United States Department of Labor
Employees' Compensation Appeals Board

CARLOS B. SMITH, Appellant	)	
and	)	**Docket No. 03-1871**
	)	**Issued: February 18, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Columbus, OH, Employer	)	

Appearances:
Carlos B. Smith, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On July 16, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated May 19, 2003. 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 on appeal is whether appellant has established entitlement to an additional schedule award to the upper extremities.

FACTUAL HISTORY

On August 18, 1997 appellant then a 48-year-old distribution clerk filed an occupational disease claim alleging that the repetitive motion of his work duties including throwing mail on or about July 29, 1997 caused numbness and pain in his hands, wrists and arms. On November 19, 1997 the Office accepted the claim for bilateral carpal tunnel syndrome and authorized surgery. Appellant did not stop working immediately following the injury. He had intermittent periods of disability with right release surgery on December 23, 1997 and left

release surgery on January 27, 1998. Appellant accepted a permanent rehabilitative position with the employing establishment on April 29, 1999.[1]

By decision dated November 30, 1999, the Office issued appellant a schedule award for a two percent permanent impairment of the right upper extremity and three percent permanent impairment of the left upper extremity. The Office based its finding on the calculation of the district medical adviser who applied the applicable tables of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) to determine the impairment based on the medical findings of Dr. Michael Ruff, an attending Board-certified orthopedic surgeon and appellant's treating physician.

On March 4, 2000 appellant filed a Form CA-7 claim for an additional schedule award. By decision dated October 17, 2000, the Office issued appellant an eight percent increase in permanent impairment of the right upper extremity and a seven percent increase in permanent impairment of the left upper extremity for a total of ten percent for both the right and left arm.

On June 20, 2001 appellant filed an occupational disease claim for cubital tunnel syndrome which he allegedly first became aware of on March 13, 2000. By decision dated October 5, 2001, the Office denied his claim. In a letter dated November 15, 2001, appellant requested reconsideration of the prior decision. He submitted a medical report from Dr. Charles Kistler, an osteopath, which stated that he underwent electromyography studies on March 13, 2000 which confirmed that he had right and left recurrent carpal tunnel syndrome and right cubital syndrome. Dr. Kistler further opined, based on a reasonable medical certainty and probability, that there was a direct causal relationship to the recurrent carpal tunnel syndrome and employment factors. On February 12, 2002 the Office thereafter vacated its prior order and decision dated October 5, 2001 and accepted the claim for right cubital tunnel syndrome and recurrent bilateral carpal tunnel syndrome.

On March 4, 2002 appellant filed a Form CA-7 claim for an additional schedule award. In a report dated March 14, 2002, Dr. Kistler discussed his recent physical examination of appellant and medical findings. The Office furnished the district medical adviser with the report; however, she was unable to calculate a permanent partial impairment so the Office requested that Dr. Kistler submit additional information. In a supplemental report dated April 23, 2002, Dr. Kistler stated "[i]t appears that [appellant] has a [G]rade [4] and 24 percent sensory deficit in his left hand and a [G]rade [3] and 35 percent sensory deficit in his right hand this is from Table 1610. It appears that [appellant] has a [G]rade [3] or 28 percent motor deficit in his left wrist and a [G]rade [3] and 42 percent motor deficit in his right wrist from Table 1611." The district medical adviser found the supplemental report from Dr. Kistler deficient and, thus, the Office sent appellant to Dr. James Rutherford, an Office referral physician and Board-certified orthopedic surgeon, for an impairment rating.

Dr. Rutherford conducted a medical examination of appellant and, in a report dated July 17, 2002, outlined appellant's medical history, his findings on examination with emphasis on the accepted conditions and answered questions provided by the Office. He indicated that

[1] The Office issued a decision on September 10, 1999 finding that the accepted position reasonably and fairly represented his wage-earning capacity.

