United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
and	)	**Docket No. 09-2134**
	)	**Issued: August 3, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 20, 2009 appellant, through his representative, filed a timely appeal from the May 22, 2009 schedule award 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 23 percent impairment of his left arm, for which he received a schedule award.

FACTUAL HISTORY

The Office accepted that appellant, a 38-year-old parcel keyer, developed a left wrist and left forearm condition causally related to factors of his employment. The claim was accepted for ulnar nerve entrapment and carpal tunnel syndrome of the left arm. On May 21, 2007 he filed a claim for a schedule award.

In a report dated February 22, 2007, Dr. David O. Weiss, an osteopath, provided an impairment rating based on evaluation of appellant's left upper extremity. On examination he noted that atrophy involving the thenar eminence, with resisted thumb abduction graded at a four plus out of five (4+/5) and resisted fourth and fifth finger flexion graded at four out of five. Grip strength testing performed *via* Jamar hand dynamometer at level 3 revealed 48 kilograms on the right versus 10 kilograms on the left, of a 79 percent strength deficit to the left hand. Pinch key unit testing measured eight kilograms on the right *versus* five kilograms on the left; three-point pinch measured five kilograms on the right and two kilograms on the left. Dr. Weiss conducted Semmes-Weinstein monofilament testing, which indicated that diminished light-touch sensibility at 3.61 milligrams over the ulnar nerve distribution of the left hand and at 2.83 milligrams over the median nerve distribution of the left hand.

Dr. Weiss advised that appellant had 44 percent left arm impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). He made general reference to Table 16-11 and Table 16-15, in assigning nine percent motor loss based on left thumb abduction and nine percent for loss based on left fourth and fifth digit flexion. Dr. Weiss cited to Table 16-10 and Table 16-15, to assign 6 percent sensory loss for the left ulnar nerve and 10 percent loss of the left median nerve. He also assigned 20 percent impairment for left pinch deficit, citing to Table 16-34. Dr. Weiss stated that the combined total due to these impairment factors was 44 percent and advised that appellant reached maximum medical improvement on February 22, 2007.

On May 3, 2007 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and Office medical adviser, reviewed the medical evidence. He noted that Dr. Weiss found a positive Phalen's sign of the left wrist, positive Tinel's sign over the carpal tunnel and a positive carpal compression test. Since the physical examination revealed ongoing median and ulnar nerve compression, the 20 percent impairment for loss of grip strength could not be accepted. Dr. Berman noted that at section 16.8a, the A.M.A., *Guides* cautioned against rating decreased strength in the presence of painful conditions that prevented effective application of maximum force to the region being evaluated.

Under Table 16-15, Dr. Berman identified the maximum impairments allowed for sensory loss (pain) and motor deficit involving the median and ulnar nerves. For the median nerve below the forearm a maximum of 39 percent was allowed for sensory loss and 10 percent for motor deficit. For the ulnar nerve below the mid forearm, a maximum 7 percent was allowed for sensory loss and 35 percent for motor deficit. In rating the extent of appellant's sensory loss, Dr. Berman noted that Dr. Weiss had classified appellant's sensory deficit as Grade 2 or 80 percent. Dr. Berman stated that the findings from examination supported classification as Grade 4, for which 25 percent was allowed. He rated sensory loss to the median nerve by multiplying 39 percent times 25 percent to equal 9.75 percent, rounded to 10 percent. For sensory loss of the ulnar nerve, he multiplied 7 percent times 25 percent to equal 1.75 percent, rounded to 2 percent. These were added to find a total sensory loss of 12 percent.

