United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
	)	
and	)	**Docket No. 10-1678**
	)	**Issued: April 4, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Des Moines, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 9, 2010 appellant filed a timely appeal from a February 1, 2010 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained more than a five percent permanent impairment of her right upper extremity and a five percent permanent impairment of the left upper extremity.

FACTUAL HISTORY

On July 1, 1992 appellant, then a 44-year-old distribution clerk, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome in the performance of

duty. On April 29, 1993 the Office accepted her claim for bilateral carpal tunnel syndrome.[1] Appellant received compensation benefits.

Appellant's treating physician, Dr. Martin Luken, a Board-certified neurological surgeon, performed a left carpal tunnel release on April 30, 2008 and a right carpal tunnel release on July 2, 2008.

On May 14, 2009 appellant filed a Form CA-7 claim for a schedule award.

On May 27, 2009 the Office requested that Dr. Luken provide an impairment rating utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (6th ed. 2009) (*hereinafter,* A.M.A., *Guides*).

In a report dated June 22, 2009, Dr. Luken noted that he had followed appellant for approximately one year for her right carpal tunnel release and approximately 14 months following the same operation on the left. He advised that her "agonizingly painful nocturnal awakenings which she experienced preoperatively" had completely resolved in the aftermath of her surgery. Dr. Luken noted that appellant related that the sensation in her hands continued to be significantly impaired and caused her a great deal of distress; however, she managed to continue working restricted duty despite engaging in repetitive movements which exacerbated her symptoms. He examined her and determined that her hands "healed beautifully, though both wrists are a bit tender to percussion, the right more so than the left, with no distinct distal Tinel's sign." Dr. Luken reviewed a February 12, 2009 electromyography (EMG) and nerve conduction study (NCS) of the bilateral upper extremity conducted by Dr. Adeel Ahmad, a Board-certified physiatrist, and noted that it revealed "bilateral severe carpal tunnel syndrome the severity of the left motor response has increased since the last EMG performed on December 21, 2007, whereas the right motor responses remain absent ... the sensory responses seem to be similar in severity to the last test." He also reviewed a February 18, 2009 functional capacity evaluation (FCE) and explained that it revealed that appellant "failed 5/70 validity criteria for upper extremity hand and pinch grip testing, indicating a sub maximal effort was given." Additionally, Dr. Luken advised that it indicated that she could "return to light/medium employment," and advised that the restrictions and limitations were "unable to be made secondary to the inconsistencies previously mentioned." He also noted that appellant did not believe that her persisting symptoms were severe enough to undergo another operation.

In a July 29, 2009 report, the Office medical adviser noted appellant's history of injury and treatment and the June 22, 2009 report from Dr. Luken. He noted Dr. Luken's findings that appellant had "complete resolvement of nocturnal wrist pain bilaterally." The Office medical adviser also noted that it was approximately one year since her post carpal tunnel release and that appellant continued to have abnormality in sensation of bilateral wrists in the median nerve distribution. He advised that following an FCE evaluation she was placed on restricted work duties. The Office medical adviser utilized the A.M.A., *Guides* and referred to Table 15-23.[2] He determined that appellant's symptoms were consistent with a Grade Modifier 2 and that she had five percent bilateral upper extremity impairment.

[1] The Office also accepted appellant's claim for a recurrence of disability on December 1, 2000.

[2] A.M.A., *Guides* 449.

On August 19, 2009 the Office granted appellant a schedule award for a five percent permanent impairment of the right upper extremity and a five percent permanent impairment of the left upper extremity. The award covered the period June 22, 2009 to January 26, 2010.

Appellant requested a review of the written record. In a letter dated September 12, 2009, she questioned the amount of her schedule award in light of having undergone two surgeries. Appellant also noted that her EMG of February 12, 2009 revealed that she had no improvement. She indicated that her lifestyle had dramatically changed. Appellant indicated that she was no longer able to cook large family dinners because it was too strenuous, that she dropped things constantly and had trouble grasping things. Furthermore, she noted that she could no longer drive long distances because her fingers tingled and became numb. Appellant noted that she needed assistance at work, and it was depressing, especially for someone who once had an extremely active life. She also indicated that she was seeking a second opinion as the surgery only provided temporary relief.

Appellant submitted a September 10, 2009 magnetic resonance imaging (MRI) scan of the right wrist and a September 11, 2009 MRI scan of the left wrist read by Dr. Scott Grossberg, a Board-certified diagnostic radiologist, whose findings included a small gap in the flexor retinaculum of each wrist that was suggestive of tissue regrowth status post carpal tunnel surgery; mild edema without intraneural or perineural enhancement in the median nerve proximal to the carpal tunnel which was nonspecific. Dr. Grossberg noted that it could be postsurgical or represent mild inflammation of the median nerve in recurrent carpal tunnel syndrome. He noted other findings but did not address permanent impairment. Also submitted were physical therapy records.

In a February 1, 2010 decision, the Office hearing representative affirmed the August 19, 2009 decision.

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. 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 A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[3] Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008). Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides,* with the Office medical adviser providing rationale for the percentage of impairment specified.[4]

[3] 20 C.F.R. § 10.404.

[4] A.M.A., *Guides (*6th ed. 2008), 494-531*; see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome. Appellant underwent a left carpal tunnel release on April 30, 2008 and a right carpal tunnel release on July 2, 2008. She claimed a schedule award on May 14, 2009. In a letter dated May 27, 2009, the Office requested that Dr. Luken provide an impairment rating utilizing the A.M.A., *Guides.*

The Office received a June 22, 2009 report, in which Dr. Luken provided findings, including that appellant reported continued impaired sensation in her hands and that an EMG showed bilateral carpal tunnel syndrome. However, Dr. Luken did not provide an impairment rating. To obtain an impairment rating, the Office forwarded his report to an Office medical adviser for review.

An Office medical adviser submitted a July 29, 2009 report following the assessment formula of the sixth edition of the A.M.A., *Guides*. He utilized the clinical findings of Dr. Luken, the treating physician, who noted that appellant continued to have abnormality in sensation of bilateral wrists in a median nerve distribution. The Office medical adviser determined that appellant's findings were consistent with a Grade Modifier 2 according to Table 15 to 23 for abnormal sensation. He found that this represented five percent impairment of each upper extremity pursuant to the A.M.A., *Guides*.

The Board finds that the Office medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Luken's clinical findings. There is no medical evidence of record demonstrating a greater percentage of permanent impairment. Although appellant submitted additional medical evidence following her request for a review of the written record, this evidence did not rate impairment of appellant's arms under the A.M.A., *Guides*.[5] The Office properly relied on the Office medical adviser's assessment of a five percent impairment of each upper extremity based on the sixth edition of the A.M.A., *Guides.* Thus, appellant has not established that he sustained more than a five percent impairment of the right or left upper extremity.

On appeal, appellant questioned the amount of her award, asserted that her "over all well-being is challenged" and noted that she was limited in what she could do. As noted above, there is no medical evidence demonstrating a greater percentage of permanent impairment under the A.M.A., *Guides*. The Board has also held that factors such as employability or limitations on daily activities have no bearing on the calculation of impairment.[6]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained more than a five percent permanent impairment of her right upper extremity and a five percent permanent impairment of the left upper extremity.

[5] Also received were physical therapy records. However, physical therapists are not competent to render a medical opinion under the Act. *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See* 5 U.S.C. § 8101(2).

[6] *J.H.*, Docket No. 08-2432 (issued June 15, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2010 is affirmed.

Issued: April 4, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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