United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 09-1079**
	)	**Issued: December 7, 2009**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, BLACK LUNG DIVISION, Washington, DC, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 16, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated August 12, 2008 and March 5, 2009 determining her permanent impairment. 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 eight percent impairment of her right upper extremity and four percent impairment of her left upper extremity for which she has received schedule awards.

FACTUAL HISTORY

On March 18, 2004 appellant, then a 53-year-old claims examiner filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome and arthritis due to factors of her federal employment. She first realized her condition on October 1, 2002.

Dr. Bruce J. Ammerman, a Board-certified neurosurgeon, performed a right carpal tunnel release on March 3, 2003. The Office accepted appellant's claim for bilateral carpal tunnel syndrome on May 20, 2004 and authorized right carpal tunnel release. Appellant retired on June 2, 2004.

Appellant requested a schedule award on March 4, 2008. In a report dated February 19, 2008, Dr. Joshua M. Ammerman, a Board-certified neurosurgeon, found no appreciable weakness in appellant's hands, but mild atrophy of the bilateral thenar eminences. He stated that appellant had reached maximum medical improvement. On February 26, 2008 Dr. Ammerman opined that appellant had 30 percent impairment of the right hand and 20 percent impairment of the left hand due to sensory and motor loss as well as atrophy.

The Office requested by letter dated March 27, 2008 that appellant provide additional medical evidence in support of her claim. In a report dated April 8, 2008, Dr. Ammerman opined that appellant had 30 percent impairment of the right hand based on Table 16-15 of the A.M.A., *Guides* of 5 percent motor impairment of the median nerve and 25 percent sensory impairment of the median nerve. He found 16 percent sensory deficit of the median nerve and 4 percent motor deficit of the median nerve on the left for 20 percent impairment.

The district medical adviser reviewed Dr. Ammerman's reports on May 4, 2008 and found that additional medical evidence was needed. He requested an additional evaluation.

The Office referred appellant for a second opinion evaluation with Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, on May 29, 2008. In a report dated June 19, 2008, Dr. Hanley found normal two point discrimination in all fingers and a mildly positive Tinel's sign in both hands with normal grip strength. He found subjective symptomatology of numbness and tingling which correlated to a Grade 4 sensory deficit or 20 percent on the right and 10 percent on the left. Dr. Hanley found eight percent impairment of the right upper extremity and four percent impairment of the left upper extremity due to sensory deficits. He found normal thenar muscle confirmation and excellent strength with no motor loss. Dr. Hanley concluded that appellant had only sensory impairments of eight percent on the right and four percent on the left.

The Office requested additional evidence from Dr. Hanley including range of motion figures on June 27, 2008. On July 29, 2008 Dr. Hanley responded and stated that appellant had dorsiflexion to 80 degrees, volar flexion to 80 degrees, ulnar deviation to 40 degrees and radial deviation to 30 degrees as measured by a goniometer. The district medical adviser reviewed Dr. Hanley's reports on August 1, 2008 and agreed with his impairment rating.

On August 12, 2008 the Office granted appellant schedule awards for eight percent impairment of the right upper extremity and four percent impairment of the left upper extremity. Appellant requested reconsideration on August 23, 2008 and disagreed with the amount of her schedule awards as she felt that she was entitled to 488 weeks of compensation. By decision dated September 18, 2008, the Office declined to reopen appellant's claim for review of the merits as she failed to submit relevant new evidence.

Dr. Ammerman completed a note on October 28, 2008 and stated that appellant had ongoing pain in both hands with atrophy bilaterally in the thenar eminences, and requested an

electromyelogram (EMG). On November 19, 2008 Dr. Ammerman stated that appellant's October 30, 2008 EMG showed sensory carpal tunnel syndrome of the left wrist and an unremarkable study of the right wrist. He opined that appellant had 5 percent impairment due to motor deficit of the median nerve in accordance with Table 16-15 of the A.M.A., *Guides* and 25 percent sensory impairment of the median nerve or 30 percent impairment of the right upper extremity. Dr. Ammerman found 16 percent sensory impairment of the median nerve on the left and 4 percent motor impairment of the median nerve for 20 percent impairment of the left upper extremity. Appellant requested reconsideration on December 3, 2008.

The district medical adviser reviewed the medical evidence on December 28, 2008 and stated that Dr. Ammerman's report did not comport with the A.M.A., *Guides*.

