United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 09-1774**
	)	**Issued: April 8, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Millville, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 1, 2009 appellant timely appealed the March 18, 2009 merit decision of the Office of Workers' Compensation Programs, which affirmed an August 20, 2008 schedule award. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has greater than 10 percent impairment of both the left and right upper extremity.

FACTUAL HISTORY

Appellant, a 59-year-old letter carrier, has accepted claims for left and right carpal tunnel syndrome. His two upper extremity occupational disease claims have been combined. Right carpal tunnel syndrome was accepted under claim number xxxxxx336 (master) with a May 3, 1988 date of injury. Appellant underwent a right carpal tunnel release on January 11, 1990. He

subsequently filed a claim for left carpal tunnel syndrome with a March 15, 2004 date of injury. This latter employment injury was accepted under claim number xxxxxx391 (subsidiary).

On April 17, 2007 appellant filed a claim for a schedule award under claim number xxxxxx391. In support of his claim, he submitted a January 9, 2007 impairment rating from Dr. David Weiss, a Board-certified orthopedist, who diagnosed bilateral carpal tunnel syndrome, status post right carpal tunnel release.[1] Dr. Weiss found 19 percent bilateral upper extremity impairment based on a combination of impairments for lateral pinch deficit (10 percent) and Grade 4 sensory deficit involving the median nerve (10 percent).

On September 5, 2007 appellant filed a claim for a schedule award under claim number xxxxxx336. He also submitted Dr. Weiss' January 9, 2007 impairment rating under claim xxxxxx336.

In a report dated September 21, 2007, the district medical adviser (DMA), Dr. Arnold T. Berman, found 10 percent impairment of the left upper extremity for sensory deficit involving the median nerve.[2] He disagreed with Dr. Weiss' 10 percent impairment for decreased lateral pinch strength. Dr. Berman explained that decreased strength could not be rated in the presence of painful conditions. He noted that Dr. Weiss reported that appellant's left hand and wrist were painful. Dr. Berman's review was limited to the left upper extremity because left carpal tunnel syndrome was the only accepted condition under claim number xxxxxx391, and the case records for appellant's two upper extremity claims had yet to be doubled. The Office subsequently asked Dr. Berman to review Dr. Weiss' impairment rating with respect to appellant's right upper extremity under claim number xxxxxx336. In a report dated November 17, 2007, Dr. Berman similarly found 10 percent impairment of the right upper extremity for sensory deficit involving the median nerve.

The Office declared a conflict in medical opinion based on the differing opinions of Dr. Berman, the DMA, and appellant's physician, Dr. Weiss. Dr. Jatin D. Gandhi, a Board-certified orthopedic surgeon and impartial medical examiner (IME), reviewed the relevant medical records and examined appellant on March 25, 2008. He noted that appellant complained of pain and numbness in both hands, which was affected by weather changes. According to appellant, his hand complaints had been ongoing for the past several years; however, his pain was not constant. He also reported dropping objects due to hand weakness. On physical examination, Dr. Gandhi found no wrist deformities, bilaterally. Phalen's test was negative, bilaterally and there was no atrophy of the thenar muscles. Tinel's sign produced local pain, bilaterally. On the right side, there was no radiation of pain along the median nerve distribution. However, on the left side, appellant's pain radiated along the median distribution in the hand. His grip strength was diminished bilaterally, but Dr. Gandhi indicated he had not performed Dynamometer testing. Dr. Gandhi also provided range of motion measurements and noted that appellant had diminished light touch on the fingers, bilaterally. Appellant's forearm diameter was 32 centimeters on the right side and 31 centimeters on the left. Dr. Gandhi's impression was

[1] Dr. Weiss provided additional diagnoses and an impairment rating with respect to appellant's left lower extremity, which are unrelated to the current upper extremity claims.

[2] Dr. Berman is a Board-certified orthopedic surgeon.

left carpal tunnel syndrome and residuals of right carpal tunnel syndrome. He found 10 percent impairment bilaterally due to sensory deficits. Dr. Gandhi further explained that decreased strength could not be rated in the presence of painful conditions. Therefore, he based appellant's impairment rating on sensory deficits alone.

DMA, Dr. Andrew A. Merola, a Board-certified orthopedic surgeon, reviewed the IME's March 25, 2008 report and concurred with his impairment rating of 10 percent upper extremity impairment, bilaterally.

By decision dated August 20, 2008, the Office granted a schedule award for 10 percent impairment of the left and right upper extremities. The award covered a period of 62.4 weeks beginning March 25, 2008. The Branch of Hearings and Review affirmed the schedule award in a decision dated March 18, 2009.[3]

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act 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.[4] 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.[5] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[6]

ANALYSIS

Appellant's counsel acknowledged that Dr. Weiss, both Office medical advisers and the IME all agreed that appellant has at least 10 percent impairment for sensory deficit involving the median nerve distribution.[7] Counsel continues to argue in support of Dr. Weiss' additional rating for loss of pinch strength, an issue which the IME was specifically selected to resolve.

The Office properly found there was a conflict of medical opinion between appellant's physician, Dr. Weiss, and the DMA, Dr. Berman. Because of this conflict, it referred appellant to an impartial medical examiner to determine the extent of appellant's upper extremity

[3] A hearing was held on January 13, 2009.

[4] For a total loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2006).

[5] 20 C.F.R. § 10.404 (2009).

[6] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

[7] *See* A.M.A., *Guides* 482, Table 16-10 and A.M.A., *Guides* 492, Table 16-15. The 10 percent impairment was derived by multiplying the Grade 4 sensory deficit (25 percent) by the maximum lower extremity sensory deficit involving the median nerve below mid-forearm (39 percent).

impairment.[8] Dr. Gandhi, the IME, correctly noted that, according to the A.M.A., *Guides* (5th ed. 2001), "[d]ecreased strength *cannot* be rated in the presence of decreased motion, painful conditions, deformities or absence of parts ... that prevent effective application of maximal force in the region being evaluated."[9] (Emphasis in the original.) During the IME's March 25, 2008 evaluation, appellant complained of pain and numbness in both hands. Dr. Gandhi's physical examination revealed local pain bilaterally, and left side pain radiating along the median distribution of the hand. Contrary to counsel's contention, the Office properly accorded determinative weight to Dr. Gandhi's findings, as he was the impartial medical examiner.[10] The record supports Dr. Gandhi's decision not to rate appellant for loss of grip or pinch strength. Even appellant's counsel acknowledged the accuracy of Dr. Gandhi's rating for bilateral sensory deficits involving the median nerve distribution.[11] Dr. Gandhi's March 25, 2008 opinion is sufficiently well reasoned and based upon a proper factual background. He conducted a thorough physical examination and undertook an extensive review of the relevant medical records. Accordingly, the Board finds that the Office properly based the August 20, 2008 schedule award on Dr. Gandhi's impartial medical evaluation.

CONCLUSION

Appellant has not established that he has greater than 10 percent impairment of the left and right upper extremities.

[8] The Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[9] A.M.A., *Guides* 508, section 16.8a.

[10] Where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[11] *See supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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