United States Department of Labor
Employees' Compensation Appeals Board

V.B., Appellant	)	
	)	**Docket No. 08-1905**
and	)	**Issued: April 14, 2009**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Des Moines, IA, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 1, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs merit decision dated May 13, 2008 which denied affirmed the denial of her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case

ISSUE

The issue is whether appellant was entitled to a schedule award for permanent partial impairment of the bilateral upper extremities.

FACTUAL HISTORY

On March 4, 2006 appellant, then a 54-year-old clerk, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome as a result of performing her work duties. She did not stop work and retired on February 29, 2004. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized bilateral surgical releases.

Dr. Ronald S. Bergman, an osteopath, performed a left carpal tunnel release on January 16, 2006. On February 20, 2006 he performed decompression of the right median nerve. In reports dated April 11 to July 18, 2006, Dr. Bergman noted appellant was progressing well postoperatively but experienced pain at the joint of the left thumb. He diagnosed left trigger thumb and recommended a left trigger finger release which was performed on July 10, 2006. Appellant was also treated by Dr. Eden Murad, an osteopath. On April 6, 2006 Dr. Murad noted that appellant presented on November 10, 2005 with bilateral hand pain and numbness and diagnosed bilateral carpal tunnel syndrome. He opined that appellant's long-term employment as a clerk may have contributed to the diagnosis of bilateral carpal tunnel syndrome.

On February 20, 2007 appellant filed a claim for a schedule award.

In a letter dated March 12, 2007, the Office requested that appellant submit a detailed report from her treating physician which provided an impairment evaluation pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment,*[1] (A.M.A., *Guides*). Appellant did not respond.

In a decision dated May 21, 2007, the Office denied appellant's claim for a schedule award.

On June 16, 2007 appellant requested a review of the written record. In a June 13, 2007 report, Dr. Murad noted treating appellant in May 2007 for problems secondary to the carpal tunnel releases. He subsequently referred appellant for a functional capacity evaluation (FCE).

In a letter dated August 17, 2007, the Office requested that Dr. Murad provide an impairment evaluation pursuant to the A.M.A., *Guides*. In a letter dated September 11, 2007, Dr. Murad indicated that he did not provide disability ratings.

In a decision dated October 4, 2007, the hearing representative affirmed the May 21, 2007 decision.

On November 27, 2007 appellant requested reconsideration. She advised that Dr. Bergman would perform an impairment rating and submit his findings to the Office. No additional evidence was submitted. In a decision dated December 12, 2007, the Office denied appellant's reconsideration request without further merit review.

On January 11, 2008 appellant requested reconsideration. She submitted a report from Dr. Bergman dated November 6, 2007, who determined that she reached maximum medical improvement as of that date. Dr. Bergman noted that in accordance with the A.M.A. *Guides* appellant had 16 percent impairment of the left upper extremity and 7 percent impairment of the right upper extremity. He assessed bilateral thumb impairment due to loss of range of motion and opined that appellant sustained 9 percent impairment of the right thumb and 14 percent impairment of the left thumb under section 16.4d, page 454 of the A.M.A. *Guides*. Using the conversion table, Dr. Bergman calculated four percent impairment of the right hand and six percent impairment of the left hand due to loss of range of motion of the thumb. He rated three

[1] A.M.A., *Guides* (5th ed. 2001).

percent impairment of the right wrist and eight percent to the left wrist for range of motion deficit pursuant to section 16.4g, page 466 of the A.M.A. *Guides*. Dr. Bergman calculated two percent impairment of the left upper extremity due to partial transverse sensory loss through the left thumb and cited to section 16.5, page 480 of the A.M.A. *Guides*. He added the four percent impairment of the right hand to the three percent impairment of the right wrist for seven percent impairment to her right upper extremity. Dr. Bergman added the 6 percent impairment for the left hand to the 8 percent impairment for the left wrist and 2 percent impairment for peripheral nerve involvement for a 16 percent impairment of the left upper extremity.

Dr. Bergman's report was referred to an Office medical adviser. In a report dated February 11, 2008, the Office medical adviser determined that Dr. Bergman's November 6, 2007 report did not conform to the A.M.A. *Guides* or provide an acceptable impairment rating for the upper extremities for carpal tunnel syndromes.

In a decision dated February 19, 2008, the Office denied modification of the October 4, 2007 merit decision.

On April 14, 2008 appellant requested reconsideration. In an April 4, 2008 report, Dr. Bergman noted objective measurements for range of motion of the right and left wrists for extension, flexion, radial deviation and ulnar deviation. He also provided objective measurements for range of motion of the right and left thumbs for metacarpophalangeal (MP) joint extension and flexion, interphalangeal (IP) joint extension and flexion abduction and adduction. With regard to grip strength of the hand, Dr. Bergman noted 59 pounds on the right and 35 pounds on the left. He noted that appellant had a partial transverse sensory loss in the left thumb for two percent impairment to the left upper extremity. Dr. Bergman concluded that appellant had 9 percent impairment to the right thumb and 14 percent impairment to the left thumb for loss of motion,[2] 3 percent impairment to the right wrist and 8 percent impairment to the left wrist due to abnormal motion[3] and 2 percent impairment for peripheral nerve involvement for the left upper extremity for 7 percent impairment of the right arm and 16 percent impairment of the left arm.