By decision dated March 5, 2009, the Office reviewed that the merits of appellant's claim denied modification of its August 12, 2008 decision.

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[3] Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[4]

In calculating impairment ratings for compression neuropathies without surgical treatment, the A.M.A., *Guides* provide that the severity of the sensory deficit or pain is graded through Table 16-10, and the maximum impairment due to sensory deficit of the nerve as found in Table 16-15 and the two values are multiplied to obtain the impairment of the upper extremity due to sensory deficit.[5] A similar procedure is followed to obtain the motor deficit relying on Table 16-11.[6]

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] *Id.*

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

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

[6] *Id.*

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome as a result of her employment duties. It also authorized a surgical right carpal tunnel release. Appellant did not seek surgical treatment for the left carpal tunnel syndrome.

In accordance with the A.M.A., *Guides*, two different evaluation methods should be applied to determine appellant's permanent impairment due to the accepted condition. In regard to appellant's left upper extremity, the grade of the sensory impairment should be multiplied by the value of the median nerve to reach the impairment rating. Appellant's attending physician, Dr. Ammerman, a Board-certified neurosurgeon, did not provide his impairment rating in accordance with the A.M.A., *Guides*, as he did not provide the grade or percentage of impairment of appellant's left median nerve in regard to either sensory or motor deficits. He merely offered a rating based solely on Table 16-15. Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[7] Dr. Ammerman's reports are not in sufficient detail for the Board to determine appellant's impairment rating under the A.M.A., *Guides*.

The Office referred appellant to Dr. Hanley, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Hanley found that appellant had four percent impairment of her left upper extremity due to Grade 4 sensory impairment.[8] A Grade 4 sensory impairment involves distorted superficial tactile sensibility with or without minimal abnormal sensations or pain that is forgotten during activity and has a sensory deficit rating of 1 to 25 percent.[9] The maximum sensory value of the median nerve is 39 percent and 39 multiplied by 10.4 percent is 4 percent impairment.

Dr. Hanley did not appropriately calculate appellant's impairment for her right upper extremity. In evaluating carpal tunnel syndrome, the A.M.A., *Guides* provide that, if after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paraesthesias or difficulties in performing certain activities three possible scenarios can be present. The first situation is: "Positive clinical finding of median nerve dysfunction and electrical conduction delay(s): The impairment due to residual CTS [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier."[10] In this situation, the impairment due to residual carpal tunnel syndrome is evaluated by multiplying the grade of

[7] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

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

[9] *Id.*

[10] *Id.* at 495.

severity of the sensory or motor deficit by the respective maximum upper extremity impairment 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.[11] In the second scenario: "Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles: a residual CTS [carpal tunnel syndrome] is still present, and an impairment rating not to exceed 5 percent of the upper extremity may be justified." In the final situation: "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."[12] To accurately evaluate sensory impairment clinically and reduce the subjective nature of these findings,[13] the A.M.A., *Guides* recommend either the two-point test for fine discrimination, the monofilament touch-pressure threshold test or the pinprick test.[14]

As appellant has undergone surgery on the right upper extremity, a physician must evaluate her EMG results and determine which of the three above listed categories applies. In any case, only if appellant has abnormal EMG results is she entitled to more than five percent impairment of her right upper extremity. As there has been no such appropriate evaluation of appellant's right upper extremity, the case is not in posture for a decision regarding this issue.

The Board notes that appellant did not understand why she did not receive a schedule award based on 488 weeks of compensation. The Act provides that a claimant is entitled to compensation dependent on the percentage of impairment of the scheduled member. As appellant has four percent impairment of her left upper extremity, she is entitled to four percent of the number of weeks of compensation for the total loss of that member which is 312 weeks, or 12.48 weeks of compensation.

CONCLUSION

The Board finds that appellant has no more than four percent impairment of her left upper extremity for which she has received a schedule award. The Board further finds that the case is not in posture for a decision regarding the impairment rating of her right upper extremity.

[11] *Id.* at 494, 481.

[12] *Id.* at 495.

[13] *Id.* at 446.

[14] *Id.* at 445.

ORDER

IT IS HEREBY ORDERED THAT March 5, 2009 and August 12, 2008 decisions of the Office of Workers' Compensation Programs are affirmed in part and set aside and remanded in part consistent with this decision of the Board.

Issued: December 7, 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