United States Department of Labor
Employees' Compensation Appeals Board

TARA L. HEIN, Appellant	)	
and	)	**Docket No. 05-191**
	)	**Issued: April 4, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Beaumont, CA, Employer	)	

Appearances:
Tara L. Hein, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 21, 2004 appellant filed a timely appeal from the August 4, 2004 merit decision of the Office of Workers' Compensation Programs, which awarded her compensation for a two percent permanent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this schedule award.

ISSUE

The issue is whether appellant has more than a two percent permanent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On November 18, 1998 appellant, then a 36-year-old window clerk, filed a claim alleging that the repetitive duties of her position caused tendinitis in her hand or wrist. The Office accepted her claim for right wrist tendinitis. Appellant underwent an arthroscopy on March 22, 2000 with minor exploratory surgeries on March 23 and June 1, 2001. She underwent a second arthroscopy on June 19, 2002. The Office paid compensation for temporary total disability.

On March 31, 2004 appellant filed a claim for a schedule award. In a report dated October 2, 2002, Dr. Lauri B. Hemsley, a specialist in occupational medicine, declared appellant permanent and stationary. She noted that appellant had occasional burning-type pain on the volar wrist when she overdid it with a lot of prolonged repetitive hand activities. Appellant also complained of a constant generalized aching pain in the whole wrist rated from 3 to 7 out of 10 and which increased with activities. Anti-inflammatories and heat reduced the pain to minimal overnight. Appellant reported no swelling or weakness.

On physical examination Dr. Hemsley reported no measurable atrophy, full range of right wrist and elbow motion, normal upper extremity sensation to light touch and pinprick, normal upper extremity motor strength, no evidence of loss of grip strength and normal reflexes.[1] She diagnosed status post recent wrist arthroscopy with debridement of ulnar scar tissue secondary to prior triangular fibrocartilage tear with subsequent arthroscopy. She added that appellant had lost 50 percent of her preinjury capacity for forceful or repetitive hand activities.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Laurence Meltzer, an orthopedic surgeon, for a second opinion. On May 13, 2004 Dr. Meltzer reported that appellant continued to have discomfort in her right wrist "but not very severe." On physical examination findings were generally negative. He noted slight tenderness over the triangular fibrocartilage but no pain with motion of the distal radial ulnar joint. He stated that motor strength was grossly within normal limits but noted slightly less grip strength on the right.[2] Reflexes and wrist and finger motions were normal.

Dr. Meltzer reported that appellant had recovered quite well. Given her slight tenderness over the distal ulna, however, he felt she had mild tendinitis. Based on her very minimal findings, he restricted her to lifting 20 pounds occasionally with both hands, 10 pounds repeatedly with both hands and 5 to 10 pounds repeatedly with just the right. He recommended no prolonged grasping with the right and stated that she should be able to rest her hand periodically. On a form provided by the Office, Dr. Meltzer indicated that appellant had mild discomfort in her right wrist that could not be localized to one particular area or nerve distribution and which decreased her lifting ability.

On July 7, 2004 an Office medical consultant reviewed Dr. Meltzer's findings and determined that appellant had a two percent impairment of the right upper extremity due to sensory deficit or pain.

In a decision dated August 4, 2004, the Office issued a schedule award for a two percent permanent impairment of the right upper extremity.

[1] Jamar dynamometer readings were 55, 60 and 60 pounds on the left and 50, 60 and 60 pounds on the right.

[2] Jamar dynamometer readings were 40, 50 and 40 pounds on the left and 30, 30 and 25 pounds on the right.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[3] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[4]

ANALYSIS

Dr. Hemsley and Dr. Meltzer examined appellant but did not rate her impairment under the A.M.A., *Guides*. Instead, the Office medical consultant reviewed Dr. Meltzer's findings, which were current, and determined that appellant had a two percent permanent impairment of the right upper extremity, which the Office awarded.[5] The problem is that the Office medical consultant did not adequately explain some of the calculations.

Dr. Meltzer reported essentially normal findings on examination but noted appellant's complaint of "not very severe discomfort" in her right wrist. He reported on the Office evaluation form that this discomfort could not be localized to one particular area or nerve distribution. Nonetheless, and without explanation, the Office medical consultant identified the nerve innervating the area of involvement as the radial nerve, which has a maximum upper extremity impairment value of five percent.[6] She graded appellant's discomfort under Table 16-10, page 482, of the A.M.A., *Guides* as Grade 3: "Distorted superficial tactile sensibility (diminished light touch and two-point discrimination), with some abnormal sensations or slight pain, that interferes with some activities." While this appears to be an appropriate grade based on the description of appellant's complaint and restrictions, the percentage of sensory deficit in Grade 3 ranges from 26 to 60 percent. The Office medical consultant selected 40 percent, again without explanation. In the case of *John Keller*, the Board found fault with this practice:

> "While the Board recognizes that the selection of these percentages from the allowable range involves a subjective judgment, an Office medical adviser, as a nonexamining physician, cannot select a percentage without any explanation or reference to the examining physician's findings. Such arbitrary selection precludes the Board from making an informed determination of the propriety of the Office medical adviser's calculation of the permanent impairment."[7]

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404. Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

[5] If the clinical findings are fully described, any knowledgeable observer may check the findings with the A.M.A., *Guides* criteria. A.M.A., *Guides* at 17.

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

[7] 39 ECAB 543, 547 (1988).

Thus, when the Office medical consultant followed the procedure set forth in Table 16-10, page 482, for determining impairment of the upper extremity due to sensory deficits or pain resulting from peripheral nerve disorders, she multiplied the severity of the sensory deficit, an unexplained 40 percent, by the maximum upper extremity impairment value of the radial nerve, the selection of which she also did not explain. This is not a proper basis for a schedule award.

The Board notes that, while impairment due to peripheral nerve injury may not be combined with impairment for loss of muscle strength,[8] appellant may be entitled to a schedule award for one or the other. Dr. Hemsley's findings support no impairment of the upper extremity due to loss of grip strength, but Dr. Meltzer's more recent measurements with the Jamar dynamometer indicate a ratable impairment under Table 16-34, page 509, of the A.M.A., *Guides*. The average strength of the left or "normal" hand was 43.33 pounds. The average strength on the right was 28.33.[9] This amounts to a 35 percent strength loss index using the formula on page 509, and a 20 percent impairment of the upper extremity under Table 16-34.

It is the responsibility of the evaluating physician to explain in writing why a particular method to assign the impairment rating was chosen. When uncertain about which method to choose, the evaluator should calculate the impairment using different alternatives and choose the method or combination of methods that gives the most clinically accurate impairment rating.[10] The Board will remand the case for a proper evaluation of impairment under the A.M.A., *Guides*.

CONCLUSION

This case is not in posture for a decision on whether appellant has more than a two percent permanent impairment of the right upper extremity. Further development of the medical evidence is warranted. After such further development as may be necessary to resolve appellant's entitlement to a schedule award, the Office shall issue an appropriate final decision.

[8] A.M.A., *Guides* at 526, Table 17-2.

[9] *See supra* note 2.

[10] A.M.A., *Guides* at 526.

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: April 4, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member