

**United States Department of Labor
Employees' Compensation Appeals Board**

LILIBETH B. DEGUZMAN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Bernardino, CA, Employer**

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**Docket No. 04-1627
Issued: April 26, 2005**

Appearances:
Lilibeth B. Deguzman, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 14, 2004 appellant filed an appeal of an Office of Workers' Compensation Programs' merit decision dated March 18, 2004, denying her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established any permanent impairment of her upper extremities entitling her to a schedule award.

FACTUAL HISTORY

This is appellant's second appeal before the Board. In a November 20, 2003 decision, the Board found that she was not disabled for the period September 4, 2002 through January 6, 2003 due to her accepted bilateral carpal tunnel condition.¹ The facts and circumstances of this case are presented in the prior decision and are hereby incorporated by reference.

¹ Docket No. 03-1639 (issued November 20, 2003). Appellant's claim for bilateral carpal tunnel syndrome was accepted by the Office on October 8, 2002. She underwent surgical procedures for release of both wrists.

On June 25, 2003 appellant filed a claim for a schedule award for impairment to her upper extremities. By letter dated August 4, 2003, the Office referred appellant to Dr. Laurence Meltzer, a Board-certified orthopedic surgeon, for an evaluation in order to determine whether she had any permanent impairment due to her accepted condition. In a report dated September 12, 2003, Dr. Meltzer reviewed the statement of accepted facts and the history of medical treatment and surgery. He noted her complaints of discomfort around her hands and wrists and reported his findings on examination of the upper extremities. Dr. Meltzer noted that there was no swelling, redness or deformity of any of the joints of the upper extremities with no evidence of atrophy or circulatory defect. He noted well-healed scars from the previous carpal tunnel releases and no tenderness or drainage in or around the scar sites. Phalen's testing was negative bilaterally with normal sensation in the thumb and fingers. Appellant complained of a diminution of sensation over the dorsum of both hands, but he found no evidence of wrist drop or weakness with dorsiflexion or extension of her fingers. Tinel's sign was reported as negative, but with appellant stating that the test caused pain in her wrist and forearm. He noted that tapping over the median nerve was negative as were compression testing, Adson's maneuver and Finkelstein's testing.

Dr. Meltzer stated that when he asked appellant to grip, she could hardly hold his fingers. She stated that Jamar dynamometer grip testing caused pain. Dr. Meltzer reported findings on range of motion of the wrists and fingers and noted that motor strength testing was within normal limits throughout the upper extremities. He stated that sensation in the thumbs and index fingers was normal and equal bilaterally, noting her complaint of no feeling in the long, ring and little fingers. Dr. Meltzer found that appellant had recovered fully from her carpal tunnel surgeries and had no residuals. He noted that he did not believe that she gave a full effort while being examined. Although appellant stated that she could not pinch, Dr. Meltzer had her remove her watch and she demonstrated great dexterity with her right hand. He concluded that appellant had no permanent impairment to her upper extremities. Dr. Meltzer completed an Office work sheet in which he noted that she had reached maximum medical improvement by July, 2003 and that appellant's complaints of wrist pain were subjective.

In a March 10, 2004 report, Dr. Ellen Pichey, an Office medical adviser Board-certified in family practice, reviewed the medical evidence of record and noted that the report of Dr. Meltzer did not demonstrate any impairment to the upper extremities based on the accepted bilateral carpal tunnel condition. She noted that his medical report did not demonstrate any loss of range of motion, impairment due to loss of strength or sensory deficit and that there was zero percent impairment of the upper extremities. Dr. Pichey concurred that maximum medical improvement was as of July 31, 2003.

By decision dated March 18, 2004, the Office found that appellant was not entitled to a schedule award. The Office determined that the reports of Dr. Meltzer and the Office medical adviser constituted the weight of the medical opinion and established that appellant did not have any impairment to her upper extremities due to her accepted bilateral carpal tunnel condition.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing federal regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the discretion of the Office.⁴ 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 schedule losses.⁵ A medical opinion regarding permanent impairment that is not based upon application of the A.M.A., *Guides*, the standard adopted by the Office and approved by the Board as appropriate for evaluating schedule losses, is of diminished probative value in determining the extent of a claimant's permanent impairment.⁶

It is the claimant's burden of proof to establish that he or she sustained permanent impairment of a scheduled member or function as a result of an employment injury.⁷

ANAYLSIS

The Board finds that appellant has not established that her accepted condition of bilateral carpal tunnel syndrome, for which she underwent surgery, resulted in permanent impairment to her upper extremities. The weight of medical opinion is represented by the report of Dr. Meltzer, a Board-certified orthopedic surgeon, who evaluated appellant at the request of the Office. He provided a thorough medical report which reviewed her history of injury, medical treatment and provided findings on physical examination of her wrists and upper extremities. He noted appellant's complaint of pain and discomfort in her hands and wrists but noted that her subjective complaints were embellished based on his examination. Dr. Meltzer opined that appellant had fully recovered from her carpal tunnel surgeries and had no residuals of the accepted condition. He noted that she reached maximum medical improvement by the end of July, 2003 and that she demonstrated no permanent impairment of the upper extremities. In assessing the weight to be given the medical evidence of record, factors that determine its convincing quality include the opportunity for and thoroughness of the physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history of the

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ See *Danniel C. Goings*, 37 ECAB 781, 783-84 (1986); *Richard Beggs*, 28 ECAB 387, 391-93 (1977).

⁵ See *supra*, note 3.

⁶ *Carolyn E. Sellers*, 50 ECAB 393 (1999).

⁷ *Tammy L. Meehan*, 53 ECAB 229 (2001).

case, the care and analysis manifested in the physician's report and the medical rationale expressed in support of his opinion and stated conclusions.⁸ The Board finds that Dr. Meltzer's examination of appellant and report to the Office was based on a thorough examination and findings as stated in his medical report. He was requested to provide an opinion on impairment to appellant's upper extremities based on the accepted medical condition and he provided findings to support his conclusion that she did not have any impairment under the A.M.A. *Guides*.

An Office medical adviser reviewed Dr. Meltzer's report and concurred with his opinion that the findings on physical examination would not support a finding of permanent impairment under the A.M.A. *Guides*. The Board notes that the case record contains medical reports from Dr. Harkeerat S. Dhillon, an attending Board-certified orthopedic surgeon. Although he indicated that appellant experienced sensory loss around the area of her wrists, he did not provide any opinion on permanent impairment to the upper extremities or make an evaluation in conformance with the A.M.A. *Guides*. For this reason, his opinion is of diminished probative value.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained permanent impairment to her upper extremities based on the accepted condition of bilateral carpal tunnel syndrome. For this reason, she is not entitled to a schedule award.

⁸ See Anna M. Delaney, 53 ECAB 384 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 18, 2004 be affirmed.

Issued: April 26, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member