United States Department of Labor
Employees' Compensation Appeals Board

W.G., Appellant **and** **DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Washington, DC, Employer**	)	**Docket No. 08-2202** **Issued: April 15, 2009**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 6, 2008 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated June 27, 2008, denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant established that he was entitled to a schedule award.

FACTUAL HISTORY

On February 24, 1998 appellant, then a 37-year-old laborer, filed a traumatic injury claim alleging that, on February 17, 1998, he twisted his right wrist while pulling trash. The Office accepted appellant's claim for right carpal tunnel syndrome and wrist sprain. Treatment included physical therapy, splints and decompression surgery.

On January 24, 2007 appellant filed a claim for a schedule award. In a report dated March 2, 2007, Dr. Hampton J. Jackson, appellant's treating Board-certified orthopedic surgeon, stated:

> "There is obvious atrophy that has prompted manual muscle testing examination which clearly shows weakness to pinch and grip. Therefore, a dynamometer was used to measure the pinch and grip and the values were rated to [T]ables 16-32, 16-33 and 16-34 [of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001)]. His pinch and grip strength rates a 20 percent impairment of the upper extremity. [Appellant] indeed does have diminished light touch with two-point discrimination of the thumb and index finger. Thus, according to [T]able 16-10, [appellant] rates a [G]rade [3] neurosensory deficit or peripheral nerve disorder and obvious deceased motor strength rating [G]rade [4]. When the grades are then utilized on [T]able 16-5, [appellant] then has a 23.4 percent impairment due to pain, discomfort and sensory alteration and a 2.5 percent impairment due to muscle weakness. There has been a good range of motion of the wrist.
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> "Therefore, when [appellant's] various impairments are combined on the [C]ombined [V]alues [C]hart, which is on page 604 of the [A.M.A., *Guides*], his impairment of his right upper extremity related to his carpal tunnel syndrome is 52 percent impairment of the right upper extremity. This is based on his present impairment, which may change with future surgery and the total rate of his right upper extremity.

By memorandum dated July 16, 2007, the Office forwarded Dr. Jackson's report to the Office medical adviser and asked his comments with regard to appellant's eligibility for a schedule award. By letter dated July 19, 2007, the Office medical adviser replied that in order to rate appellant for residuals of carpal tunnel syndrome, he must have updated electromyogram (EMG) and nerve conduction studies (NCS) done by an independent physician.

The Office referred appellant to Dr. Kenneth Eckman, a Board-certified neurologist, to perform EMG and NCS for the purpose of determining an impairment rating for a schedule award for the right upper extremity resulting from carpal tunnel syndrome. It noted that it was not necessary that Dr. Eckman provide an impairment rating. In a report dated October 3, 2007, after conducting a physical examination, Dr. Eckman found that the NCS were in the normal to upper normal range and that the needle EMG component was normal in both upper extremities. He noted that, on the basis of this study, there was no definite electrophysiological evidence of carpal tunnel syndrome on either side, nor was there evidence of cervical radiculopathy. Dr. Eckman then indicated that the current assessment, including clinical evaluation and NCS/EMG show no evidence of carpal tunnel syndrome on the right side and that based on this, he would "conclude that there is no evidence of carpal tunnel syndrome in this case at the present time."

On January 30, 2008 the Office referred appellant's case to the Office medical adviser for comments with regard to his claim for a schedule award. In a response dated February 11, 2008, the Office medical adviser found that appellant's impairment rating to his right upper extremity

was zero percent because the EMG and NCS were negative. He noted that, pursuant to the A.M.A., *Guides*, Chapter 16, page 495, there was no basis for rating of permanency of the nerve as it adequately decompressed and had recovered.

In a decision dated June 27, 2008, the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] 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.

Office procedures[3] 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.[4] Chapter 16 of the fifth edition of the A.M.A., *Guides* provides the framework for assessing upper extremity impairments.[5] Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

> "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 CTS is rated according to the sensory and/or motor deficits as described earlier.[6]

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). *See also Cristeen Falls,* 55 ECAB 420 (2004).

[4] A.M.A., *Guides* 491, 482, 484, 492, respectively; *see Joseph Lawrence, Jr.,* 53 ECAB 331 (2002).

[5] A.M.A., *Guides* 433-521.

