United States Department of Labor
Employees' Compensation Appeals Board

H.T., Appellant	)	
and	)	**Docket No. 08-1854**
	)	**Issued: May 7, 2009**
DEPARTMENT OF DEFENSE, DECA-WEST REGION, McCLELLAN AIR FORCE BASE, CA, Employer	)	

Appearances:
Appellant, pro se
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 June 24, 2008 appellant filed a timely appeal from the April 22, 2008 decision of an Office of Workers' Compensation Programs' hearing representative, who affirmed a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than 10 percent permanent impairment of her left upper extremity for which she received a schedule award.

FACTUAL HISTORY

On March 6, 2006 appellant, then a 59-year-old store worker, filed a traumatic injury claim alleging that, on February 22, 2006, she moved heavy cases of flavored water and sustained an injury to her left hand, wrist and shoulder. On April 27, 2006 the Office accepted her claim for sprain/strain of the left wrist and aggravation of left carpal tunnel syndrome (CTS).

It authorized left carpal tunnel surgery, which appellant underwent on September 18, 2006. Appellant received compensation benefits and subsequently claimed a schedule award.[1]

In a September 11, 2007 report, Dr. Robert D. Power, an occupational medicine specialist, reviewed appellant's history and utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (5th ed. 2001) (A.M.A., *Guides*). On examination, appellant complained of tenderness in the palm, tingling and numbness in the first four digits of the left hand and weakness. Dr. Power advised that, while appellant could perform activities of daily living, she could not do any activities that required repetitive or strenuous use of the left arm. He reviewed diagnostic studies including an x-ray of the left wrist which revealed degenerative changes of the lateral midcarpal row and an April 27, 2006 electromyogram (EMG) revealed moderately severe left carpal tunnel syndrome with acute denervation. Dr. Power noted that appellant had a "hint of thenar atrophy," a well-healed postsurgical scar from her carpal tunnel release and tenderness in the palm with diminished sensation on two-point and Semmes-Weinstein testing on the ulnar and radial side of the first three digits and the radial side of the ring finger. He stated that appellant had constant slight tingling/numbness in the left hand first four digits, constant tenderness at the base of the palm and pain that increased to moderate with grasping. Dr. Power referred to Table 16-10[2] and determined that appellant had a Grade 4 sensory deficit in the distribution of the median nerve which represented a 25 percent sensory deficit. He referred to Table 16-11[3] and determined that appellant had no motor deficit. Dr. Power referred to Table 16-15[4] which provides a maximum impairment of 39 percent median nerve impairment below the elbow. He multiplied the 25 percent deficit grade by 39 percent to total 9.7 percent, which he rounded to 10 percent impairment of the left arm.[5] Dr. Power converted this to six percent whole person impairment. He added that appellant had "pillar pain" which was "out of the ordinary for carpal tunnel syndrome." Dr. Power referred to Chapter 18 at page 573 of the A.M.A., *Guides* to rate an additional one percent impairment for pain and tenderness in the palm. He added the one percent for pain and the six percent whole person impairment to find a total seven percent whole person impairment. Dr. Power noted work restrictions and opined that appellant reached maximum medical improvement on September 11, 2007.

In a December 14, 2007 report, an Office medical adviser reviewed the medical evidence. He utilized the A.M.A., *Guides* and to find that appellant had a 10 percent impairment of the left arm. The Office medical adviser reviewed appellant's history and findings on examination which included residual complaints of some numbness and tingling in the left hand and wrist. He advised that Dr. Power's examination revealed a satisfactory range of motion with

[1] The record reflects that appellant also has a right carpal tunnel syndrome condition, which was accepted by the Office on January 14, 2008. The Office hearing representative instructed it to combine the claims under case OWCP File No. xxxxxx707. Appellant underwent right hand carpal tunnel surgery on March 2, 2007.

[2] A.M.A., *Guides* 482.

[3] *Id*. at 484.

[4] *Id.* at 492

[5] Represented.

diminished sensation in the median nerve distribution, without motor weakness. The Office medical adviser agreed that under Table 16-10 appellant had a Grade 4 sensory deficit for decreased sensation which was forgotten with activity. Under Table 16-15 maximum of 39 percent impairment was allowed for the median nerve for loss of sensory function. Therefore, appellant had 10 percent impairment of the left arm. The Office medical adviser also advised that appellant was not entitled to an additional 1 percent impairment to the whole person for residual "pillar" pain under the Chapter 18 because the 10 percent impairment rating under Chapter 16 took into consideration appellant's pain in both the hand and wrist following her carpal tunnel surgery release. He opined that appellant had no more than 10 percent impairment of her left arm.

