United States Department of Labor
Employees' Compensation Appeals Board

CLARK O. CLAY, Appellant	)	
	)	**Docket No. 05-720**
and	)	**Issued: August 23, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Dallas, TX, Employer	)	

Appearances:
Clark O. Clay, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 3, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated January 13, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant has more than a 17 percent permanent impairment of the right upper extremity and more than a 16 percent permanent impairment of the left upper extremity for which he received a schedule award.

FACTUAL HISTORY

Appellant filed an occupational disease claim on September 10, 2001 which was accepted for sprain/strain of the left rotator cuff and the Office authorized a rotator cuff repair, file number 16-2026030. On September 12, 2002 appellant was granted a schedule award for 16 percent permanent impairment of the left upper extremity. On May 6, 2002 appellant filed an occupational disease claim which was accepted for a right rotator cuff sprain and was

consolidated with file number 16-2026030. On December 29, 2003 appellant was granted a schedule award for 17 percent permanent impairment of the right upper extremity. On July 9, 2003 appellant filed a traumatic injury claim which was accepted for cellulites/abscess of the left upper arm, file number 16-2059897. All of the above claims were consolidated under file number 16-2026030.

On May 1, 2003 appellant, then a 59-year-old letter carrier, filed an occupational disease claim alleging that he developed bilateral carpal tunnel syndrome as a result of the repetitive use of his hands while in the performance of duty. The Office accepted bilateral carpal tunnel syndrome and osteoarthritis of both thumbs. Appellant did not stop work.

The record contains reports from Dr. David P. Taylor, a Board-certified orthopedist, appellant's treating physician who noted treating appellant since late 2002 for bilateral carpal tunnel syndrome and symptoms of numbness and tingling of his upper extremities.

On March 1, 2004 appellant filed a claim for a schedule award. Appellant submitted an electromyogram (EMG) dated March 8, 2004 which revealed abnormal studies with electrodiagnostic evidence of carpal tunnel syndrome bilaterally, mild in nature, neuropraxic and without denervation. It was noted that appellant's studies improved since the 2002 EMG.

In a letter dated March 8, 2004, the Office requested that appellant have his physician provide an evaluation as to the extent of permanent partial impairment of the left and right upper extremity in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[1] (A.M.A., *Guides*).

Appellant submitted a report from Dr. Taylor dated September 22, 2004, who noted that appellant had reached maximum medical improvement with regard to his bilateral carpal tunnel syndrome. He calculated that impairment due to sensory deficit or pain was a Grade 3 impairment of the median nerve below the mid forearm for both the right and left extremity based on the numbness and tingling of appellant's bilateral upper extremities which interferes with some activities, or a 30 percent sensory deficit of the 39 percent impairment allowed for upper extremity impairment due to sensory deficits of median nerve below the mid forearm. This totaled a 12 percent impairment of both the left and right upper extremity.[2] With regard to motor deficit, Dr. Taylor calculated impairment due to motor deficit as a Grade 4 of the median nerve below the mid forearm for both hands or a 10 percent motor deficit of the 10 percent impairment allowed for motor deficit of the median nerve below the mid forearm. This totaled a 1 percent impairment of both the left and right upper extremities. Dr. Taylor noted that, using the Combined Values Chart, page 604 of the A.M.A., *Guides*, appellant sustained a 13 percent impairment of the left and right upper extremity.[3] Dr. Taylor noted that limitation in the right wrist range of motion secondary to right wrist tendinitis was calculated as follows: flexion of 62

[1] A.M.A., *Guides* (5th ed. 2001).

[2] Table 16-10, 16-15, page 482, 492 (A.M.A., *Guides*).

[3] Table 16-11, 16-15, page 484, 492 (A.M.A., *Guides*).

degrees,[4] extension of 38 degrees,[5] radial deviation of 17 degrees,[6] and 30 degrees of ulnar deviation[7] for an impairment rating of 5 percent impairment of the right wrist. He noted that limitation in the left wrist and elbow range of motion secondary to olecranon bursitis was calculated as follows: flexion of 62 degrees,[8] extension of 54 degrees,[9] radial deviation of 30 degrees[10] and ulnar deviation of 30 degrees[11] for an impairment rating of 2 percent. Dr. Taylor further noted that limitation of the elbow was calculated as follows: flexion of 138 degrees,[12] and extension of 12 degrees.[13] Utilizing the Combined Values Chart on page 604 of the A.M.A., *Guides*, appellant sustained a 17 percent impairment of the right upper extremity and a 16 percent impairment of the left upper extremity.

The Office referred the medical evidence to an Office medical adviser who, in a report dated January 6, 2005, agreed with Dr. Taylor that appellant sustained a 13 percent permanent impairment of both the right and left upper extremities based on impairment due to sensory deficit or pain and motor deficit affecting the median nerve below the forearm. The medical adviser noted, however, that Dr. Taylor had also provided a rating which combined loss of range of motion with the sensory and motor deficits. He advised that no consideration could be given for the loss of range of motion pursuant to the A.M.A., *Guides*, page 494. Additionally, medical adviser noted that no consideration was given for the elbow range of motion deficits because there was no accepted condition of the elbow.

