

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

J.Y., Appellant

and

**CUSTOMS & BORDER PROTECTION,
Chicago, IL, Employer**

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**Docket No. 08-2336
Issued: January 23, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 25, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 29, 2008. 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 12 percent impairment to the right upper extremity and a 12 percent permanent impairment to the left upper extremity.

FACTUAL HISTORY

On July 6, 2005 appellant, a 47-year-old technician, filed a claim for a bilateral carpal tunnel condition causally related to employment factors. The Office accepted the claim for bilateral carpal tunnel syndrome.

In a report dated February 14, 2006, Dr. Sayed Naveed, a general practitioner, stated that appellant had pain, numbness and tingling in both hands, with weakness in the hand, neck pain and tenderness around the elbow. He noted that these symptoms were worsening.

On May 6, 2008 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.

In a June 2, 2008 report, Dr. Mohammed Asgar, a specialist in internal medicine, found that appellant had a 30 percent permanent impairment of the upper extremity due to loss of function from decreased strength, a 30 percent impairment the upper extremity due to loss of function resulting from sensory deficit, pain or discomfort, and a 30 percent impairment in the thumb, second and third fingers. He found that appellant reached maximum medical improvement in October 2007.

In a report dated June 20, 2008, an Office medical adviser found that appellant had a 12 percent right upper extremity impairment and a 12 percent left upper extremity impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A. Guides) (5th ed.). He noted that he reviewed reports from Dr. Asgar and other physicians of record. However, the Office medical adviser did not indicate which reports he reviewed in rendering his impairment rating; nor did he specify the dates these reports were issued.¹ He further advised that “[n]o recent physician notes are currently available.” The Office medical adviser stated:

“Per [physical therapy] note dated October 18, 2007, [appellant] currently complains of wrist pain bilaterally and pain in both thumbs, [two] fingers, and a middle finger. Decreased bilateral wrist range of motion and decreased grip strength is noted.”

“It should be noted that in the absence of chronic regional pain syndrome, impairment cannot be awarded for range of motion loss in conjunction with compression neuropathies. It should also be noted that in compression neuropathies, additional impairment values are not given for decreased grip strength. No other detailed strength measurements are documented and no atrophy is present.”

The Office medical adviser accorded appellant a 12 percent permanent impairment for the right and left upper extremities based on the following findings: a Grade 4, 30 percent pain/sensory deficit in the right median nerve distribution, pursuant to Table 16-10 at page 482 and Table 16-15, page 492, which yielded a 30 percent impairment; a 39 permanent impairment, the maximum impairment allowed, multiplied by 30 percent, for a Grade 4 pain/sensory deficit. He found that appellant reached maximum medical improvement on October 18, 2007.

On July 29, 2008 the Office granted appellant a schedule award for a 12 percent impairment of his right upper extremity and a 12 percent impairment of her left extremity, covering the period March 25 to October 18, 2008, for a total of 74.88 weeks of compensation.

¹ The Office medical adviser did not cite a specific physician or indicate the specific source for the findings upon which he relied.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² 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.³ 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.⁴

ANALYSIS

The Board finds that the case is not in posture for decision.

The Office medical adviser found in his June 20, 2008 report that appellant had a 12 percent impairment of her right upper extremity and a 12 percent impairment of her left extremity. However, he did not specify the methods by which he calculated a 12 percent bilateral upper extremity rating. The Office medical adviser did not examine appellant and derived his 12 percent impairment ratings without indicating the source of the measurements upon which he relied. He stated that he calculated 12 percent impairment based on a 30 percent strength deficit, which is ratable for a Grade 3 sensory deficit at Table 16-10. The Board notes that, while a Grade 3 sensory deficit at Table 16-10 yields a sensory deficit of 26 to 60 percent, the Office medical adviser determined that appellant had a Grade 4 sensory deficit, which yields a sensory deficit of 1 to 25. The Office medical adviser also did not provide any explanation of how he used this calculation, in conjunction with Table 16-15, to render a 12 percent impairment rating.

The Office medical adviser further stated that there were no current medical reports in the record. The instant case file, however, contains a June 2, 2008 report from Dr. Asgar, appellant's treating physician, which the Office medical adviser apparently did not consider in his June 20, 2008 impairment evaluation. Finally, the Office medical adviser did not indicate which sections of Table 16-15 he relied on in calculating a 12 percent impairment rating in the right and left upper extremities in the distribution of the median nerve to the thumb and index finger, right side.⁵ The Board therefore finds that the Office erred in finding that appellant had a 12 percent impairment of the right and left upper extremities based on the opinion of the Office medical adviser.

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

⁵ Table 16-15 provides a method for determining upper extremity impairments due to unilateral sensory or motor deficits or to combined 100 percent deficits of the major peripheral nerves. A.M.A., *Guides* 492.

CONCLUSION

The Board finds that the case is not in posture for decision with regard to an impairment based on the left and right upper extremities and the case is remanded for further development. After such development as it deems necessary, the Office shall issue a *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2008 decision is set aside and the case is remanded to the Office of Workers' Compensation Programs for further action consistent with this decision of the Board.

Issued: January 23, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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