side of the ring finger and one-half of the index finger and that, upon ulnar nerve testing of the left wrist she had a negative Froman's test with no clawing of the wrist or any weakness of the intrinsics or lumbrical muscles.

[6] *See* A.M.A., *Guides* 483, 492, Tables 16-10 and 16-15.

Table 16-10. Dr. Zimmerman, a Board-certified orthopedic surgeon, who served as a district medical adviser, provided a presumed calculation of this impairment but his assumptions regarding Dr. Basta's rationale for the impairment rating would not serve as a substitute for Dr. Basta's own opinion on the matter.

Dr. Basta also determined that, with respect to appellant's left carpal tunnel syndrome "she had been assessed at 15 percent impairment as a result of the first surgeries and there are no new findings of limitations as far as the carpal tunnel is concerned right now."[7] The Board notes, however, that it remains unclear whether Dr. Basta reached this conclusion based on his current evaluation of appellant's carpal tunnel condition or merely reached this determination based on the fact that appellant had previously been compensated for this condition. For example, appellant reported pins and needles sensations and tingling in her left arm but Dr. Basta did not clearly indicate whether any of these deficits might be associated with residuals of carpal tunnel syndrome. In addition, Dr. Basta indicated that her left wrist motion was normal, but he did not provide any actual findings for wrist motion. Therefore, it is not possible to determine whether appellant might have impairment due to limited wrist motion under the standards found in Tables 16-28 and 16-31 of the A.M.A., *Guide*.[8] Moreover, it remains unclear whether Dr. Basta had adequate medical records regarding appellant's carpal tunnel condition as Dr. Zimmerman had indicated that he only assembled records pertaining to appellant's left cubital tunnel syndrome to give to Dr. Basta.

As noted above, the Office shares responsibility in the development of the evidence and, therefore, the case should be remanded to the Office for further development to clarify the above-described matters.[9] After such development it deems necessary, the Office should issue an appropriate decision regarding appellant's entitlement to schedule award compensation.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she had more than a 14 percent permanent impairment of her left arm for which she received schedule awards. The case is remanded to the Office for further development of the medical evidence.

[7] The Board notes that appellant actually received compensation for a 13 percent impairment rather than a 15 percent impairment.

[8] *See* A.M.A., *Guides*, Tables 467, 469, 16-28, 16-31.

[9] *See supra* note 4 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 22, 2007 and December 6, 2006 decisions are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: October 22, 2007
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