

JAMES S. GURCIK, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE, Bell
Mawr, NJ, Employer**

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Office of Solicitor, for the Director

Case Submitted on the Record

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

On March 26, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated December 19, 2002. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has more than a seven percent impairment of his right hand and wrist for which he received a schedule award.

This is the second appeal before the Board. By decision dated August 13, 2002, the Board set aside the decisions of the Office dated December 21 and April 18, 2000 and remanded the case to the Office to determine appellant's impairment rating based on his bilateral carpal tunnel syndrome.¹ The Board found that the Office had failed to consider

¹ Docket No. 01-1202 (issued August 13, 2002).

the relevant reports of Dr. Kenneth C. Peacock, a Board-certified orthopedic surgeon, and Dr. David Weiss, an osteopath, in denying appellant a merit review based on his request for reconsideration. The law and the facts as set forth in the previous Board decision are incorporated herein by reference.²

Subsequent to the Board's August 13, 2002 decision, on October 10, 2002, the Office requested that appellant obtain a supplemental report from Dr. Craig H. Rosen, his treating orthopedist, to support his January 24, 2000 opinion that appellant had a three percent bilateral impairment based on pain and discomfort, and also explain why he based his impairment rating, in part, on strength testing.³ The Office also noted that it had reviewed the previously submitted reports of Drs. Peacock and Weiss as ordered by the Board and determined that neither of the reports supported an entitlement to right hand/wrist impairment greater than seven percent. The Office requested that Drs. Peacock and Weiss submit additional evidence to support appellant's claim for an increase in his impairment rating.⁴ Appellant did not submit additional evidence in support of his claim.

By decision dated December 19, 2002, the Office denied modification of its April 18, 2000 decision on the grounds that the evidence failed to establish that appellant sustained greater than a seven percent permanent impairment for the right hand/wrist for which he received a schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁵ provides that, if there is a permanent disability involving the loss or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating scheduled losses.⁶

² The Office had accepted that appellant sustained bilateral carpal tunnel syndrome and subsequently authorized a left carpal tunnel release on February 25, 1998 and a right carpal tunnel release on December 9, 1998. Appellant retired from federal service on February 28, 1999. On April 18, 2000 the Office awarded appellant a seven percent schedule award of the right hand/wrist.

³ In its decision, the Board advised that strength testing was rarely used in hand impairment rating evaluations.

⁴ In its October 10, 2002 letter, the Office distinguished an amended schedule award, which is based on incorrect calculations, and an additional award, which is based on an increase in disability based on the original injury.

⁵ 5 U.S.C. § 8107.

⁶ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

ANALYSIS

The relevant medical evidence includes a report dated January 24, 2000 from Dr. Rosen, appellant's treating orthopedist, who noted that on July 16, 1997 appellant had a positive Tinel's sign in both wrists and that an electromyogram revealed bilateral carpal tunnel syndrome. He noted appellant's history of injury including a left carpal tunnel release on February 25, 1998 and a right release on December 9, 1998. Subsequent x-rays revealed bilateral degenerative disease at the thumbs. He then noted that a Jamar evaluation showed 80-pound strength on the right, appellant's dominate side, and 90 on the left. Based on the fourth edition of the A.M.A., *Guides*, Dr. Rosen advised that appellant's right hand had a 3 percent impairment due to decreased strength, 4 percent impairment for restrictions in range of motion and 3 percent for residual pain for a total impairment of 10 percent. Dr. Rosen cited page 19, page 36, Figure 26 and page 57, Table 16 of the A.M.A., *Guides*. Regarding the left hand, Dr. Rosen found a three percent impairment for residual pain and discomfort of the left hand. He advised that appellant had residual discomfort in both hands, noting a weak right hand but no sensory abnormalities.

In a report dated April 5, 2000, the Office medical adviser stated that he had reviewed Dr. Rosen's report and determined that appellant had a seven percent impairment of the right hand based on three percent for loss of strength⁷ and four percent impairment for loss of range of motion.⁸ He noted that in the absence of a sensory or motor loss there was no impairment for pain and discomfort for either hand. Dr. Rosen then rated appellant's left hand/wrist at zero percent impairment.