In a decision dated January 13, 2005, the Office denied appellant's claim for an additional schedule award. The Office noted that appellant was previously paid a schedule award of 17 percent impairment of the right upper extremity and 16 percent permanent impairment of the left upper extremity under file number 16-2026030 and the medical evidence did not support greater impairment.

[4] Figure 16-28, page 467 (A.M.A., *Guides*).

[5] *Id.*

[6] Figure 16-31, page 469 (A.M.A., *Guides*).

[7] *Id.*

[8] Figure 16-28, page 467 (A.M.A., *Guides*).

[9] *Id.*

[10] Figure 16-31, page 469 (A.M.A., *Guides*).

[11] *Id.*

[12] Figure 16-34, page 472 (A.M.A., *Guides*).

[13] *Id.*

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[14] and its implementing regulation[15] sets 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. 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.[16]

ANALYSIS

In support of his claim for a schedule award appellant submitted a report from Dr. Taylor dated September 22, 2004. Dr. Taylor properly calculated that impairment due to sensory deficit or pain as a Grade 3 for the median nerve below the mid forearm for both the right and left extremity based on the numbness and tingling of appellant's bilateral upper extremities which interferes with some activities. This represents a 30 percent sensory deficit of the 39 percent impairment allowed for upper extremity impairment due to sensory deficits of the median nerve below the mid forearm, or a 12 percent impairment of both the left and right upper extremity.[17] With regard to motor deficit, Dr. Taylor determined the motor deficit was Grade 4 of the median nerve below the mid forearm for both hands, or a 10 percent motor deficit of the 10 percent impairment allowed for motor deficit of the median nerve below the mid forearm. This results in a 1 percent impairment of both the left and right upper extremities. Dr. Taylor used the Combined Values Chart, page 604 of the A.M.A., *Guides* to combine the motor and sensory deficit impairments to find that appellant sustained a 13 percent impairment of the left and right upper extremity.[18]

Dr. Taylor allowed impairment for loss of right wrist range of motion secondary to right wrist tendinitis to allow for another 5 percent impairment of the right wrist. However, the Board notes that in rating sensory and motor deficits in cases of entrapment or compression neuropathies, the A.M.A., *Guides*, provide that, in the absence of complex regional pain syndrome, impairment values are not to be given for decreased motion.[19] Office procedures[20] specifically provide that upper extremity impairment secondary to carpal tunnel syndrome and

[14] 5 U.S.C. § 8107.

[15] 20 C.F.R. § 10.404 (1999).

[16] *Id.*

[17] Table 16-10, 16-15, page 482, 492 (A.M.A., *Guides*).

[18] Table 16-11, 16-15, page 484, 492 (A.M.A., *Guides*).

[19] *See* A.M.A., *Guides*, 5th ed., pp. 494-95.

[20] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808 (March 1995).

other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[21] Under the fifth edition of the A.M.A., *Guides*, schedule awards for carpal tunnel syndrome are predicated on motor and sensory impairments only.[22]

The A.M.A., *Guides* provide in the absence of complex regional pain syndrome, additional impairment values derived from section 16.4 are not given for decreased motion to avoid duplication or unwarranted increase in the impairment estimation.[23] In this case there is no evidence of complex regional pain syndrome, consequently, no impairment is attributable for decreased motion of the wrist.[24]

Additionally, Dr. Taylor noted that appellant sustained permanent impairment of the right elbow and provided elbow range of motion deficits; however, appellant's condition was not accepted for an elbow condition and therefore no impairment rating can be awarded for a nonaccepted condition.[25]

The Office medical adviser correlated the findings from Dr. Taylor's report to the specific provisions in the A.M.A., *Guides.* He properly determined that appellant sustained a 13 percent impairment of the left upper extremity and a 13 percent impairment of the right upper extremity in accordance with the fifth edition of the of the A.M.A., *Guides.*[26] He noted that appellant reached maximum medical improvement on September 22, 2004. He advised that no consideration was given for the losses of range of motion as set forth by Dr. Taylor. The Office medical adviser properly applied the A.M.A., *Guides* to Dr. Taylor's September 22, 2004 report to find a 13 percent permanent impairment of the right upper extremity and a 13 percent permanent impairment of the left upper extremity. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no greater impairment than that for which he previously received a schedule award.

CONCLUSION

The Board finds that appellant is not entitled to an additional schedule award for either of his upper extremities. Appellant was previously awarded a 17 percent permanent impairment of the right upper extremity and a 16 percent impairment of the left upper extremity. He has not established greater impairment of his upper extremities.

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[21] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[22] *Robert V. Disalvatore*, 54 ECAB ___ (Docket No. 02-2256, issued January 17, 2003) (where the Board found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory impairments only); *John E. Hesser*, Docket No. 03-1359 (issued December 31, 2003) (where the Board found that in a carpal tunnel schedule award case, there generally will be no ratings based on loss of motion or grip strength as schedule awards for carpal tunnel syndrome are predicated on motor and sensory impairments only).

[23] A.M.A., *Guides* at section 16.8a, page 508.

[24] *See* A.M.A., *Guides*, 16.5a, Impairment Evaluation Principles, page 480.

[25] *See Veronica Williams*, 56 ECAB ___ (Docket No. 04-2120, issued February 23, 2005).

[26] A.M.A., *Guides* (5th ed. 2001).

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board