United States Department of Labor
Employees' Compensation Appeals Board

SHAWN S. WILLIAMS, Appellant	)	
and	)	**Docket No. 04-171**
	)	**Issued: February 19, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Shawn S. Williams, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On October 15, 2003 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated July 24, 2003. 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 a 10 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On November 17, 2000 appellant, then a 37-year-old letter carrier, filed a notice of occupational disease alleging that he was first aware of his bilateral carpal tunnel syndrome and bilateral hand paresthesias on October 5, 2000 and that it was caused or aggravated by his federal employment on October 27, 2000.

In a report dated November 29, 2000, Dr. Robert R. Schenck, a Board-certified plastic surgeon with a specialty in hand surgery, listed findings on physical examination of a positive Tinel's sign with tingling radiating to the palm of the right hand, a positive Phalen's test with tingling radiating to the right thumb, and a positive median nerve compression test with tingling radiating to the ring and small fingers. He reported a negative Tinel's sign along the right and left cubital tunnels at the elbows bilaterally, normal sensation in all fingers and normal vibratory sensibility bilaterally in the median and ulnar nerves with a marked decrease in vibratory sensitivity in the right side. He advised that appellant's motor and sensory nerve conduction times along the bilateral medial nerve and the sensory nerve conduction time across the ulnar nerve at the left elbow were markedly delayed. Dr. Schenck advised that appellant had work-related bilateral carpal tunnel syndrome and a possible bilateral cubital tunnel syndrome. He prescribed periodic injections and recommended use of a wrist splint.

On January 23, 2001 the Office accepted appellant's claim for bilateral carpal tunnel syndrome and subsequently paid appropriate compensation. On February 22, 2001 Dr. Schenck performed a right carpal tunnel release. In a post status report dated March 12, 2001, Dr. Schenck stated that appellant was progressing well and that his right hand strength was 35 pounds versus 60 pounds for the left hand. On March 26, 2001 Dr. Schenck stated that appellant complained of numbness and paresthesia in his left index, middle and ring fingers, and stated he had persistent left hand weakness. He noted negative bilateral Tinel's sign, Phalen's test, median nerve compression tests and thenar atrophy tests. On April 19, 2001 Dr. Schenck performed a left carpal tunnel release.

On May 7, 2001 Dr. Schenck injected appellant's right pillar region for pain. On June 1, 2001 appellant was released to return to restricted work effective June 18, 2001. In a report dated June 4, 2001, Dr. Schenck stated that appellant had attended therapy for the past four weeks, that his strength had improved and that his wrist wounds were normal. Appellant was released to return to full-time work with no restrictions, effective June 18, 2001.

In a report dated October 19, 2001, Dr. Schenck stated that he tested appellant on September 24, 2001 and advised that he had hypothenar muscle tenderness in the left palm and thenar muscle tenderness in the right palm. He also reported a right-sided positive Tinel's sign and Phalen's test with tingling radiating to the palm. Median nerve compression test was positive. Dr. Schenck noted appellant's below average vibratory results, but added that his motor and sensory nerve conduction tests revealed considerable improvement. He added that it would take up to a year to determine whether appellant had residual symptoms.

In a September 27, 2002 report, Dr. Schenck advised that he examined appellant on September 11, 2002. He noted appellant's complaints of intermittent numbness in his fingertips and minor pain in the left thumb with gripping and grasping. Upon examination, Dr. Schenck noted that the surgical scars were well healed, and that the radial and pillar areas were normal. He noted tenderness along the base and ulnar collateral alignment of the left thumb but advised that appellant had a negative Tinel's sign, Phalen's test and median nerve compression tests. There was no evidence of thenar muscle atrophy. Appellant's range of motion revealed normal thumb extension, abduction and opposition. Muscle testing revealed good hand strength bilaterally; he had normal Semmes-Weinstein filament testing in both hands and normal

vibratory responses. However, the doctor noted some increased delays in the motor nerve conduction times across the median nerve at the right and left wrists. Dr. Schenck stated that appellant had improved overall but that he had mild bilateral numbness in the fingertips at night. Appellant was released from medical care effective that day.

