United States Department of Labor
Employees' Compensation Appeals Board

F.M., Appellant	)	
and	)	**Docket No. 08-1173**
	)	**Issued: October 3, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Asbury, 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:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 12, 2008 appellant filed a timely appeal from an October 3, 2007 decision of the Office of Workers' Compensation Programs, adjudicating his schedule award claim. 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 a 10 percent permanent impairment of his right upper extremity.

FACTUAL HISTORY

On June 16, 2003 appellant, then a 38-year-old letter carrier, filed an occupational disease claim alleging that he developed right carpal tunnel syndrome and trigger finger of his middle and little fingers due to the repetitive motions involved in his job. The Office accepted his claim for right carpal tunnel syndrome and trigger finger of the third and fifth fingers of his right hand. On June 17, 2004 appellant underwent surgery consisting of a right carpal tunnel release and

trigger releases of the right middle and little finger. He subsequently filed a claim for a schedule award.

In notes dated September 27, 2002, Dr. Gary M. Pess, an attending Board-certified orthopedic surgeon specializing in hand surgery, stated that appellant was experiencing pain, locking, clicking, numbness and tingling in his right hand. Findings on physical examination included tenderness over the middle and little finger A1 pulleys with gross locking and clicking. There was a positive Tinel's sign over the carpal tunnel and decreased sensation in the median nerve distribution. Dr. Pess diagnosed right middle and little fingers trigger fingers and possible right carpal tunnel syndrome.

In an October 2, 2002 nerve conduction study and electromyography (EMG) report, Dr. Alan D. Deutsch, a Board-certified neurologist and psychiatrist, noted the following test results: mild prolongation of right median sensory nerve distal latency with slowing of sensory nerve velocity across the wrist to palm segment, normal right median motor nerve conduction studies, normal right ulnar sensory and motor nerve conduction studies and normal EMG examination of selected muscles of the right upper extremity. He diagnosed mild right carpal tunnel syndrome.

On May 20, 2005 Dr. Pess indicated that appellant's condition was improving following his June 17, 2004 surgery but he still had some residual discomfort, swelling and stiffness. However, he had reached a point of maximum medical improvement.

In an August 15, 2005 report, Dr. David Weiss, an osteopath, specializing in orthopedic medicine, reviewed appellant's medical history and provided findings on physical examination. He stated that he had daily right wrist pain, described as a 4 on a 0 to 10 scale, and stiffness. Appellant did not have any numbness, tingling or swelling in his right wrist. He had no locking sensation in his right hand middle and little fingers. Appellant experienced difficulty with grasping objects, pulling and pushing and had decreased grip strength. Dr. Weiss diagnosed cumulative and repetitive trauma disorder, right carpal tunnel syndrome, stenosing tenosynovitis to the right middle and little finger, status post right endoscopic carpal tunnel release and status post release of the A-1 pulley of the middle and little finger of the right hand. He stated:

> "Examination of the right hand and wrist reveals … no thenar or hypothenar atrophy. Fist presentation is normal to the distal palmar crease. Range of motion reveals dorsiflexion [extension] of … 75 degrees, palmar flexion of … 75 degrees, radial deviation of … 20 degrees and ulnar deviation of … 35 degrees. The Tinel['s] sign is positive. The one-minute Phalen['s] sign is negative. Carpal compression test is positive. Resistive thumb abduction is graded at 5/5. There is no tenderness noted over the A-1 pulley in the long or little finger. There is no trigger phenomena in either the long or little fingers.
>
> "Grip strength testing performed via Jamar Hand Dynamometer at Level III reveals 20 kg [kilograms] of force strength on the right versus 38 kg of force strength on the left. This equates out to a strength deficit index of 47 percent to the right hand.

"Pinch key testing reveals 7 kg in the right hand versus 10 kg in the left hand.

"Semmes-Weinstein Monofilament testing reveals a diminished light touch sensibility at 2.83 mgs [milligrams] over the median nerve distribution on the right hand."

* * *

"The following is a rating of [appellant's] impairment on the basis of [the American Medical Association, *Guides to the Evaluation of Permanent Impairment* Fifth Edition:

"Right lateral pinch deficit = 10 percent, Table 16-34, [page] 509

"Grade 4 sensory deficit right median nerve = 10 percent, Table 16-10, [page] 482 [and] Table 16-15, [page] 492

"Total combined right upper extremity [impairment] 19 percent

"[F]rom this examiner's viewpoint, [appellant] reached maximum medical improvement on August 15, 2005."

On October 28, 2005 Dr. Pess stated that he had reviewed the report of Dr. Weiss and agreed that appellant had a 19 percent impairment of his right upper extremity.

