United States Department of Labor
Employees' Compensation Appeals Board

S.R., Appellant	)	
	)	**Docket No. 09-640**
and	)	**Issued: October 20, 2009**
SOCIAL SECURITY ADMINISTRATION, Dallas, TX, 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 January 6, 2009 appellant filed a timely appeal from the December 2, 2008 merit decision of the Office of Workers' Compensation Programs which granted schedule awards. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than 8 percent permanent impairment of the right upper extremity and 11 percent impairment of the left upper extremity, for which she received schedule awards.

FACTUAL HISTORY

On December 19, 2007 appellant, then a 47-year-old letter claims representative, filed an occupational disease claim alleging that she developed cubital tunnel syndrome as a result of

performing her work duties. The Office accepted her claim for bilateral carpal tunnel syndrome.[1] Appellant did not stop work.

From December 4, 2007 to April 11, 2008 appellant came under the treatment of Dr. Richard S. Levy, a Board-certified orthopedic surgeon, for numbness, tingling and dysesthesias in the left hand and fingers due to keyboarding at work. Dr. Levy noted physical findings of negative Tinel's and Phalen's signs bilaterally, good range of motion and paresthesias in the left thumb. He diagnosed status post bilateral carpal tunnel releases,[2] bilateral recurrent carpal tunnel syndrome and probable new onset of cubital tunnel syndrome. On January 8, 2008 Dr. Levy advised that appellant had reached maximum medical improvement and had seven percent impairment of both upper extremities under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[3] He continued to treat appellant for recurrent left thumb and elbow pain and, on April 11, 2008, diagnosed left trigger thumb and cubital tunnel syndrome of the left elbow. On May 2, 2008 appellant underwent an electromyogram (EMG) which revealed evidence of bilateral chronic carpal tunnel syndrome with a delay in bilateral median motor distal latencies.

On July 7, 2008 appellant filed a claim for a schedule award. On July 21, 2008 the Office requested that Dr. Levy submit a detailed impairment evaluation pursuant to the A.M.A., *Guides*.

In a July 8, 2008 report, Dr. Levy opined that appellant had 8 percent impairment of the right upper extremity and 11 percent impairment of the left upper extremity under the A.M.A., *Guides*. He noted that she reached maximum medical improvement on July 8, 2008. As to the right wrist, appellant had a full range of motion, weakness of grip strength and paresthesias in the median nerve distribution, well-healed surgical scars and mild atrophy of the thenar musculature. With respect to the left wrist, appellant had a full range of motion, weakness of grip strength and paresthesias in the median nerve distribution, well-healed surgical scars, mild atrophy of the thenar musculature and triggering of the left thumb. Dr. Levy rated six percent impairment of the right arm due to sensory deficit or pain of the median nerve below the midforearm[4] and two percent impairment due to motor deficit of the median nerve below the midforearm.[5] For the left upper extremity, he rated six percent impairment of the left arm due to sensory deficit or pain of the median nerve below the midforearm[6] and two percent impairment due to motor deficit of the

[1] Appellant filed the following claims for compensation: an injury sustained on September 1, 1989 was accepted for bilateral carpal tunnel syndrome in File No. xxxxxx919; an injury sustained on December 20, 2007 was accepted for left trigger finger/thumb in File No. xxxxxx434; and an elbow injury accepted for right lateral epicondylitis in File No. xxxxxx740. These claims were consolidated with the current claim before the Board.

[2] The record reveals that appellant underwent right carpal tunnel surgery in 1994, left carpal tunnel surgery on April 15, 1997 and a revision of the carpal tunnel release on July 11, 2007, File No. xxxxxx919.

[3] A.M.A., *Guides* (5th ed. 2001).

[4] *Id.* at 482, 492, Table 16-10, 16-15.

[5] *Id*. at 484, 492, Table 16-11, 16-15.

[6] *Id.* at 482, 492, Table 16-10, 16-15.

median nerve below the midforearm.[7] For loss of motion to the left interphalangeal joint, which measured -40 degrees, Dr. Levy found seven percent thumb impairment[8] or three percent upper extremity impairment. Using the Combined Values Chart of the A.M.A., *Guides,* he found that appellant had 8 percent impairment of the right upper extremity and 11 percent impairment of the left upper extremity.

In an August 5, 2008 report, Dr. Levy diagnosed bilateral carpal tunnel syndrome, left trigger thumb, left ulnar nerve palsy and right lateral epicondylitis. He noted that he previously assigned 11 percent impairment of the left upper extremity for carpal tunnel syndrome and trigger finger and 8 percent impairment on the right for carpal tunnel syndrome. Dr. Levy opined that appellant would be entitled to additional impairment for left ulnar dysfunction and right epicondylitis. He specifically noted elbow range of motion on the right for flexion was 135 degrees for 1 percent impairment.[9] Dr. Levy noted that appellant had 10 percent motor deficit and 20 percent sensory deficit for 7 percent upper extremity impairment for left ulnar nerve dysfunction. He concluded that she sustained a 17 percent impairment of the left arm and 9 percent impairment for the right arm.