On September14, 2002 appellant filed a claim for a schedule award. On October 4, 2002 the Office referred the record to an Office medical consultant who on October 26, 2002 recommended a 10 percent permanent impairment for each upper extremity. On July 24, 2003 the Office awarded appellant a 10 percent permanent impairment for the right upper extremity and a 10 percent permanent impairment of the left upper extremity. The period of award ran for 62.40 weeks, from September 11, 2002 to November 21, 2003. The date of maximum medical improvement was September 10, 2002.[1]

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.[2] 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* [hereinafter A.M.A., *Guides*] as the appropriate standard for evaluating schedule losses.[3] Effective February 1, 2001, schedule awards are determined in accordance with the fifth edition of the A.M.A., *Guides*.[4]

ANALYSIS

As Dr. Schenck's September 11, 2003 report did not include an impairment rating under the fifth edition of the A.M.A., *Guides,* the Office properly referred the case record for review by its medical consultant. Based on Dr. Schenck's examination findings and section 16.5d of the A.M.A., *Guides*,[5] the Office medical consultant determined that appellant had a 25 percent

[1] The Office also referred the case records to another Office medical consultant on December 4, 2002 who on December 9, 2002 recommended a 4 percent permanent impairment of the right upper extremity and a 12 percent permanent impairment of the left upper extremity. The Office, however, relied on the October 26, 2002 Office medical consultant's report as it was to the benefit of appellant.

[2] The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks of compensation. 5 U.S.C. § 8107(c)(1). With respect to the loss of one's lower extremity, pursuant to 5 U.S.C. § 8107(c)(2), an employee shall receive 288 weeks of compensation for a total, or 100 percent loss of use of a leg.

[3] A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404 (1999); *see Joseph Lawrence, Jr*., 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002).

[4] FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

[5] A.M.A., *Guides*, *supra* note 3 at 491-95.

sensory impairment for occasional subjective numbness in the fingertips,[6] and a 39 percent impairment of the upper extremity due to sensory deficit in the distribution of the median nerve below the mid-forearm.[7] He then determined that appellant was entitled to a 10 percent per impairment of each upper extremity.[8] The Office medical consultant also noted appellant's variability in strength testing and advised that those values were determined to be unreliable to determine an impairment rating for grip strength. The Office medical consultant stated that appellant's date of maximum medical improvement was September 11, 2002, the date of Dr. Schenck's evaluation. Inasmuch as the Office medical consultant's calculation of appellant's impairments conforms to the A.M.A., *Guides*, his findings constitute the weight of the medical evidence. Accordingly, appellant has failed to provide any probative medical evidence that he has greater than a 10 percent impairment of the right upper extremity and greater than a 10 percent impairment of the left upper extremity.

On appeal, appellant argued that he lost grip strength as a result of his injury. The Board notes that the Office medical consultant determined that appellant's grip strength results varied greatly from June to October 2001, and thus were unreliable values.[9] Further, the Board notes that the standards enunciated in the A.M.A., *Guides* discourage the use of strength measurements in determining impairments. Section 16.8 of the A.M.A., *Guides* under the heading "Strength Evaluation" states:

> "Because strength measurements are functional tests influenced by subjective factors that are difficult to control and the [A.M.A.,] *Guides* for the most part is based on anatomic impairment, the [A.M.A.,] *Guides* does not assign a large role to such measurements. Those who have contributed to the [A.M.A.,] *Guides* believe further research is needed before loss of grip and pinch strength is given a larger role in impairment evaluation."[10]

CONCLUSION

The Board finds that appellant failed to establish that he has more than a 10 percent permanent impairment of the right upper extremity and a 10 percent impairment of the left upper extremity.

[6] A.M.A., *Guides supra* note 3, Table 16-10 at 482.

[7] *Id*., Table 16-15 at 492.

[8] Under Tables 16-10 and 16-15, at pages 482 and 489 of the A.M.A., *Guides*, a Grade 4 rating (25 percent) and a maximum sensory deficit (39 percent) results in a 10 percent impairment (25 percent x 39 percent = 9.75 percent).

[9] Appellant's June 2001 right grip strength in 3 tests ranged from 69 to 100 pounds, his left grip strength ranged from 90 to 66 pounds. His October 2001 right grip strength ranged from 69 to 73 pounds on the right, while his left ranged from 51 to 35 pounds. The average grip strength for a 38-year-old right-handed male is approximately 108 pounds in the right and approximately 98 pounds in the left.

[10] A.M.A., *Guides, supra* note 3 at 507.

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member