appellant had reached maximum medical improvement on July 17, 2002, the date of his examination, but noted that, because Dr. Kistler previously found that appellant had reached maximum medical improvement on January 10, 2002, it was reasonable to conclude that he had reached such by that date. Dr. Rutherford further responded to the Office question regarding restrictions that appellant had no restriction of movement in terms of degrees of retained active motion. He also indicated that appellant had no restriction of movement of his shoulders, elbows, wrists and hands. Dr. Rutherford further noted that on clinical examination, appellant had decreased sensation in the right fifth finger and a lesser degree of paresthesias in the left fifth finger and on a Phalen's test he had very mild paresthesias in the median distribution of each hand and increased paresthesias in the fifth finger of each hand. He stated that appellant had tenderness over the right cubital tunnel and the medial aspect of the right elbow and some decreased grip strength on the right side with the repeated grip strength on the right side being 40, 50 and 40 and the grip strength on the left side being 60, 60 and 60 pounds. Dr. Rutherford indicated that appellant had subjective complaints of pain and discomfort, along with constant numbness and tingling in the right hand and frequent numbness and tingling in the left. Regarding impairment, Dr. Rutherford stated:

> "Based on his current orthopedic evaluation, [appellant] has ratable impairments related to residuals of mild carpal tunnel syndrome of each hand and residuals of a cubital tunnel syndrome on the right side. Based on Table 16-10 on page 482, it is my medical opinion that [appellant] has a 25 percent sensory deficit of his right hand a 25 percent sensory deficit of his left hand. The right side involves both the distribution of the median and ulnar nerve and the left side involves the distribution, primarily of the median nerve. [Appellant] also has a 25 percent decrease in the muscle function of the right hand affecting primarily the ulnar nerve. This was demonstrated with the grip strength. The reference for this is Table 16-11 on page 484. Applying these impairments to the maximum upper extremity impairment, due to unilateral sensory and motor deficits as described in Table 16-15 on page 492. [Appellant] would then have a 10 percent impairment related to the right upper extremity due to a sensory deficit from mild residuals of a carpal tunnel syndrome on the right side. He would also have a 10 percent impairment of the left upper extremity due to mild residuals of the carpal tunnel syndrome on the left side. In addition, he would have a two percent impairment of the right upper extremity related to decreased sensation on the ulnar nerve distribution of the right hand and a nine percent impairment of the right upper extremity related to decreased motor function of the ulnar nerve on the right side. It is thus my medical opinion that based on his current orthopedic evaluation, [appellant] has a 20 percent permanent impairment of the right upper extremity, which is a combined value of 10 percent for the mild residuals of a carpal tunnel syndrome on the right side and the motor and sensory deficits related to the cubital tunnel syndrome on the right side. This is a combined value of 10 percent, 9 percent and 2 percent with the reference being the [C]ombined [V]alues [C]hart on page 604. This represents an additional 10 percent impairment of the right upper extremity from the previously granted 10 percent impairment of the right upper extremity which was awarded for mild residual carpal tunnel syndrome related to a previous claim allowance. In addition, [appellant] has a 10 percent impairment of the left upper extremity based on mild residual symptoms of the

left carpal tunnel syndrome. [Appellant] has been previously granted a 10 percent impairment of the left upper extremity related to mild residual symptoms of the left carpal tunnel syndrome concerning a previous injury and claim number. [Appellant] at the time of my examination thus has no increase in the impairment of the left upper extremity that was previously granted for the same condition."

On August 12, 2002 Dr. Andrea Young, an internist and district medical adviser, reviewed his report and applied the fifth edition of the A.M.A., *Guides* to determine that appellant was not entitled to an additional amount for the left upper extremity because he already received a 10 percent permanent impairment for sensory defect but that he was entitled to an additional 11 percent for the right upper extremity. Dr. Young evaluated the maximum sensory involvement of the median nerve according to Table 16-15 on page 492 and found that appellant had 39 percent impairment of the right upper extremity and taking into consideration grade sensory deficit of 25 percent, she determined that 25 percent of 39 yields a permanent impairment of 9.75 or 10 percent of the right upper extremity. She then found that the maximum sensory involvement of the ulnar nerve was 7 percent according to Table 16-15 on page 492 and that 25 percent of 7 yields a permanent impairment of 1.75 percent or 2 percent of the right upper extremity. Dr. Young determined that according to Table 16-15 of page 492 appellant's maximum medical involvement was 46 percent. She stated that 25 percent for grade sensory deficit of 46 yields a permanent impairment of 11.5 or 12 percent or that according to Table 16-34 on page 509, with the right arm grip strength averaging 44 and the left 60, the index loss of strength of 60 minus 44 divided by 60 yields 26.6 rounded to 27, which was equivalent to a 10 percent permanent impairment. Dr. Young stated that loss of strength would be based on the objective data of grip strength and further stated that using the Combined Values Chart on page 604, 10 percent with 2 percent with 10 percent yields a 10 percent permanent impairment for the right upper extremity of 21 percent. She noted that because appellant had received a 10 percent impairment for the right upper extremity he should received an additional 11 percent for the right upper extremity.

