United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 10-837**
	)	**Issued: February 1, 2011**
DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, UT, Employer	)	

Appearances:
Appellant, pro se
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 February 3, 2010 appellant filed a timely appeal of the Office of Workers' Compensation Programs' August 20 and December 8, 2009 merit decisions finding two percent impairment of each upper extremity. Pursuant to 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 two percent impairment of each upper extremity, for which he received schedule awards.

FACTUAL HISTORY

On June 5, 2007 appellant, then a 39-year-old electrical equipment repairer, filed an occupational disease claim alleging that on July 1, 2006 he sustained tenosynovitis in both wrists and hands as a result of repetitive motion while working with small tools. The Office accepted his claim for bilateral tenosynovitis of the hands and wrists and bilateral carpal tunnel syndrome. On January 28, 2008 appellant underwent right carpal tunnel release with tenosynovectomy and

epineurolysis. On February 15, 2008 he underwent left carpal tunnel release with tenosynovectomy and epineurolysis.

On June 19, 2008 appellant filed a claim for a schedule award. In a June 3, 2008 medical report, Dr. William F. Brandt, an attending Board-certified physiatrist, reviewed a history of appellant's employment-related injuries, medical treatment and family and social background. He noted continuing bilateral wrist symptoms. Dr. Brandt listed essentially normal findings on physical examination with a minimally tender scar over the volar surface of the carpal tunnel, left greater than right, and positive Tinel's signs. He provided range of motion findings for both wrists. The right wrist had 55 degrees of extension, 60 degrees of flexion, 40 degrees of ulnar deviation and 15 degrees of radial deviation. The left wrist had 70 degrees of extension, 55 degrees of flexion, 40 degrees of ulnar deviation and 15 degrees of radial deviation. On neurological examination, Dr. Brandt noted intact motor strength and sensation, and normal two-point discrimination. He advised that appellant had bilateral carpal tunnel syndrome with minimal residuals, left greater than right and was status post carpal tunnel release. Utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Brandt rated two percent impairment of each upper extremity. Regarding the right wrist, he found one percent impairment each for loss of extension and radial deviation under Figure 16-28 and Figure 16-31 on pages 467 and 469, respectively, of the A.M.A., *Guides*, resulting in two percent impairment. Regarding the left wrist, Dr. Brandt utilized the same figures to find that the loss of extension and radial deviation each constituted one percent impairment, resulting in two percent impairment. He determined that appellant had Grade 5 sensory and motor muscle deficit which constituted zero percent impairment under Table 16-10 and Table 16-11 on pages 482 and 484, respectively, of the A.M.A., *Guides*.

On August 15, 2008 Dr. Morley Slutsky, an Office medical adviser, reviewed appellant's medical records, including Dr. Brandt's June 3, 2008 report. He determined that appellant reached maximum medical improvement on June 3, 2008. Dr. Slutsky agreed with Dr. Brandt's rating of two percent impairment to each upper extremity.

By decision dated August 20, 2008, the Office granted appellant schedule awards for two percent impairment of each upper extremity.

On September 8, 2008 appellant requested a telephonic hearing with an Office hearing representative. A November 5, 2007 report from Frank Romney, a physical therapist, found that appellant had diminished grip strength and sensation in both hands although there were no positive test results on neurological examination.

In a March 12, 2009 decision, an Office hearing representative affirmed the August 20, 2008 decision, finding that appellant had no more than two percent impairment of each upper extremity.

By letter dated June 15, 2009, appellant requested reconsideration. He submitted medical reports dated June 4, 2007 to May 12, 2009 from the employing establishment's health unit which addressed the treatment of his work-related conditions, physical restrictions and diagnostic test results. In reports dated April 28 and December 7, 2008, Dr. Allisyn Okawa, a Board-certified plastic surgeon, listed her findings on physical examination and found that appellant had

employment-related carpal tunnel syndrome and tenosynovitis. She stated that he was doing well following carpal tunnel release, but he still had symptoms related to his employment-related conditions that were permanent in nature. Dr. Okawa further stated that appellant had cervical radiculopathy, but she was unable to determine whether the diagnosed condition was work related.