In a letter dated March 14, 2008, appellant's representative provided additional information, which included a completed Form CA-7 dated March 13, 2008 and a copy of Dr. Power's September 11, 2007 report.

On April 22, 2008 the Office granted appellant a schedule award for 10 percent impairment of the left upper extremity. The award covered a period of 31.20 weeks from April 13 to November 17, 2008.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[6] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[7] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[8] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[9]

ANALYSIS

In support of her claim for a schedule award, appellant submitted a September 11, 2007 report from Dr. Power, who determined that she sustained a seven percent impairment of the whole person. The Board notes, however, that the Act does not provide for schedule awards based on whole person impairment.[10]

[6] 5 U.S.C. §§ 8101-8193.

[7] 5 U.S.C. § 8107.

[8] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[9] A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404.

[10] *See Tania R. Keka*, 55 ECAB 354 (2004); *James E. Mills*, 43 ECAB 215 (1991) (neither the Act nor its implementing regulations provide for a schedule award for impairment to the body as a whole).

Office procedures 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.[11] 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) [p]ositive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS [computerized tomography scan] is rated according to the sensory and/or motor deficits as described earlier.
> >
> > (2) [n]ormal 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) [n]ormal 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]

Dr. Power and the Office medical adviser were in agreement with regard to appellant's 10 percent impairment of the left upper extremity for sensory deficit in the median nerve distribution consistent with the first scenario, as noted, for rating impairment due to carpal tunnel syndrome. In calculating 10 percent impairment for sensory deficit or pain, both physicians referred to Table 16-10 page 482 of the A.M.A., *Guides*. Dr. Power found that appellant qualified for Grade 4 which provides for a maximum 25 percent sensory deficit. The physicians utilized Table 16-15 which provides for a 39 percent maximum sensory impairment for median nerve below the elbow.[13] Both of the physicians multiplied the 25 percent sensory deficit by the 39 percent maximum for median nerve sensory impairment. This totaled 9.75 percent impairment which was rounded to 10 percent.[14] Dr. Power advised that appellant sustained only a sensory loss for pain and had no motor deficit.

---

[11] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). *See* A.M.A., *Guides* 482, 484, 492; *Joseph Lawrence, Jr*., 53 ECAB 331 (2002).

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

[13] *Id.* at 492, Table 16-15. Although the Office medical adviser indicated 30 percent, it appears to be a typographical error as the table reveals that the actual value is 39 percent for sensory deficit or pain.

[14] *See J.Q.*, 59 ECAB ___ (Docket No. 06-2152, issued March 5, 2008) (the Office's policy is to round the calculated percentage of impairment to the nearest whole number).

Dr. Power advised that appellant had complaints of pillar pain in the palm that it was "out of the ordinary for carpal tunnel syndrome. He concluded that she was entitled to an additional one percent whole person impairment for pain pursuant to page 573 of the A.M.A., *Guides*. However, according to section 18.3(b) of the A.M.A., *Guides*, "examiners should not use this chapter to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*."[15] Office procedures provide that Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain (Chapters 13, 16 and 17).[16] Dr. Power did not adequately to explain why any additional pain related impairment was proper. The Board notes that the 10 percent impairment rating for sensory deficit under Chapter 16 took into account appellant's upper extremity pain of the median nerve below the forearm. The Office medical adviser found no basis for rating additional impairment. He properly noted that the 10 percent impairment for sensory deficit took into account appellant's residual pain following her carpal tunnel release. The Board finds that Dr. Power did not provide sufficient rationale to support additional impairment for pain under Chapter 18.

On appeal, appellant asserted that the schedule award was based on erroneous application of the A.M.A., *Guides*, the wrong doctor's reports and misinformation. However, she has not supported her allegations with probative evidence. There is no other medical evidence, in conformance with the A.M.A., *Guides*, establishing that appellant has more than 10 percent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant does not have more than a 10 percent impairment of her left upper extremity.

[15] Section 18.3b, page 571, A.M.A., *Guides* (5th edition, 2001).

[16] *See supra* note 12; FECA Bulletin 01-05 (issued January 31, 2001): Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 22, 2008 is hereby affirmed.

Issued: May 7, 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