United States Department of Labor
Employees' Compensation Appeals Board

L.R., Appellant	)	
and	)	**Docket No. 09-1119**
	)	**Issued: December 2, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Brook Park, OH, Employer	)	

Appearances:
Alan J. Shapiro, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 3, 2009 appellant, through his representative, filed a timely appeal from the February 20, 2009 merit decision of the Office of Workers' Compensation Programs which affirmed the denial of a schedule award for his left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained any permanent impairment of his left upper extremity causally related to his accepted employment injury.

FACTUAL HISTORY

On May 22, 2002 appellant, then a 43-year-old letter carrier, filed a claim alleging that he sustained an occupational injury in the performance of duty: "After converting to a one bundle system I began to notice pain in my left arm and wrist while carrying mail." The Office accepted his claim for tenosynovitis of the left wrist and left thumb. It later expanded its acceptance to

include bilateral carpal tunnel syndrome. Appellant underwent a left carpal tunnel release on July 12, 2004 and a right carpal tunnel release on August 9, 2004.[1]

On December 13, 2007 appellant filed a claim for a schedule award. On February 13, 2008 Dr. Timothy J. Morley, a specialist in internal medicine, related appellant's history of wrist and hand pain, his diagnoses of bilateral carpal tunnel syndrome and tenosynovitis and his bilateral surgical releases. He noted complaints of ongoing wrist pain, worsened with activities. Dr. Morley stated that appellant continued predominately with left-sided wrist and hand pain and numbness that kept him awake at night. Appellant complained that this adversely affected his ability to lift and carry heavy items, to grasp or hold objects and to perform certain recreational activities.

On physical examination, Dr. Morley reported a positive Tinel's sign over the left carpal tunnel and a slightly positive Phalen's. Appellant complained of decreased sensation through the third digit on the left. There was some weakness on the left, with an average of 42 pounds after a series of three pulls on the dynamometer, compared to 80 pounds on the right.

Citing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), Table 16-10, Dr. Morley graded appellant's sensory deficit at 25 percent. He multiplied this by 39 percent, the maximum upper extremity impairment due to unilateral sensory deficit of the median nerve below the midforearm, from Table 16-15, and concluded that appellant had a six percent left[2] upper extremity impairment "with respect to the recognized diagnoses regarding the left upper extremity."

Using Table 16-34, Dr. Morley found a 10 percent upper extremity impairment due to loss of left[3] grip strength. He combined the impairment due to sensory deficit with the impairment due to loss of grip strength under the Combined Values Chart and found that appellant had a total permanent left upper extremity impairment of 15 percent due to the allowed diagnoses under OWCP File No. xxxxxx535. Dr. Morley found no impairment of the right upper extremity. He reported that appellant reached maximum medical improvement on June 25, 2007.

On May 22, 2008 an Office medical adviser reviewed Dr. Morley's evaluation. He noted that, in compression neuropathies, such as appellant's, an impairment rating due to decreased grip strength could not be given. The medical adviser further noted that Dr. Morley's report of weakness in shoulder abduction was not noted elsewhere in the medical record, even in an examination two weeks earlier. As such, he concluded that the medical record contained no definitive, objective information on which to base a functional impairment.

[1] The record indicates that employment activities caused a second occupational injury in 2003, which the Office accepted for aggravation of cervical disc disease and radiculopathy at C6-7. Appellant underwent an anterior C6-7 discectomy and fusion surgery on October 10, 2004. On June 1, 2007 the Office denied a schedule award. OWCP File No. xxxxxx113.

[2] Although the report states "right" upper extremity, it is clear from the report that it was meant to be "left."

[3] *Id*.

In a decision dated July 28, 2008, the Office denied appellant's claim for a schedule award. It found that the medical evidence failed to demonstrate a measurable impairment. On February 20, 2009 an Office hearing representative affirmed.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[4] 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*.[5]

ANALYSIS

The Office accepted appellant's claim for carpal tunnel syndrome, and he underwent a surgical release of the left median nerve on July 12, 2004. Years after surgical decompression, appellant continued to complain of pain and numbness and difficulty performing certain activities. When Dr. Morley, the attending internist, examined him on February 13, 2008, appellant showed positive clinical findings of median nerve dysfunction on physical examination, with a positive Tinel's sign over the left carpal tunnel, a slightly positive Phalen's, and decreased sensation through the third digit on the left. Impairment due to residual carpal tunnel syndrome is therefore rated according to the sensory or motor deficits described in Table 16-10 and 16-11.[6]

Dr. Morley found a six percent impairment of the left upper extremity due to sensory deficits resulting from a peripheral nerve disorder.[7] Citing Table 16-10, page 482 of the A.M.A., *Guides*, he graded the severity of appellant's sensory deficit at 25 percent, or Grade 4. Following the procedure set out in Table 16-10, he multiplied this percentage by 39 percent, or the maximum upper extremity impairment value due to unilateral sensory deficit of the median nerve below the midforearm, according to Table 16-15, page 492. Although he reported the result as 6 percent, 25 percent times 39 percent equals 9.75 percent, which rounds to 10 percent.

The Office medical adviser did not comment upon Dr. Morley's evaluation of sensory deficit in the left median nerve. Instead, he commented on weakness in shoulder abduction, which Dr. Morley did not mention in his February 13, 2008 evaluation and grip strength.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] A.M.A., *Guides* 495 (5th ed. 2001) (Scenario 1). Only individuals with an objectively verifiable diagnosis should qualify for a permanent impairment rating. The diagnosis is made not only on believable symptoms but, more important, on the presence of positive clinical findings and loss of function. The diagnosis should be documented by electromyography as well as sensory and motor nerve conduction studies. *Id*. at 493.

[7] Dr. Morley referred to appellant's right upper extremity but clearly meant the left.

The Board finds this case not in posture for decision. The Office understood further development by forwarding the medical evidence to the Office medical adviser for review as to whether appellant established any permanent impairment of the upper extremities. As the medical adviser did not review the sensory deficit evaluation of Dr. Morley, the case was not properly developed. The Office medical adviser correctly noted that, in compression neuropathies, such as the accepted carpal tunnel syndrome, no addition impairment values can be given for decreased grip strength.[8]

CONCLUSION

The Board finds that the medical evidence has not been properly developed as to sensory deficit and the Board will remand the case for further development.

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: December 2, 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

[8] A.M.A., *Guides* 494 (5th ed. 2001). *See also id*. at 526 (Table 17-2 Guides to the Appropriate Combination of Evaluation Methods, which indicates impairment ratings for muscle strength may not be combined with impairment values for peripheral nerve injury).