In a report dated March 23, 2000, Dr. Peacock, a Board-certified orthopedic surgeon, noted right-sided dorsiflexion of 70 degrees; Palmar flexion of 70 degrees, radial deviation of 30 degrees; ulnar deviation of 55 degrees; on the left, he found dorsiflexion of 70 degrees, Palmar flexion of 75 degrees, radial deviation of 30 degrees and ulnar deviation of 60 degrees. He noted a positive Tinel's sign on the right and left wrist and a negative on the right and left forearm and cubital tunnel. Phalen's test was positive on the right and negative on the left. He diagnosed bilateral carpal tunnel syndrome. Manual muscle testing was normal. However, he found that appellant's decreased sensation of the thumb resulted in a seven and one half percent impairment of the thumb due to loss of sensation,⁹ which is three percent of the hand¹⁰ which is a three percent upper extremity impairment.¹¹ Using a diagnosis method, Dr. Peacock found 10

⁷ A.M.A., *Guides*, 34, Figure 23.

⁸ *Id.* at 36, Figure 26.

⁹ *Id.* at 24, Figure 7.

¹⁰ *Id.* at 18, Table 1.

¹¹ *Id.* at 19, Table 2.

percent impairment of the upper extremity based on thumb sensory loss and loss of strength with grip testing.¹²

In a report dated August 31, 2000, Dr. Weiss, appellant's treating osteopath, noted right and left dorsiflexion of 75 degrees; Palmar flexion of 75 degrees, radial deviation of 20 degrees; ulnar deviation of 35 degrees with a positive Tinel's sign and negative Phalen's test. He advised that there was "some triggering phenomenon ongoing with the right thumb." Dr. Weiss also noted a sensory decrease over the index finger of the right hand consistent with a median nerve problem and diagnosed trauma disorder, bilateral carpal tunnel syndrome with release, right thumb trigger phenomenon, finger trigger release and a history of left trigger finger phenomenon. Dr. Weiss rated appellant's impairment based on the fourth edition of the A.M.A., *Guides* as follows: median nerve entrapment of the right wrist at 20 percent,¹³ for a total of 20 percent impairment of the right upper extremity, and median nerve entrapment for the left wrist at 10 percent¹⁴ for a 10 percent impairment of the left upper extremity. He advised that appellant reached maximum medical improvement on August 28, 2000. Dr. Weiss failed to reference specific charts or tables from the A.M.A., *Guides* and thus his report is of limited probative value.

However, the Board notes that the Office medical adviser did not review Dr. Peacock's March 2000 report in which Dr. Peacock found a 10 percent upper extremity impairment based on thumb sensory loss and loss of strength with grip testing. Dr. Peacock does not clarify whether the impairment is for bilateral upper extremity or for only one extremity. His report is of insufficient probative value to calculate a schedule award.

The Board holds that the record contains conflicting medical opinions between the opinions of Dr. Rosen, appellant's orthopedist, who calculated a 10 percent impairment of the right hand and a 3 percent impairment of the left hand, and the Office medical adviser who calculated a 7 percent impairment of appellant's right hand only using the figures and examination findings supplied by Dr. Rosen. Because there is a conflict between appellant's treating orthopedist and the Office medical adviser regarding the degree of impairment of appellant's bilateral carpal tunnel syndrome, a conflict in medical opinions exists.

CONCLUSION

On remand, the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination. The impartial medical specialist should be requested to make a full description of findings from examination and to provide impairment evaluations of

¹² *Id.* at 57, Table 16.

¹³ *Id.* at 54, Table 16.

¹⁴ *Id.*

appellant's bilateral carpal tunnel syndrome. Upon further development of the case as the Office deems necessary, it shall issue a *de novo* decision.

ORDER

IT IS ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 19, 2002 is set aside and the case is remanded for further action consistent with this opinion.

Issued: November 18, 2003

Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member