On January 26, 2007 the Office asked Dr. Morley Slutsky, a Board-certified specialist in preventive medicine and a district medical adviser, to review the report of Dr. Weiss and determine appellant's impairment. On January 31, 2007 Dr. Slutsky stated that appellant had a 10 percent impairment of the right upper extremity based on the report of Dr. Weiss. He stated:

"[Appellant] was noted to have a normal strength exam[ination] in the upper extremity and in particular in the median nerve distribution in 2002 (before corrective endoscopic carpal tunnel release had been performed). Dr. Weiss also found the same result[;] he noted that [appellant's] [r]esistive thumb abduction (controlled by the median nerve) is graded at 5/5. This was consistent with [appellant's] EMG/NCV [electromyography/nerve conduction velocity] test which showed, 'normal right median motor nerve conduction studies.' In addition to this, Dr. Weiss incorrectly rated impairment [due] to carpal tunnel syndrome using lateral pinch strength deficits. Median nerve motor dysfunction is supposed to be rated using Table 16-11, page 484, not using lateral grip strength deficits[,] per The Carpal Tunnel Section, page 495. Based upon this discussion of normal median nerve clinical findings and EMG testing, coupled with an incorrect rating by Dr. Weiss, I do not feel there is any impairment rating for median nerve motor dysfunction. Therefore the final median nerve rating will be based upon the clinical sensory dysfunction per [p]age 495….

"The following rating calculations are performed according to The [A.M.A., *Guides*] 5th Edition.

"RIGHT MEDIAN NERVE IMPAIRMENT[:] *UEI* [*Upper Extremity Impairment*] *Due to Sensory/Pain Deficit -- Median Nerve.* Grade median nerve sensory deficit using Table 16-10, page 482. I agree with Grade 4 which corresponds to 25 percent deficit. *Maximum UEI due to Sensory Deficit Median Nerve-Using Table 16-15, page 492*. Maximum Sensory Deficit for Median Nerve below mid forearm equals 39 percent UEI. *Total Sensory Median Nerve Impairment*. Grade Deficit 25 percent [times] Maximum UEI for Median Nerve Sensory Deficit 39 percent = 9.75 percent UEI = 10 percent UEI."

By decision dated February 15, 2007, the Office granted appellant a schedule award for 10 percent impairment of his right upper extremity from August 15, 2005 to March 21, 2006, or 31.20 weeks.[1]

Appellant requested an oral hearing that was held on July 18, 2007. By decision dated October 3, 2007, the Office denied appellant's claim for an additional schedule award.

LEGAL PRECEDENT

Section 8107 of the Act[2] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[3]

The fifth edition of the A.M.A., *Guides*, regarding impairment due to carpal tunnel syndrome, provides:

"If, after an *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present:

1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described [in Tables 16-10a and 16-11a].

2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present and an

[1] The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of the upper extremity. 5 U.S.C. § 8107(c)(10). Multiplying 312 weeks by 10 percent equals 31.20 weeks of compensation.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

impairment rating not to exceed five percent of the upper extremity may be justified.

3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating."[4]

The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.[5]

ANALYSIS

In this case, Dr. Weiss found that the first carpal tunnel scenario applied to appellant's condition. He found that he had a sensory deficit in his right upper extremity causally related to his accepted right carpal tunnel syndrome. Using the fifth edition of the A.M.A., *Guides*, Dr. Weiss rated appellant's sensory deficit as Grade 4, 25 percent, and multiplied this by the maximum median nerve sensory impairment, at the midforearm, 39 percent,[6] which resulted in 9.75 percent impairment, rounded to 10 percent, for sensory deficit impairment. Dr. Weiss combined the 10 percent sensory deficit with 10 percent for lateral pinch deficit, based on Table 16-34 at page 509 of the A.M.A., *Guides*, resulting in a 19 percent combined impairment of the right upper extremity, according to the Combined Values Chart at page 604 of the A.M.A., *Guides.*

Dr. Slutsky agreed with Dr. Weiss that appellant had a 10 percent impairment of the right upper extremity for sensory deficit, based on Table 16-10 at page 482 and Table 16-15 at page 492 of the fifth edition of the A.M.A., *Guides*. He noted that Dr. Weiss also found that appellant had a 10 percent impairment due to lateral pinch strength deficits based on Table 16-34 at page 509 of the A.M.A., *Guides*. However, motor deficit due to carpal tunnel syndrome is rated using the same procedures at page 495 as for rating sensory deficit. Further, the A.M.A., *Guides* provides that, "In compression neuropathies, additional impairment values are not given for decreased grip strength.[7] The medical evidence does not support a motor deficit in appellant's right upper extremity. As noted, in 2002, prior to his right carpal tunnel release, Dr. Deutsch stated that electrodiagnostic testing revealed a normal right upper extremity median motor nerve. Although Dr. Weiss found that appellant experienced difficulty with grasping objects, pulling and pushing and decreased grip strength, he did not provide any objective test results to support these findings. In light of the fact that objective testing revealed a normal median motor nerve in 2002 and there are no tests showing a change in the motor nerve, right upper extremity impairment due to motor deficit is not established.

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

[5] *Kimberly M. Held*, 56 ECAB 670 (2005).

[6] Table 16-15 provides for a maximum impairment of 39 percent for sensory deficit of the median nerve regardless of whether the area involved is below or above the midforearm. A.M.A., *Guides* 492, Table 16-15.

[7] A.M.A., *Guides* 494.

Accordingly, Dr. Slutsky's determination that appellant had a 10 percent impairment of his right upper extremity due to sensory deficit of the median nerve is consistent with the A.M.A, *Guides* and Dr. Weiss' findings on physical examination. The Board finds that the weight of the medical evidence establishes that appellant has no more than a 10 percent impairment of his right upper extremity causally related to his accepted right carpal tunnel syndrome.

CONCLUSION

The Board finds that appellant has no more than a 10 percent impairment of his right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 3, 2007 is affirmed.

Issued: October 3, 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