United States Department of Labor
Employees' Compensation Appeals Board

G.R., Appellant	)	
and	)	**Docket No. 08-1489**
	)	**Issued: November 24, 2008**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Kearny, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 28, 2008 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated December 20, 2007 and a July 16, 2007 decision of the Branch of Hearings and Review denying her request for an additional schedule award. 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 has more than 21 percent impairment of her right upper extremity for which she has received a schedule award.

FACTUAL HISTORY

On January 26, 1998 appellant, then a 52-year-old clerk, filed an occupational disease claim alleging that she developed right wrist pain in the performance of duty. The Office denied appellant's claim for carpal tunnel syndrome by decision dated July 27, 1998. Appellant,

through her attorney, requested an oral hearing on August 3, 1998. By decision dated May 17, 1999, the hearing representative set aside the Office's July 27, 1998 decision and remanded the claim for additional development of the medical evidence.

On June 23, 1999 the Office referred appellant, a statement of accepted facts and a list of questions to Dr. Howard M. Baruch, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a July 6, 1999 report, Dr. Baruch diagnosed right carpal tunnel syndrome and noted that appellant underwent a surgical carpal tunnel release on the right in August 1998. He opined that appellant's condition was work related and that she had no ongoing disability. By decision dated July 26, 1999, the Office accepted appellant's claim for right carpal tunnel syndrome.

Appellant, through her attorney, requested a schedule award on November 24, 1999. In a September 17, 1999 report, Dr. Ronald John Potash, a Board-certified surgeon, examined appellant and found that her surgical scar was sensitive to light touch. He found positive Tinel's and Phalen's signs. Dr. Potash noted that appellant had limited range of motion of 60 degrees of dorsiflexion, 55 degrees of palmar flexion, and 30 degrees of ulnar deviation. He provided findings on grip strength testing and noted that appellant had reduced sensation on sensory examination of the median nerve on the right. Dr. Potash concluded that appellant had 21 percent impairment of her right upper extremity based on 1 percent impairment for loss of range of motion and 20 percent sensory impairment of the median nerve. By decision dated December 14, 1999, the Office granted appellant a schedule award for 21 percent impairment of her right upper extremity.

Appellant, through her attorney, requested an additional schedule award on November 25, 2005. She submitted a report from Dr. Nicholas Diamond, an osteopath, dated September 1, 2005. Dr. Diamond found positive Tinel's and Phalen's signs on the right and full range of motion. He noted that Semmes-Weinstein monofilament testing revealed a diminished light touch sensibility over the median nerve distribution and two-point discrimination of three millimeters bilaterally. Dr. Diamond found Grade 2 sensory deficit right median nerve or 31 percent impairment of the upper extremities bilaterally and concluded that appellant reached maximum medical improvement on September 1, 2005.

In a letter dated June 5, 2006, appellant's attorney noted that the Office had accepted appellant's claim for left carpal tunnel syndrome under a different claim number and that appellant had requested a schedule award.[1]

The Office medical adviser reviewed Dr. Diamond's September 1, 2005 report on August 22, 2006 and concluded that due to normal two-point discrimination and "mild objective sensory changes" the findings were not compatible with a 31 percent impairment rating. By decision dated November 13, 2006, the Office denied appellant's claim for an additional schedule award. Appellant, through her attorney, requested an oral hearing on November 17, 2006. In a statement dated May 14, 2007, appellant noted that she retired from the employing establishment on January 2, 2001. She worked between 8 and 15 hours a week as

[1] The record does not contain a final decision on appellant's entitlement to a schedule award for her left upper extremity and the Board may not address this issue on appeal. 20 C.F.R. § 501.2(c).

a receptionist, answering telephones, filing and opening mail for approximately 18 months. By decision dated July 16, 2007, the hearing representative affirmed the Office's November 13, 2006 decision finding that Dr. Diamond's report did not comport with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

Appellant, through her attorney, requested reconsideration on August 1, 2007. She submitted a report on June 7, 2007 in which Dr. Diamond opined that appellant's condition had worsened following his 1999 examination and before she began her part-time position in 2001. By decision dated December 20, 2007, the Office reviewed appellant's claim on the merits and denied modification of the July 16, 2007 decision of the Branch of Hearings and Review.

LEGAL PRECEDENT

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

It is the responsibility of the evaluating physician to explain in writing why a particular method to assign the impairment rating was chosen.[4] In evaluating carpal tunnel syndrome, the A.M.A., *Guides* provide that, if after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias or difficulties in performing certain activities three possible scenarios can be present. The first situation is: "Positive clinical finding of median nerve dysfunction and electrical conduction delay(s): The impairment due to residual CTS [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier."[5] In this situation, the impairment due to residual carpal tunnel syndrome is evaluated by multiplying the grade of severity of the sensory or motor deficit by the respective maximum upper extremity impairment value resulting from sensory or motor deficits of each nerve structure involved. When both sensory and motor functions are involved the impairment values derived for each are combined.[6] In the second scenario: "Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles: a residual CTS is still present, and an impairment rating not to exceed five percent of the upper extremity may be justified." In the final situation: "Normal sensibility

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] *Tara L. Hein*, 56 ECAB 431 (2005).

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

[6] *Id*. at 494, 481.

(two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength, and nerve conduction studies: there is no objective basis for an impairment rating."[7]

To accurately evaluate sensory impairment clinically and reduce the subjective nature of these findings,[8] the A.M.A., *Guides* recommend either the two-point test for fine discrimination, the monofilament touch-pressure threshold test or the pinprick test.[9]

ANALYSIS

Appellant received a schedule award for 21 percent impairment to her right upper extremity due to the accepted condition of carpal tunnel syndrome. She requested an additional schedule award and submitted a report dated September 1, 2005 from Dr. Diamond, an osteopath. Appellant underwent a right carpal tunnel release in August 1998. The record does not contain the results of any electrodiagnostic testing of the right upper extremity following the August 1998 surgery. In accordance with the A.M.A., *Guides*, appellant can only be rated for sensory or motor deficits due to her accepted carpal tunnel syndrome if there is continued evidence of electrical conduction delay following her surgery. Without evidence of electrical conduction delay, appellant would only be entitled to an impairment rating of up to five percent under the A.M.A., *Guides*. The Office medical adviser properly noted that Dr. Diamond's report did not include the necessary electrodiagnostic testing results as required by the A.M.A., *Guides*, or support his rating of 31 percent impairment of the right upper extremity. It is well established that when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides* his opinion is of diminished probative value. The Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.[10] It medical adviser reviewed Dr. Diamond's report and concluded that the report did not contain the necessary findings to support the physician's impairment rating to establish impairment of more than five percent. Appellant has not met her burden of proof in establishing that she has more than 21 percent impairment to his right arm.

CONCLUSION

The Board finds that the weight of the medical opinion evidence does not establish that appellant has more than 21 percent impairment of her right upper extremity for which she received a schedule award.

[7] *Id*. at 495.

[8] *Id*. at 446.

[9] *Id*. at 445.

[10] *Linda Beale*, 57 ECAB 429, 434 (2006).

ORDER

IT IS HEREBY ORDERED THAT the December 20 and July 17, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 24, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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