Dr. Berman rated the extent of weakness or strength loss to the upper extremity by applying Table 16-11. Again, he found that the classification of Grade 2 deficit by Dr. Weiss was not supported by the findings on physical examination. Dr. Berman allowed a Grade 4 classification (25 percent). Motor loss involving the median nerve was determined by

multiplying 10 percent maximum by 25 percent to equal 2.5 percent, rounded to 3 percent. For impairment caused by the ulnar nerve, he multiplied the 35 percent maximum by 25 percent to equal 8.75 percent, rounded to 9 percent. Dr. Berman added the 3 percent median nerve loss to the 9 percent ulnar nerve loss to find a total 12 percent motor loss of the left arm. He cited the Combined Values Chart at page 604, to total 23 percent impairment to the left arm based on the 12 percent motor and 12 percent sensory loss for median and ulnar nerve dysfunction.

In a November 26, 2007 decision, the Office granted appellant a schedule award for 23 percent impairment of the left upper extremity.[1]

On November 30, 2007 counsel for appellant requested an oral hearing that was held on April 8, 2008. He contended that Dr. Berman had erred by disallowing the 20 percent impairment rated by Dr. Weiss for left pinch deficit because appellant had been able to exercise maximal force under testing despite pain. Counsel also argued that Dr. Berman did not provide sufficient medical rationale to reduce the classification of sensory and motor deficit from Grade 2 as determined by Dr. Weiss, to Grade 4.

In a June 24, 2008 decision, an Office hearing representative set aside the November 26 2007 schedule award. She found that the 20 percent impairment rating based on pinch grip strength had been properly omitted. However, the hearing representative also found that Dr. Berman did not specifically address the clinical findings from examination he relied upon in reducing the classification of sensory and motor impairment to Grade 4. The case was remanded for clarification from Dr. Berman.

On August 31, 2008 Dr. Berman advised that under Table 16-10 a Grade 2 impairment classification was allowed for decreased protective sensibility. However, appellant showed no evidence for decreased protective sensibility. Appellant's accepted condition did not rise to the level of Grade 2 severity because he was able to perform activities of daily living such as lawn mowing, cleaning and shopping with some pain. He stated that Grade 4 impairment classification accurately described appellant's level of activity, for distorted superficial tactile sensibility, diminished light touch with or without minimal abnormal sensations or pain that was forgotten during activity. Moreover, the findings by Dr. Weiss did not reveal any atrophy of the left hypothenar eminence which would support more severe findings involving the ulnar nerve.

In an October 8, 2008 decision, the Office found that Dr. Berman's impairment rating constituted the weight of medical opinion. It determined that appellant did not have more than 23 percent left arm impairment.

On October 14, 2008 appellant requested an oral hearing that was held on March 17, 2009.

In a May 22, 2009 decision, an Office representative affirmed the October 8, 2008 schedule award decision.

[1] The Office initially issued this decision on July 2, 2007. Pursuant to a request from appellant's attorney, it reissued the decision on November 26, 2007.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] 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] 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.

With regard to rating loss of strength, section 16.8 of the A.M.A., *Guides* note that such measurements are functional tests influenced by subjective factors that are difficult to control. Therefore, the A.M.A., *Guides* do not assign a large role to such measurements. Section 16.8a states:

> "In a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*, the loss of strength may be rated separately…. If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength could be combined with the other impairments, only if based on unrelated etiologic or pathomechanical causes. Otherwise, the impairment ratings based on objective anatomic findings take precedence. Decreased 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 to be evaluated."[5]

ANALYSIS

Appellant's claim was accepted by the Office for left ulnar nerve entrapment and carpal tunnel syndrome. He received a schedule award for 23 percent impairment to his left arm based on the accepted conditions. This rating was based on motor and sensory loss affecting the median nerve below the forearm and the ulnar nerve below the mid forearm. The Board finds that appellant has not established greater impairment.

On appeal appellant contends that the Office medical adviser erred by not allowing the 20 percent impairment rating Dr. Weiss provided for loss of left pinch strength. He also disagreed with the reduction of the impairment classification for motor and sensory loss from Class 2, as

[2] 5 U.S.C. § 8107(c).

[3] *Id*. at § 8107(c)(19).

[4] 20 C.F.R. § 10.404.