[6] Section 16.5b of the A.M.A., *Guides* describes the methods for evaluating upper extremity impairments due to peripheral nerve disorders and provides that the severity of the sensory or pain deficit and motor deficit should be classified according to Tables 16-10a and 16-11a respectively. The impairment is evaluated by multiplying the grade of severity of the sensory or motor deficit by the respective maximum upper extremity 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. *Id.*

> (2) Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] 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.
>
> (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] (Emphasis in the original.)

The A.M.A., *Guides* further provides that, "In compression neuropathies, additional impairment values are not given for decreased grip strength."[8] Carpal tunnel syndrome is an entrapment/compression neuropathy of the median nerve.[9]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.[10]

ANALYSIS

The Office accepted appellant's claim for right carpal tunnel syndrome and wrist sprain causally related to his February 17, 1998 work injury. Appellant's treatment included decompression surgery. Appellant filed a claim for a schedule award.

The A.M.A., *Guides* on page 495 provide three scenarios for determining the permanent impairment due to carpal tunnel syndrome after an optimal recovery time following surgical decompression. Utilizing these scenarios, the Board finds that the medical evidence does not establish that appellant was entitled to a schedule award.

In support of his claim for a schedule award, appellant submitted the report of Dr. Jackson, his Board-certified orthopedic surgeon, who opined that appellant had 52 percent impairment of his right upper extremity causally related to his accepted injury. The Board finds that Dr. Jackson's assessment is not well rationalized or supported by the A.M.A., *Guides.* Initially, the Board notes that Chapter 16 of the A.M.A., *Guides* provide a detailed grading scheme and procedures for determining impairments of the upper extremities due to pain, discomfort, loss of sensation, or loss of strength.[11] However, Dr. Jackson does not adequately

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

[8] *Id.* at 494; *see also* FECA Bulletin No. 01-05 (issued January 29, 2001).

[9] A.M.A., *Guides* 492.

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims,* Chapter 2.808.6(d) (August 2002).

[11] A.M.A., *Guides* 433-521 (5th ed.), Chapter 16, *The Upper Extremities.*

explain his conclusion that appellant had 23.4 percent impairment due to pain, discomfort and sensory alteration and 2.5 percent impairment due to muscle weakness. The Board further finds that Dr. Jackson's conclusion that appellant had pinch and grip strength rates of 20 percent impairment of the upper extremity is improper. The Board notes that the A.M.A., *Guides* do not encourage the use of grip or pinch strength as an impairment factor because strength measurements are functional tests influenced by subjective factors that are difficult to control. The A.M.A., *Guides* for the most part is based on anatomic impairment. Only in rare cases should grip strength be used and only when it represents an impairing factor that has not been otherwise considered adequately. The A.M.A., *Guides* state that, otherwise, the impairment rating based on objective anatomic findings take precedence.[12] Accordingly, as Dr. Jackson does not properly support his finding that appellant had 52 percent impairment of the right upper extremity, his opinion is entitled to diminished weight.

On the other hand, the second opinion physician, Dr. Eckman noted that as appellant's NCS/EMG showed no evidence of carpal tunnel syndrome on the right side, there was no evidence of carpal tunnel syndrome at this time. The Office medical adviser reviewed these findings and opinions and concluded that appellant was entitled to an impairment rating to the right upper extremity of zero percent because the EMG and NCS studies were negative. He further noted that there was no definitive electrophysiological evidence of carpal tunnel syndrome on either side, nor was there any evidence of cervical radiculopathy. Finally, the medical adviser noted that there was no basis for a rating of permanency of the nerve as it had adequately decompressed and recovered.

The Board finds that the weight of the medical evidence, as represented by the opinions of Dr. Eckman and the Office medical adviser, establishes that appellant has not shown that he is entitled to a schedule award. Accordingly, the Office properly denied his claim for a schedule award.

CONCLUSION

The Board finds that appellant has not established that he was entitled to a schedule award.

[12] *See* A.M.A., *Guides*, 507-08, 16.8 Strength Evaluation, Principles; *Phillip H. Conte*, 56 ECAB 213 (2004). *See also T.A.*, 59 ECAB ___ (Docket No. 07-1836, issued November 20, 2007) (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).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 27, 2008 is affirmed.

Issued: April 15, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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