

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

P.T., Appellant

and

**DEPARTMENT OF THE NAVY, FAMILY
HOUSING OFFICE, Oakland, CA, Employer**

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**Docket No. 09-1146
Issued: December 22, 2009**

Appearances:
Hank Royal, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 24, 2009 appellant filed a timely appeal from the April 1, 2008 merit decision of the Office of Workers' Compensation Programs. Under 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 a five percent impairment of both the right and left upper extremities, for which she received schedule awards.

FACTUAL HISTORY

On March 24, 1993 appellant, a 47-year-old housing manager, filed a claim for a bilateral carpal tunnel condition causally related to employment factors. The Office accepted her claim for bilateral carpal tunnel syndrome.

In a July 12, 2002 report, Dr. David Wren, Board-certified in orthopedic surgery and appellant's treating physician, noted that she had chronic pain and swelling in both wrists. Appellant had right carpal tunnel release surgery in 1996 and 1998 and left carpal tunnel release

surgery on May 3, 2000. Dr. Wren found that appellant continued to experience pain in both wrists.

On November 1, 2004 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left and right upper extremities.

The Office referred appellant to Dr. Robert S. Ferretti, Board-certified in orthopedic surgery, for a second opinion examination. In an April 23, 2007 report, Dr. Ferretti reviewed appellant's history of injury and medical treatment. Appellant complained of pain, numbness and tingling in both hands and wrists. Dr. Ferretti had appellant undergo sensory testing, from which she related a "glove pattern" hypesthesia over both hands diffusely extending to the mid forearm on the left and just above the arm on the right. Appellant reported normal sensation above these levels. Dr. Ferretti stated that on examination appellant showed a full, painless range of motion of both elbows, forearms, hands, wrists, thumbs and fingers. He noted no noticeable deformity, discoloration, or swelling, no thenar atrophy of the hands bilaterally and no pinch weakness. Dr. Ferretti stated:

"On digital palpation, there is reported pain over the base of both thumbs and over the carpal tunnel release and trigger thumb release scars. There is an equivocally positive Finkelstein test bilaterally with reported pain only in the distal radial aspect of the wrist. There is an equivocally positive bilateral Tinel's sign over the carpal tunnels. [Appellant] reports local numbness and tingling on tapping in the region of the carpal tunnel release scar. She reports no distal pain or paresthesia. With sustained thumb pressure over both carpal tunnels, on the right [appellant] reports local pain and tingling under the thumb extending to the little finger and on the left only locally under the thumb pressure. There is a negative Phelan's test bilaterally for carpal tunnel compression. During the testing, [appellant] had some mild median nerve irritability in both wrists."

He concluded that appellant did not have any neurological deficit to either upper extremity. Dr. Ferretti concluded that she had bilateral upper extremity chronic pain syndrome with no evidence of residual carpal tunnel median nerve compression or tendinitis. Appellant had subjective complaints of pain and abnormal sensations of both hands, wrists and forearms greater on the right. The only objective factors Dr. Ferretti noted were surgical scars related to bilateral carpal tunnel release and right trigger thumb release, and equivocally positive Tinel's sign over both carpal tunnels. He did not provide an impairment rating under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A. *Guides*) (5th edition).

In a report dated July 18, 2007, an Office medical adviser found that appellant had five percent impairment to both upper extremities pursuant to the A.M.A., *Guides*. He found a successful carpal tunnel release in both wrists for which the text at page 495 allows a five percent impairment rating. The Office medical adviser found that appellant reached maximum medical improvement on September 4, 2005.

On October 10, 2007 the Office granted appellant schedule awards for five percent impairment of her right and left upper extremities. The period of the awards totaled 31.20 weeks of compensation.

By letter dated November 8, 2007, appellant's representative requested an oral hearing, which was held on February 4, 2008. Appellant did not submit any additional medical evidence.

By decision dated April 1, 2008, an Office hearing representative affirmed the October 10, 2007 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use. However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.

ANALYSIS

The Office accepted bilateral carpal tunnel syndrome for which appellant underwent release on her right and left wrists.

Dr. Ferretti, an Office referral physician, noted that appellant had subjective complaints of pain, numbness and tingling and weakness in both hands and wrists and that she exhibited a chronic pain syndrome. However, he found no neurological deficits, normal pain-free range of motion, with only mild median nerve irritability in her wrists. There was objective evidence of residual carpal tunnel median nerve compression or tendinitis. While appellant did show some positive results from her Finkelstein test and Tinel's sign test, Dr. Ferretti advised that her responses on these tests were equivocal. He did not find any permanent impairment arising from her accepted condition. An Office medical adviser reviewed the medical evidence and noted that Dr. Ferretti described mild nerve irritability in the wrists with no evidence of residual carpal tunnel median nerve compression or tendinitis. He rated impairment as five percent to both upper extremities based on successful carpal tunnel release, as set forth at page 495 of the A.M.A., *Guides*. If, after optimal recovery time, the employee complains of pain in the presence of normal sensibility and opposition strength, a rating at five percent is allowed. The report of the Office medical adviser conforms to the text of the A.M.A., *Guides*.

There is no medical evidence establishing that appellant has greater impairment. The Office properly found that appellant has five percent impairment to both the right and left upper extremities.

CONCLUSION

The Board finds that appellant has no more than a five percent impairment of the right and left upper extremities, for which she received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 22, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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