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GLORIA J. COLE-SMITH, Appellant)	
)	
and)	Docket No. 03-2273
)	Issued: February 25, 2004
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DEPARTMENT OF THE NAVY, NAVAL)	
WEAPONS STATION EARLE, Colts Neck, NJ,)	
Employer)	
)	

Case Submitted on the Record

On August 2, 1990 appellant, then a 47-year-old secretary, filed a claim for a traumatic injury alleging that on that date she sustained injuries to her right forearm when she lifted a mail

container in the performance of her duties.¹ The Office accepted appellant's claim for a right forearm strain on December 10, 1990. On January 4, 1994 appellant filed an occupational disease claim alleging that she developed right lateral epicondylitis as a result of her employment duties. On July 29, 1994 the Office accepted appellant's claim for right lateral epicondylitis.²

In a report dated January 16, 2001, Dr. David Weiss, an osteopath, to whom appellant had been referred by counsel, stated that appellant had reached maximum medical improvement and evaluated appellant's degree of residual permanent impairment. The physician reviewed appellant's medical and employment history, as well as the relevant medical records and performed a complete physical examination. Dr. Weiss diagnosed: chronic, post-traumatic lateral epicondylitis of the right elbow; radial tunnel syndrome of the right arm; status post lateral epicondyle debridement of the right elbow; status post decompression for right radial tunnel syndrome; right ulnar nerve dysfunction; mild right median nerve dysfunction; chronic, post-traumatic cervical strain and sprain; herniated nucleus pulposus, C6-7; status post anterior cervical discectomy fusion, C6-7; chronic, post-traumatic lumbosacral strain and sprain; and right lumbar radiculitis by history. In his January 16, 2001 report, Dr. Weiss evaluated appellant's right upper extremity impairments due to motor deficits and loss of power resulting from peripheral nerve disorder according to the grade of severity of loss of function and the relative maximum upper extremity impairment value of the nerve structure involved, as shown in the classification and procedure set forth in Table 15, page 54, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) fourth edition, "[m]aximum [u]pper [e]xtremity [i]mpairments [d]ue to [u]nilateral [s]ensory or [m]otor [d]eficits or [c]ombined [d]eficits of the [m]ajor [p]eripheral [n]erves." Using Table 48, page 55, Dr. Weiss identified the nerve structures involved as the axillary, musculocutaneous and radial nerves and determined that, pursuant to Table 15, page 54, the maximum upper extremity impairment due to motor deficit of these nerves is 35, 25 and 42 percent, respectively. Utilizing Table 12, page 49, Dr. Weiss classified the degree of muscle function in the right upper extremity as Grade 4, which corresponds to motor deficits that are between 1 and 25 percent. Following the procedure set forth in the A.M.A., *Guides*, Dr. Weiss multiplied the severity of the motor deficits by the maximum impairment value of the each nerve structure involved to obtain the upper extremity impairment for that structure. For each upper extremity, this means multiplying appellant's 25 percent loss of strength by the maximum impairment values of 35, 25 and 42 percent, resulting in impairment ratings of 9, 6 and 10 percent, respectively, rounded to the nearest value.

Regarding appellant's sensory losses, Dr. Weiss identified the nerve structures involved as the C5-7 spinal nerves and determined that, pursuant to Table 13, page 51, the maximum upper extremity impairment due to sensory deficit of these nerves is 5, 8 and 5 percent,

¹ Appellant stopped work on August 3, 1990 and returned to work on August 7, 1990. On March 4, 1993 appellant again stopped work and returned to work on March 30, 1994. The Office denied appellant's claim for a recurrence of disability, but in a decision dated January 13, 1997, the Board reversed the Office's decision and remanded the claim for payment.

² In addition to her two right arm claims, the Office has accepted that on January 24, 1994 appellant suffered a cervical strain in the performance of duty. Appellant's counsel indicated that he was pursuing appellant's neck injury claim separately from her right arm schedule award claim.

respectively. Pursuant to Table 11, page 48, Dr. Weiss classified the degree of sensory deficit in the right upper extremity as Grade 4, "Decreased sensibility with or without abnormal sensation or pain, which may prevent activity and/or minor causalgia." This grade corresponds to sensory deficits that are between 61 and 80 percent. Following the procedure set forth in the A.M.A., *Guides*, Dr. Weiss multiplied the severity of the sensory deficits by the maximum impairment value of the nerve structures involved to obtain the upper extremity impairment for that structure. For each upper extremity, this means multiplying appellant's 80 percent loss of strength by the maximum impairment values of 5, 8 and 5 percent, resulting in impairment ratings of 4, 6 and 4 percent, respectively.

Finally, Dr. Weiss found that appellant had impairments of the radial, median and ulnar nerves due to entrapment neuropathy that was mild, which equated to a 10 percent impairment of each nerve pursuant to Table 16, page 57. Utilizing the Combined Values Chart on page 322, Dr. Weiss concluded that pursuant to the A.M.A., *Guides* (4th ed. 1993),³ appellant had a total combined impairment of the right upper extremity of 51 percent, due to entrapment of the right radial, ulnar and median nerves, sensory deficits of the right C5-7 nerve roots, and motor strength deficits of the right axillary, musculocutaneous and radial nerves.

On April 6, 2001 appellant filed a formal claim for a schedule award.