By decision dated September 6, 2002, the Office issued appellant an additional 11 percent permanent loss of use of the right upper extremity. In a letter dated September 25, 2002, he requested a review of the written record regarding the September 6, 2002 schedule award. Appellant submitted an additional report from Dr. Kistler dated October 25, 2002 and a report from Dr. Desmond Stutzman, a Board-certified osteopath and hand surgeon, dated November 20, 2002. In Dr. Kistler's report, he stated that he initially treated appellant for bilateral carpal tunnel syndrome and lesion of the right ulnar nerve but that appellant had become symptomatic. He further stated that an electromyography of March 13, 2003 showed recurrent right and left carpal tunnel syndrome. Dr. Stutzman, in his report, discussed his examination of appellant and diagnosed status post carpal tunnel release bilaterally with continuing symptoms and ulnar nerve neuritis bilateral. He indicated that future studies were needed in order to determine how severe the cubital tunnel syndrome had progressed.

On April 28, 2003 the Office expanded appellant's claim to include cubital tunnel syndrome on the left side and authorized medical expenses. He thereafter filed a May 13, 2003 Form CA-7 claim for schedule award. By decision dated May 19, 2003, the Office advised appellant that he had been previously informed that it had already considered the issue of increased entitlement to an additional schedule award for permanent partial impairment for the

left upper extremity and determined that appellant was only entitled to a 10 percent impairment award and no additional amount.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing federal regulation,[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[4] 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

ANALYSIS

In the instant case, Dr. Young, the Office medical adviser properly applied the A.M.A., *Guides* to the physical findings of Dr. Rutherford to determine whether appellant was entitled to any additional impairment. In her August 12, 2002 report, Dr. Young evaluated Dr. Rutherford's findings of the left upper extremity and determined that appellant had already received the appropriate 10 percent impairment based on sensory deficits of the left median nerve and was not entitled to any additional impairment. Based on her calculations, the Board finds that Dr. Young correctly concluded that appellant was entitled to no additional impairment on the left. Dr. Young evaluated Dr. Rutherford's findings of the right upper extremity and found additional impairment. She calculated the median nerve involvement of the right upper extremity by determining that the maximum sensory involvement equaled 39 percent[6] and that the grade sensory deficit was 25 percent.[7] She then correctly found that 25 percent of 39 yielded a permanent impairment of 9.75 rounded to 10 pecent of the right upper extremity. Dr. Young then calculated impairment based on the involvement of the ulnar nerve by determining that the maximum sensory involvement was 7 percent[8] and that 25 percent (the grade sensory deficit) of 7 percent equaled 1.75 percent rounded to 2 percent of the right upper extremity. Dr. Young also properly determined that the maximum motor involvement was 46 percent[9] and that 25 percent

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] 5 U.S.C. § 8107(c)(19).

[5] *Supra* note 3.

[6] A.M.A., *Guides*, Table 16-15, page 492.

[7] A.M.A., *Guides*, Table 16-10, page 482.

[8] A.M.A., *Guides*, Table 16-15, page 492.

[9] A.M.A., *Guides*, Table 16-15, page 492.

(the grade sensory deficit) of 46 percent equaled 11.5 percent rounded to 12 percent of the right upper extremity. Although Dr. Young went on to calculate appellant's loss of strength based on objective data of grip strength, the Board notes that grip strength is typically rated separately except in limited cases and not applicable here.[10] According to her calculations, Dr. Young correctly concluded that appellant had a total of 21 percent impairment of the right upper extremity. She noted that because appellant had already received 10 percent on the right, he was entitled to an additional 11 percent impairment.

There is no evidence in the record establishing that appellant has more than a 21 percent impairment to his right upper extremity and a 10 percent impairment of his left upper extremity. No physician of record opined that appellant had a greater impairment than that for which he already received awards. As the medical evidence does not support any greater impairment than that for which he has received awards, the Office properly denied appellant an additional schedule award.

CONCLUSION

The Board finds that appellant has failed to establish that he is entitled to an additional schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 13, 2003 and September 6, 2002 are affirmed.

Issued: February 18, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[10] A.M.A., *Guides,* page 508.