

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Birnamwood, WI, Employer**

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**Docket No. 08-1686  
Issued: April 7, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 28, 2008 appellant filed a timely appeal from a May 1, 2008 merit decision of the Office of Workers' Compensation Programs denying her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

**ISSUE**

The issue is whether appellant has established that she sustained a permanent impairment of the upper extremities.

**FACTUAL HISTORY**

This case is before the Board for the second time on this issue. By decision dated February 8, 2008, the Board set aside a January 18, 2007 decision finding that appellant had no

impairment of the upper extremities entitling her to a schedule award.<sup>1</sup> The Board found that the Office medical adviser did not adequately consider the medical evidence or the provisions of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*) in finding that she did not have an impairment due to carpal tunnel syndrome. The Board noted that the record contained a January 13, 2006 electromyogram (EMG) showing sensory and demyelinating minimal median neuropathies of the wrists.<sup>2</sup> The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On March 3, 2008 an Office medical adviser asserted that he had considered the January 2006 postoperative EMG study but maintained that “abnormal electrical studies following release of the median nerve at the wrist are very common, and do not seem to correlate with [appellant’s] symptoms.<sup>3</sup> Thus, while this test was recognized, knowing that it does not necessarily correlate with the clinical exam[ination], it was somewhat disregarded.” The Office medical adviser asserted that there was no basis for an award for an upper extremity impairment. He recommended an evaluation by a specialist.

On April 1, 2008 the Office referred appellant to Dr. Paul Cederberg, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of any upper extremity impairment. In a report dated April 21, 2008, Dr. Cederberg reviewed the history of injury and the medical evidence of record. He diagnosed chronic pain syndrome of uncertain etiology. On examination, Dr. Cederberg found full range of shoulder, wrist, elbow, shoulders and fingers bilaterally. He measured grip strength of 60 pounds on the right and 52 pounds on the left. Dr. Cederberg noted that with “abduction of her arm and Valsalva maneuvers, she did obliterate both of the radial pulses.” He found that she had no numbness “specific for the dorsum or volar aspect of the fifth finger in either finger” but experienced mild tenderness over the medial and lateral right epicondyle. Dr. Cederberg stated:

“With regard to bilateral carpal tunnel syndromes, [appellant] has no loss of sensation, normal excursion of the digits, no physical findings and excellent grip strength in both hands. In my opinion, she has [zero] percent permanency rating to either wrist for the whole person due to her carpal tunnel syndrome. There are no objective findings of permanency or impairment regarding [appellant’s] hands.

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<sup>1</sup> Docket No. 07-1462 (issued February 8, 2008). The Office accepted that appellant sustained right forearm tendinitis, bilateral carpal tunnel syndrome, thoracic outlet syndrome, neck strain and bilateral elbow epicondylitis due to factors of her federal employment. Appellant underwent a right carpal tunnel release on August 5, 2005, a left carpal tunnel release on September 16, 2005 and a right rib resection on October 25, 2005.

<sup>2</sup> In a decision dated April 9, 2008, the Board affirmed January 8 and July 18, 2007 decisions reducing appellant’s compensation based on her actual earnings. Docket No. 07-2165 (issued April 9, 2008).

<sup>3</sup> In a report dated February 20, 2007, Dr. Susan M. Schneider, a family practitioner, related that appellant experienced a “significant amount of pain associated with the majority of her activities.” She opined that appellant had reached maximum medical improvement. Dr. Schneider did not provide an opinion regarding the extent of any permanent impairment.

“With regard to [appellant’s] forearm, she has full excursion of her elbows and she has normal grip strength in her right and left hands. In my opinion, she has no ratable permanency regarding her medial and lateral epicondylitis.

“With regard to [appellant’s] thoracic outlet syndrome, she has full excursion, and her global symptoms are not in keeping with thoracic outlet syndrome. Using the [A.M.A., *Guides*], there is no rating for thoracic outlet syndrome. Therefore, she has no ratable permanency under those guidelines for her thoracic outlet syndrome.”

By decision dated May 1, 2008, the Office denied appellant’s claim for a schedule award.<sup>4</sup>

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act,<sup>5</sup> and its implementing federal regulations,<sup>6</sup> 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>7</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>8</sup>

### **ANALYSIS**

The Office accepted appellant’s claim for right forearm tendinitis, bilateral carpal tunnel syndrome, thoracic outlet syndrome and bilateral elbow epicondylitis. Appellant underwent right and left carpal tunnel releases and a right rib resection in 2005. He filed a claim for a schedule award for the upper extremities, which the Office denied by decision dated January 18, 2007. On February 8, 2008 the Board remanded the case for further consideration of the medical evidence. The Board noted that it was unclear whether the Office medical adviser considered a January 13, 2006 EMG which showed evidence of median neuropathy prior to finding that she had no permanent impairment of the upper extremities.

On remand the Office medical adviser explained that he had considered the January 13, 2006 EMG but noted that it did not correlate with the clinical findings. It referred appellant to

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<sup>4</sup> The Office cited legal precedent relevant to examinations by impartial medical examiners; however, Dr. Cederberg performed a second opinion examination. Any error is harmless as it does not affect the disposition of the case.

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Id.* at § 10.404(a).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

Dr. Cederberg for a second opinion evaluation. In a report dated April 21, 2008, Dr. Cederberg diagnosed chronic pain syndrome of unclear etiology. He found that appellant had no loss of range of motion of the upper extremities or loss of strength. Dr. Cederberg noted that she had mild tenderness over the right medial and lateral epicondyle but no numbness over the “dorsum or volar aspect of the fifth finger” bilaterally. He concluded that appellant had no impairment due to carpal tunnel syndrome as she had no loss of sensation, grip strength, loss of motion or other physical findings. Dr. Cederberg additionally found no impairment of the forearm or due to thoracic outlet syndrome. The Board finds that he conducted a thorough examination and that his report represents the weight of the evidence. Appellant, consequently, has not met her burden of proof to establish that she has a permanent impairment of either upper extremity.

**CONCLUSION**

The Board finds that appellant has not established that she sustained a permanent impairment of the upper extremities.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated May 1, 2008 is affirmed.

Issued: April 7, 2009  
Washington, DC

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees’ Compensation Appeals Board