On September 18, 2008 the Office asked its medical adviser to render an opinion on appellant's permanent impairment based on Dr. Levy's July 8, 2008 report. On October 16, 2008 the Office medical adviser agreed with the findings in Dr. Levy's July 8, 2008 report which found 8 percent permanent impairment of the right arm and 11 percent impairment of the left arm.

In a decision dated October 29, 2008, the Office granted appellant schedule awards for 11 percent permanent impairment of the left upper extremity and 8 percent impairment for the right upper extremity. The periods of the awards ran from July 8, 2008 to March 5, 2009. In a decision dated November 5, 2008, the Office noted that the October 29, 2008 Office decision contained an error in the number of weeks appellant was to be compensated. The Office noted that she was entitled to 59.28 weeks of compensation. In a decision dated December 2, 2008, the Office noted that the November 5, 2008 decision contained an error as to the period the schedule awards would run from July 8, 2008 to August 26, 2009.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[10] and its implementing regulations[11] 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

[7] *Id*. at 484, 492, Table 16-11, 16-15.

[8] *Id.* at 438-439, 456, Table 16-1, 16-2, 16-12.

[9] *Id.* at 472, Figure 16-34.

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404 (1999).

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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[12]

ANALYSIS

Appellant contends she has more than 11 percent permanent impairment of the left upper extremity and 8 percent impairment for the right upper extremity. The Office accepted her claim for bilateral carpal tunnel syndrome, left cubital tunnel syndrome and left trigger finger/thumb. It authorized several surgical procedures to treat the accepted conditions.

The Office based its schedule award decision on the July 8, 2008 report of Dr. Levy and the October 16, 2008 report of its Office medical adviser. Dr. Levy rated impairment based on sensory and motor loss to both upper extremities and loss of range of motion to the left arm. He concluded that appellant had 8 percent impairment of the right upper extremity and 11 percent impairment of the left upper extremity.[13] On October 16, 2008 the Office medical adviser concurred with Dr. Levy's impairment rating. The medical adviser found that appellant had six percent impairment of the right and left arms for sensory deficit or pain in the distribution of the median nerve below the midforearm, under Table 16-15, page 492, of the A.M.A., *Guides*. For sensory deficit or pain, appellant was classified as Grade 4, under Table 16-10, page 482, for a 15 percent sensory deficit. The A.M.A., *Guides* provide that the maximum impairment of the median nerve below the midforearm is 39 percent. When the maximum for the median nerve below the midforearm, 39 percent, is multiplied by a 15 percent Grade 4 sensory deficit, this yields 5.8 percent impairment, rounded to 6 percent, for sensory loss. For motor deficit, the medical adviser found 2 percent impairment of the right and left arms in the distribution of the median nerve below the midforearm, under Table 16-15. Appellant was classified as Grade 4, under Table 16-11, page 484, for a 20 percent motor deficit. The A.M.A., *Guides* provides that the maximum allowed for motor impairment of the median nerve below the midforearm is 10 percent. When the maximum for the median nerve below the midforearm, 10 percent, is multiplied by the 20 percent allowed for a Grade 4 motor deficit, this yields 2 percent impairment for motor loss. The medical adviser also found that loss of motion in the interphalangeal joint measured -40 degrees of extension which equated to seven percent thumb impairment under Figure 16-12, or three percent left upper extremity impairment. Using the Combined Values Chart of the A.M.A., *Guides*, the medical adviser found that appellant had 8 percent impairment of the right upper extremity and 11 percent impairment of the left upper extremity.

However, the Board notes that the Office medical adviser did not consider Dr. Levy's August 5, 2008 report which took into consideration other conditions such as left ulnar dysfunction and right epicondylitis in rating additional impairment to each arm. Dr. Levy reiterated his prior findings of 8 percent impairment for the right arm and 11 percent impairment for the left arm but also provided range of motion findings for the right elbow and listed findings

[12] *See id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[13] *See supra* notes 4-8.

for motor and sensory deficit attributable to the left ulnar nerve. Although the A.M.A., *Guides* provide that, in a carpal tunnel schedule award case, there generally will be no ratings based on loss of motion,[14] in this case appellant has other accepted conditions such as right lateral epicondylitis[15] which may be another source of ratable impairment.[16]

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[17] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.

The Board will remand the case to the Office for review by an Office medical adviser to determine whether appellant has greater permanent impairment based on the August 5, 2008 report of Dr. Levy. Following this, and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

On appeal, appellant asserts that the amount of the schedule award is insufficient as she can no longer work. The Board notes that the amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.[18]

CONCLUSION

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

[14] A.M.A., *Guides* 494-95. *See Christine Falls*, 55 ECAB 424 (2004).

[15] *See supra* note 1 for conditions accepted in the combined claims.

[16] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, 2.808.6(d) (August 2002) (contemplates that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

[17] *John W. Butler*, 39 ECAB 852 (1988).

[18] *Ruben Franco*, 54 ECAB 496 (2003).

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2008 decision of the Office of Workers' Compensation Programs be set aside and remanded for further action in accordance with this decision of the Board.

Issued: October 20, 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