[5] A.M.A., *Guides* 508.

found by Dr. Weiss, to Class 4. He contended on appeal that the rating by the examining physician in this case should take precedence over that of the Office medical adviser.

As noted, the A.M.A., *Guides* at section 16.8 do not assign a large role to grip or pinch strength measurements as they are too influenced by subjective factors. Dr. Weiss advised that appellant was able to perform routine household duties such as dishwashing, mowing, cleaning and shopping with some difficulty performing nonspecialized hand activities. He noted that appellant is right-hand dominant and reported that he no longer played basketball or softball. Examination of the left wrist revealed a well-healed surgical scar and Dr. Weiss provided measurements on range of motion. He advised that Tinel's sign was positive over Guyon's canal and over the median nerve at the wrist. The one minute Phalen's sign was positive as was carpal compression. Dr. Weiss stated that Semmes-Weinstein monofilament testing revealed "diminished light-touch sensibility" over the ulnar nerve and median nerve distribution of the left hand. In light of the principles found at section 16.8, Dr. Weiss provided no explanation as to why appellant's loss of strength was not adequately considered with reference to the other methods of the A.M.A., *Guides*. Dr, Weiss merely listed measurements obtained on grip and pinch strength testing. He did not address any of the factors listed under section 16.8a or acknowledge the caution that decreased strength cannot be rated in the presence of painful conditions that prevent effective application of maximal force. While counsel argued that appellant was able to exercise maximal force on testing despite pain, the report of Dr. Weiss is silent on this point. The Office medical adviser properly applied the A.M.A., *Guides* to the findings on examination reported by Dr. Weiss and explained why he disallowed the 20 percent left pinch grip deficit rating found by the examining physician under section 16.8. The Board finds that the Office medical adviser did not abuse his discretion.

The Office medical adviser also explained why he classified the extent of sensory and motor deficit under Tables 16-10 and 16-11 as Grade 4, for which he allowed 25 percent. As to sensory loss, Dr. Weiss noted that testing revealed "diminished light-touch sensibility." This corresponds to Grade 4, which is described as distorted superficial tactile sensibility (diminished light touch) with or without minimal abnormal sensations or pain. Dr. Weiss noted that appellant was able to engage in routine household duties with some difficulty due to pain. The report of the examining physician did not provide any additional discussion of the relative factors that go into determining the classification of sensory or motor loss under section 16.5. The A.M.A., *Guides* provide that the examiner must use clinical judgment to estimate the appropriate percentages of sensory or motor deficits, noting that the maximum value for each grade is not applied automatically. The report of Dr. Weiss does not explain the factors he considered in classifying appellant's motor or sensory deficit as Grade 2. It appears that, despite the caution under section 16.5, he automatically allowed the maximum value for Grade 2 of 80 percent. The February 22, 2007 report of the examining physician did not adequately address the factors that go to such clinical judgment. Dr. Weiss provided only a footnote reference to those tables he applied in rating impairment. Absent any discussion, his is not a well-rationalized report.

While the report of an examining physician may be found to constitute the weight of medical opinion, such physician should clearly address the principles of the A.M.A., *Guides* in explaining how an impairment rating is reached. Absent such explanation, the Office may rely

on the opinion of its medical adviser.[6] In this respect, Dr. Berman addressed the sensory and motor loss to appellant's left arm caused by deficit in the median nerve below the forearm and the ulnar nerve. He explained his application of Table 16-10 and Table 16-11 for classifying the extent of motor and sensory deficit as Grade 4, for which he allowed 25 percent. In turn, he identified the maximum upper extremity impairments allowed for sensory and motor loss affecting the median nerve below the forearm and the ulnar nerve below the mid forearm. He explained the basis for finding 12 percent motor and 12 percent sensory loss to the left arm which, under the Combined Values Chart, represents 23 percent impairment.

CONCLUSION

The Board finds that appellant has no more than 23 percent impairment of his left arm, for which he receive a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[6] *See Tommy R. Martin* 56 ECAB 273 (2005).