United States Department of Labor
Employees' Compensation Appeals Board

T.A., Appellant	)	
and	)	**Docket No. 08-381**
	)	**Issued: October 8, 2008**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Chicago, IL, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 19, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 16, 2007 merit decision granting a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant has more than 19 percent impairment of his right arm and 8 percent impairment of his left arm.

FACTUAL HISTORY

This is the second appeal in this case. In a February 28, 2007 decision, the Board set aside decisions of the Office which found that appellant had sustained five percent impairment to

his right and left upper extremities.[1] It remanded the case to the Office for further development of the medical evidence. The facts and circumstances of the case are set forth in the Board's prior decision and are incorporated herein by reference.

On remand the Office referred appellant to Dr. Vikram H. Gandhi, a Board-certified orthopedic surgeon, for examination and an evaluation of the extent of permanent impairment.[2] Dr. Gandhi performed electromyogram (EMG) and nerve conduction velocity (NCV) studies on August 16, 2007 which revealed normal results in the upper extremities. In a report received on October 16, 2007,[3] he stated that physical examination revealed some limitation of motion and decreased strength, with pain, decreased sensation, decreased 2-point discrimination, and a positive Tinel's sign on both wrists. Dr. Gandhi indicated that the decreased sensation was mainly affecting the index, middle and ring fingers of the right hand. He stated, "Some decrease was also noted on the left but this appeared to be minimal." Dr. Gandhi reported that appellant described more problems with his right hand than his left. He diagnosed bilateral carpal tunnel syndrome, status post surgical releases, and found that appellant reached maximum medical improvement one year after his most recent surgery. Dr. Gandhi stated that he was applying the first category on page 495 of the A.M.A., *Guides* even though appellant's EMG and NCV testing was normal because such testing can be normal even if there is clinical evidence of median nerve dysfunction. He stated:

> "Most of the impairment rating was calculated for the sensory loss at the median nerve at the wrist level, which is what carpal tunnel syndrome is, and he has no significant muscular involvement. Most of the loss is sensory involvement. Right-sided sensory loss appeared to be worse than the left-sided sensory loss, and it was considered that the patient had Grade 3 loss of the right hand as he had sensory changes including pain and then difficulty in daily activities in some areas and it was felt that this loss was in the range of 32 percent."
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> "Table 16-10 and 16-15 from the [A.M.A., *Guides*] were used. Sensory deficit on the right side was felt to be 60 percent and that multiplied by 32 percent as the

[1] Docket No. 06-1893 (issued February 28, 2007). The Office accepted that appellant, a 29-year-old claims examiner, sustained bilateral carpal tunnel syndrome. He underwent surgery on both wrists in 1997. The Office granted appellant schedule awards on February 9, 2006 for five percent impairment of both the right and left arms.

[2] The Office made several earlier attempts to refer appellant for evaluation but the physicians either indicated that they did not provide impairment ratings or failed to follow the Office's instructions to perform an evaluation of permanent impairment. The Office indicated that Dr. Gandhi served as an impartial medical specialist but he actually served as an Office referral physician because there was no conflict in the medical evidence at the time of the referral. As noted by the Board in its February 28, 2007 decision, the impairment ratings of Dr. Thompson, a Board-certified orthopedic surgeon who served as an Office medical adviser, and Dr. Salomon, an attending Board-certified orthopedic surgeon, were not derived in accordance with the relevant standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Therefore, their opinions did not create a conflict in the medical evidence.

[3] The report is actually dated July 19, 2007 but this date appears to be incorrect as the report discusses the August 16, 2007 test results.

median involvement at the wrist level for upper extremity impairment, which gives a 19.2 percent rating, rounded to 19 percent.

"Similarly, the left upper extremity was rated and it was found that the left upper extremity had a Grade 4 loss which gave it a 25 percent loss and at 32 percent of that it gives an 8 percent impairment rating."