Dr. Bergman's report was referred to an Office medical adviser. In a report dated May 4, 2008, the Office medical adviser determined that appellant did not sustain any permanent impairment of the upper extremities due to her accepted work condition. He noted that Dr. Bergman's April 4, 2008 report provided ratings for the right and left thumbs; however, the Office had not accepted any conditions affecting the thumbs. The Office medical adviser further noted that thumb ratings due to range of motion limitations could not be accepted in consideration of impairment ratings due to residuals of bilateral carpal tunnel syndrome. He noted that Dr. Bergman offered impairment ratings for sensory symptoms affecting the thumbs due to peripheral nerve dysfunction involving the median nerve with sensation in the left thumb according to section 16.5, page 480 of the A.M.A. *Guides.* However, the Office medical adviser advised that impairment ratings for sensory symptoms must be calculated using Tables 16-10 and 16-15 of the A.M.A. *Guides*. He noted that Dr. Bergman did not describe sensory testing of

[2] *Id.* at 454, section 16.4d.

[3] *Id.* at 466, section 14.4g.

the thumbs and, in the absence of sensory testing, any grade from Table 16-10 was conjectural. The Office medical adviser further noted that Dr. Bergman found impairment due to partial transverse sensory loss in the left thumb; however, he did not quantify the partial loss with a grade or by reporting the two-point discrimination. He concluded that the impairment rating recommended by Dr. Bergman on April 4, 2008 could not be accepted for consideration of impairment for either upper extremity due to the accepted bilateral carpal tunnel syndrome.

In a decision dated May 13, 2008, the Office denied modification of the February 19, 2008 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulations[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 regulations as the appropriate standard for evaluating schedule losses.[6]

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

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Id. See B.C.*, 58 ECAB ___ (Docket No. 06-925, issued October 13, 2006).

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."[7]

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.[8]

ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized bilateral carpal tunnel release surgery which was performed on the left side on January 16, 2006 and on the right side on February 20, 2006.

On appeal, appellant argues that she is entitled to a schedule award for permanent partial impairment of the bilateral upper extremities as set forth in Dr. Bergman's April 4, 2008 report.

The Board has carefully reviewed Dr. Bergman's report and notes that, while he rated a 7 percent permanent impairment of the right upper extremity and 16 percent permanent impairment of the left upper extremity, it is not clear how his rating conforms to the relevant standards of the A.M.A., *Guides*.

On April 4, 2008 Dr. Bergman noted loss of range of motion in appellant's wrists and thumbs and assigned impairment. However, the Board finds that Dr. Bergman incorrectly applied the A.M.A., *Guides* in calculating impairment for loss of range of motion to the wrists and thumbs. As noted, the A.M.A., *Guides* provides a specific method for determining the permanent impairment due to carpal tunnel syndrome. Impairment for carpal tunnel syndrome is rated on motor and sensory deficits.[9] Therefore, it was not proper rating any residuals of carpal tunnel syndrome, on loss of range of motion.[10] Dr. Bergman also sought to rate impairment based on loss of grip strength. However, A.M.A., *Guides*, provide that in carpal tunnel cases, impairment values are not given for loss of grip strength.[11] Office procedures provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[12] As noted, the A.M.A., *Guides* set forth a procedure for assessing permanent impairment of the upper extremity due to carpal tunnel syndrome where there has been optimal recovery time following surgical

[7] A.M.A., *Guides* 495. *See T.A.*, 59 ECAB ___ (Docket No. 07-1836, issued November 20, 2007).

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

[9] A.M.A., *Guides* 495; *see also Kimberly M. Held*, *id.* The Board also notes that the Office did not accept a thumb condition as employment related, only bilateral carpal tunnel syndrome.

[10] *See supra* note 8.

[11] *See E.L.*, 59 ECAB ___ (Docket No. 07-2421, issued March 10, 2008); A.M.A., *Guides* at 494.

[12] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

decompression. Dr. Bergman did not properly apply this procedure or explain why the procedure would not be applicable to appellant.

Dr. Bergman also noted that appellant had a partial transverse sensory loss in the left thumb for two percent impairment to the left upper extremity pursuant to section 16.5, page 480 of the A.M.A., *Guides*. However, he did not identify a grade of sensory deficit between 1 and 5 as set forth in the A.M.A., *Guides.*[13] Moreover, Dr. Bergman did not explain how he calculated specific impairment values using Table 16-15 on pages 492 of the A.M.A., *Guides.*[14] Consequently, he provided not basis to support that appellant has ratable permanent impairment under the provisions of the A.M.A., *Guides* pertaining to carpal tunnel syndrome.

The Office medical adviser reviewed Dr. Bergman's report and properly determined that his impairment rating did not conform to the A.M.A., *Guides*. He noted that Dr. Bergman's ratings for loss of range of motion for the thumbs and wrists were not a basis for rating impairment where the accepted condition is bilateral carpal tunnel syndrome.[15] The Office medical adviser explained that, while Dr. Bergman offered impairment ratings for sensory symptoms affecting the thumbs, he did not follow the procedures in the A.M.A., *Guides* for rating such impairment. In particular, he noted that Dr. Bergman did not provide sensory testing of the thumbs and in the absence of sensory testing; determining a grade from Table 16-10 would be conjectural. Additionally, the Office medical adviser stated that Dr. Bergman indicated appellant had a partial transverse sensory loss in the left thumb but that he did not quantify the partial loss with a grade or report the two-point discrimination. Consequently, he properly found no basis in Dr. Bergman's April 4, 2008 report for attributing permanent impairment for appellant's accepted condition of bilateral carpal tunnel syndrome.

The Board finds that the Office properly denied appellant's claim for a schedule award as there is no evidence of record, conforming with the A.M.A., *Guides,* indicating that appellant has permanent partial impairment of the bilateral upper extremities.

CONCLUSION

The Board finds that the Office properly determined that appellant was not entitled to a schedule award for permanent partial impairment of the bilateral upper extremities.

[13] A.M.A., *Guides* 482, Table 16-10a.

[14] *Id.* at 492, Table 16-15.

[15] *See supra* notes 9, 10.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2009
Washington, DC

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

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

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