In an August 20, 2009 decision, the Office denied modification of the August 20, 2008 and March 12, 2009 decisions, finding that appellant had no more than two percent impairment of each upper extremity.

On November 2, 2009 appellant requested reconsideration. In a September 16, 2009 report, Sam DeLong, a hand therapist, found that appellant continued to suffer from loss of range of motion, grip and pinch strength, pain, scar thickness and tenderness, and minimal sensation related to his bilateral wrists. He showed minimal signs of his employment-related condition. Mr. DeLong stated that although appellant had made progress with his recovery following his bilateral carpal tunnel surgery, he had a functional score of 77.9 percent which represented a 22.1 percent functional deficit.

In a December 8, 2009 decision, the Office denied modification of the August 20, 2009 decision. The medical evidence submitted was found to be insufficient to establish that appellant had more than two percent impairment of each upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[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 of loss of use.[3] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[4]

[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.404.

[3] 5 U.S.C. § 8107(c)(19).

[4] *Supra* note 2.

The fifth edition of the A.M.A., *Guides*, regarding carpal tunnel syndrome, provides:

> "If, after 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. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier.
> >
> > 2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present and an impairment rating not to exceed five percent of the upper extremity may be justified.
> >
> > 3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating."[5]

The Board has found that, in accordance with the fifth edition of the A.M.A., *Guides*, impairment arising from carpal tunnel syndrome should be rated on motor and sensory deficits only.[6] The A.M.A., *Guides* provides that, in compression neuropathies, additional impairment values are not given for decreased motion strength in the absence of a complex regional pain syndrome.[7] Carpal tunnel syndrome is an entrapment/compression neuropathy of the median nerve.[8]

ANALYSIS

The Office accepted appellant's claim for bilateral tenosynovitis of the hands and wrists and bilateral carpal tunnel syndrome and authorized carpal tunnel release. On August 20, 2008 he received schedule awards for two percent impairment of each upper extremity. The Board finds, however, that this case is not in posture for decision.

Dr. Brandt, an attending physician, found in a June 3, 2008 report that appellant did not have any impairment due to motor and sensory deficit as he had Grade 5 muscle loss (A.M.A., *Guides* 482, 484, Table 16-10 and Table 16-11).[9] He calculated impairment ratings of two

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[5] A.M.A., *Guides* 495; *Silvester DeLuca*, 53 ECAB 500 (2002).

[6] *Id.* at 494; *T.A.*, 59 ECAB 221 (2007); *Robert V. Disalvatore*, 54 ECAB 351 (2003).

[7] *Id.* at 494; *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); *Kimberly M. Held*, 56 ECAB 670 (2005); *David D. Cumings*, 55 ECAB 285 (2004).

[8] *Id.* at 492.

[9] *See supra* note 6.

percent each for the right and left upper extremities based on loss of range of motion which as noted above, is not allowed in rating impairment due to carpal tunnel syndrome.[10] The Board finds, therefore, that Dr. Brandt's impairment ratings are insufficient to form the basis for a schedule award.

Similarly, the Board finds that the two percent impairment ratings of Dr. Slutsky, an Office medical adviser, are of diminished probative value because he did not address the A.M.A., *Guides*. He calculated his impairment ratings based on Dr. Brandt's loss of range of motion measurements which as stated, are not allowed in rating compression neuropathy such as, carpal tunnel syndrome.[11]

For the stated reasons, the case will be remanded to the Office for a proper evaluation of appellant's claim for a schedule award in accordance with the above-described standards. After such development as it deems necessary, the Office shall issue a *de novo* decision.[12]

CONCLUSION

The Board finds that this case is not in posture for decision as further medical development is necessary regarding the extent of appellant's right and left upper extremity impairment.

[10] *See supra* note 7.

[11] *Id.*

[12] The reports of Mr. Romney, a physical therapist, and Mr. DeLong, a hand therapist, are of no probative value as therapists are not physicians as defined under the Act. 5 U.S.C. § 8101(2); *A.C.*, 60 ECAB ___ (Docket No. 08-1453, issued November 18, 2008).

ORDER

IT IS HEREBY ORDERED THAT the December 8 and August 20, 2009 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this decision.

Issued: February 1, 2011
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