In an October 16, 2006 decision, the Office granted appellant additional schedule award compensation to reflect 19 percent impairment to his right arm and eight percent impairment of his left arm. The awards ran for 53.04 weeks from July 22, 2005 to July 28, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] 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.[6]

ANALYSIS

The Office accepted that appellant sustained employment-related bilateral carpal tunnel syndrome and granted him schedule award compensation for a 19 percent permanent impairment of his right arm and an 8 percent permanent impairment of his left arm. The Office based the schedule awards on the examination of Dr. Gandhi, a Board-certified orthopedic surgeon who served as an Office referral physician.[7] The Office referred appellant to Dr. Gandhi after the Board, in a February 28, 2007 decision, found that additional development of the medical evidence was required to evaluate the extent of his upper extremity impairment.

The Board finds that Dr. Gandhi properly determined that appellant's bilateral carpal tunnel syndrome was appropriately evaluated under the first category on page 495 of the A.M.A., *Guides.*[8] The choice of this category was appropriate as Dr. Gandhi identified several clinical signs of median nerve dysfunction and electrical conduction delays including positive Tinel's signs in both sides and decreased 2-point discrimination (mainly affecting the index, middle and

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Id*. *See Thomas P. Gauthier*, 34 ECAB 1060 (1983).

[7] *See supra* note 2 regarding Dr. Gandhi's status as an Office referral physician. Dr. Gandhi's report was received by the Office on October 16, 2007.

[8] *See* A.M.A., *Guides* 495 (section entitled "carpal tunnel syndrome").

ring fingers).[9] He characterized the extent of sensory loss to the median nerve in the right as Grade 3 as found at Table 16-10, page 482. Under this classification, Dr. Gandhi advised that appellant had a 60 percent deficit for distorted superficial tactile sensibility (diminished light touch and two point discrimination), with some abnormal sensations or slight pain, that interferes with some activities. For the impairment of the median nerve of the left wrist, Dr. Gandhi characterized the sensory loss as Grade 4, for which he allowed 25 percent deficit for distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain that is forgotten during activity. He explained that appellant's symptoms, both reported and observed on examination, were much greater on the right than on the left.[10]

Dr. Gandhi then referenced Table 16-15, page 492, to rate the sensory impairment to the upper extremities. The Board notes that in rating sensory loss of the median nerve below the forearm, Table 16-15 allows up to a maximum value of 39 percent for pain to the upper extremities.[11] In making his rating, Dr. Gandhi advised that allowing 32 percent for the sensory deficits found on examination of appellant's upper extremities was appropriate. For the right arm, he multiplied the 60 percent sensory deficit by 32 percent to total 19.2 percent loss, which was rounded down to 19 percent. For the left arm, Dr. Gandhi multiplied the 25 percent sensory deficit by 32 percent to total 8 percent impairment. The Board finds that the impairment ratings provided by Dr. Gandhi for appellant's sensory loss to his upper extremities conforms to the protocols of the A.M.A., *Guides*. As the examining physician, his impairment rating is well explained and supported by the findings made on physical evaluation of appellant's arms. His rating of impairment constitutes the weight of medical opinion. Appellant has not submitted any medical evidence to establish that he has greater impairment to his upper extremities resulting from his accepted injury.

CONCLUSION

The Board finds that appellant has a 19 percent impairment of his right arm and an eight percent impairment of his left arm for which he received schedule awards.

[9] *See id.* Dr. Gandhi explained that, even though appellant's EMG and NCV testing was normal, such testing can be normal even if there is valid clinical evidence of median nerve dysfunction.

[10] *See* A.M.A., *Guides* 482, Table 16-10. Dr. Gandhi noted that appellant's right arm sensory loss was so severe that it interfered with activity and other medical evidence of record supports this finding of a greater degree of sensory loss on the right.

[11] Chapter 1 of the A.M.A., *Guides*, page 4, notes, "Evaluating physicians may use their clinical judgment, however, and comment on any significant age or gender effect for a particular individual." It goes on to state, "Impairment percentages or ratings developed by medical specialists are consensus-derived estimates that reflect the severity of a given medical condition…."

ORDER

IT IS HEREBY ORDERED THAT Office of Workers' Compensation Programs' October 16, 2007 decision be affirmed.

Issued: October 8, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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