At the request of the Office on June 27, 2001 an Office medical adviser reviewed Dr. Weiss' January 16, 2001 report and using the physician's findings and physical examination, recalculated the degree of appellant's impairment pursuant to the fifth edition of the A.M.A., *Guides*, which became effective February 1, 2001.⁴ The Office medical adviser concluded that appellant had a 44 percent permanent impairment of her right upper extremity due to the combined effects of her employment-related sensory and motor deficits. The Office medical examiner explained the decrease in total impairment compared with Dr. Weiss' 51 percent rating, stating that not every impairment allowable under the fourth edition of the A.M.A., *Guides* was equally allowable under the new fifth edition.

In a decision dated August 2, 2001, the Office granted appellant a schedule award for a 44 percent permanent impairment of her right upper extremity. The period of the award ran for 137.28 weeks from January 16, 2001 to September 3, 2003.

Appellant requested a review of the written record,⁵ asserting that a conflict in medical opinion existed between Dr. Weiss, who found a 51 percent right upper extremity impairment and the Office medical adviser, who found only a 44 percent impairment. In addition, appellant submitted the results of magnetic resonance imaging scan of her cervical spine performed on

³ At the time of Dr. Weiss' examination and report, the A.M.A., *Guides* (4th ed. 1993) was still in effect.

⁴ Federal FECA Bulletin No. 01-05 (issued January 29, 2001).

⁵ Appellant had originally requested an oral hearing before an Office representative, but subsequently agreed to a review of the written record instead.

October 29, 2002 as well as a report dated November 5, 2002 from Dr. Vicki E. Raab, a Board-certified neurologist, who diagnosed cervical spine disease with mild myelopathy, most likely due to appellant's disc herniation and scar tissue above the level of the spinal fusion.⁶

On October 11, 2002 the Office referred the case to an Office medical adviser and inquired as to whether an increased level of impairment was warranted. In a response dated October 22, 2002, the Office medical adviser stated that he was unable to find objective evidence to support the claimed multiple nerve entrapments as noted by Dr. Weiss and, therefore, could not find sufficient evidence to support even the 44 percent impairment rating previously granted.

In a decision dated July 3, 2003, an Office hearing representative affirmed the Office's prior decision awarding appellant a schedule award for a 44 percent permanent impairment of her right upper extremity.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act⁷ and section 10.404 of the implementing federal regulations,⁸ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, the Act does not specify the manner in, which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁹ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.¹⁰

ANALYSIS

The Board finds that this case is not in posture for a decision as neither appellant's treating physician nor the Office medical examiner correctly followed standardized procedures for calculating the impairment of appellant's right upper extremity due to spinal nerve involvement. Dr. Weiss concluded that appellant had 51 percent impairment of the right upper extremity due to entrapment of the right radial, ulnar and median nerves, sensory deficits of the right C7 nerve roots and motor strength deficits of the right axillary, musculocutaneous and radial nerves. Dr. Weiss arrived at his conclusion utilizing the A.M.A., *Guides* (4th ed. 1993), which was no longer in effect at the time of the Office's August 2, 2001 decision. The Board

⁶ Appellant also submitted several reports from her podiatrist, Dr. Alan Spector. These reports, however, pertain solely to a diagnosed right foot condition and, therefore, are not pertinent to the instant claim for compensation for right upper extremity impairment.

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404 (1999).

⁹ At the time of the August 2, 2001 schedule award, the Office utilized the fifth edition of the A.M.A., *Guides*, which became effective February 1, 2001. Federal FECA Bulletin No. 01-05 (issued January 29, 2001).

¹⁰ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

further notes that the fourth edition's Table 16, "[u]pper [e]xtremity [i]mpairment due to [e]ntrapment [n]europathy," utilized by Dr. Weiss, has been removed from the fifth edition of the A.M.A., *Guides*, which provides that entrapment neuropathies should be calculated by using section 16.5d and Tables 16-10 and 16-15 to measure sensory deficits or pain due to peripheral nerve disorders and Tables 16-11 and 16-15 to measure motor and power loss due to peripheral nerve disorders. In attempting to correlate Dr. Weiss' findings with the appropriate sections of the fifth edition of the A.M.A., *Guides*, the Office medical adviser correctly found that appellant had sensory deficits due to peripheral nerve disorders, equivalent to 4, 6 and 4 percent, for the C5-7 spinal nerve sensory deficits, respectively, pursuant to the fifth edition's Table 16-10, page 482. However, rather than combining this rating with appellant's degree of motor and power loss due to peripheral nerve disorders pursuant to Tables 16-11 and 16-15, as set forth in the fifth edition of the A.M.A., *Guides*, it appears that the Office medical adviser agreed with Dr. Weiss that appellant was entitled to 10, 10 and 10 percent for the radial, ulnar and median nerves, respectively, pursuant to the fourth edition's Table 16, "[u]pper [e]xtremity [i]mpairment due to [e]ntrapment [n]europathy." As the Office medical examiner applied a portion of the A.M.A., *Guides*, which is no longer in effect, this case will be remanded for a redetermination of appellant's entitlement to a schedule award pursuant to the appropriate sections of the fifth edition of the A.M.A., *Guides*.

CONCLUSION

The Board finds that this case is not in posture for a decision. Further, development of the medical evidence is necessary.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 3, 2003 is set aside and the case is remanded for further consideration consistent with this opinion.

Issued: February 25, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member