United States Department of Labor
Employees' Compensation Appeals Board

AMANDA R. WILLIAMS, Appellant	)	
and	)	**Docket No. 04-1654**
	)	**Issued: January 18, 2005**
DEPARTMENT OF THE NAVY, NAVAL SURFACE WARFARE CENTER, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 15, 2004 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs' hearing representative dated February 5, 2004, affirming a decision that granted her a schedule award for a five percent impairment of the right upper extremity and a five percent impairment of the left upper extremity. 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 is whether appellant has more than a five percent right upper extremity impairment and five percent left upper extremity impairment for which she received a schedule award.

FACTUAL HISTORY

On June 2, 1999 appellant, then a 32-year-old program analyst, filed an occupational disease claim alleging that she had developed carpal tunnel syndrome in her right and left wrists

as a result of her employment duties. She continued to work. The Office accepted the claim for right carpal tunnel syndrome and a right carpal tunnel release was performed in October 1999, with subsequent recurrences in October 1999 with January 2001. The Office expanded the claim to include left carpal tunnel syndrome and authorized a left carpal tunnel release.[1]

On January 28, 2002 appellant filed a claim for a schedule award.

In a report dated September 21, 2001, Dr. David Weiss, appellant's attending orthopedist, provided findings on examination and stated that, according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* she had a 33 percent permanent impairment of the right upper extremity and a 33 percent impairment of the left upper extremity. He found a 30 percent grip strength deficit and a 3 percent impairment for pain for each extremity. Dr. Weiss found no left hand or wrist atrophy, mild thenar atrophy on the right, full range of motion bilaterally, and a normal neurological examination of both wrists.

In a February 4, 2002 report, an Office medical adviser advised that Dr. Weiss' calculations did not conform with Office standards for evaluating impairment. The medical adviser recommend that appellant be referred for a second opinion.

On February 11, 2002 the Office referred appellant to Dr. Stuart Gordon, a Board-certified orthopedic surgeon, for an impairment evaluation of her carpal tunnel syndrome.[2] In a February 27, 2002 report, Dr. Gordon stated that appellant had bilateral carpal tunnel syndrome and was post-status right carpal tunnel release. Upon examination, he found full range of motion of the wrists bilaterally, negative Watson and Lichtman test results, negative Phalen's and Tinel's signs, and no thenar atrophy. Dr. Gordon determined that, based on page 495 of the A.M.A., *Guides,* appellant had a five percent impairment of each upper extremity.

On April 12, 2002 the Office medical adviser reviewed Dr. Gordon's report and concurred with his findings and recommendation, noting February 27, 2002 as the date of maximum medical improvement.

On April 23, 2002 the Office granted appellant a schedule award for a five percent permanent impairment of both the left and right upper extremities. The award covered a period of 31.20 weeks. On April 26, 2002 appellant requested an oral hearing, which was held on November 19, 2003.

In a decision dated February 5, 2004, the hearing representative affirmed the April 23, 2002 decision.

[1] Appellant did not undergo left carpal tunnel release.

[2] The Office only noted a right carpal tunnel syndrome.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] 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* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

ANALYSIS

In support of her claim for a schedule award, appellant submitted a report from Dr. Weiss dated September 21, 2001. The Board has carefully reviewed Dr. Weiss' report and notes that, although the doctor determined that appellant sustained a 33 percent permanent impairment of each upper extremity, his conclusions do not conform to the protocols of the A.M.A., *Guides.* These procedures[6] provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[7]

Section 16.5d of the A.M.A., *Guides* provides that, in rating compression neuropathies, additional impairment values are not given for decreased grip strength.[8] Section 16.8a provides that impairment based on grip strength should be used only in "rare" instances, and that, unless impairment cannot be adequately considered by other methods in the A.M.A., *Guides*, "the impairment ratings based on objective anatomic findings take precedence."[9] (Emphasis omitted.)

Dr. Weiss reported that appellant had essentially no sensory impairment or muscle atrophy in either extremity. However, he rated appellant with a 30 percent grip strength deficit in both the right and left hands. Grip strength performed *via* Jamar hand dynamometer at Level III revealed 12 kilograms (kg) of force strength involving the right hand versus 8 kg of force

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[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Willie C. Howard*, 55 ECAB ___ (Docket No. 04-342 & 04-464, issued May 27, 2004). *See* American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

[6] *See* FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exhibit 4 (June 2003).

[7] *See Joseph Lawrence, Jr.*, 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002).

[8] A.M.A., *Guides* at 494.

[9] *Id*. at 508.

strength involving the left. He then rated appellant with a 30 percent impairment for right grip strength deficit and 30 percent for left grip deficit for a 30 percent impairment for each extremity, citing Table 16-32 and 16-34 of the A.M.A., *Guides*.[10] He then found a 3 percent impairment for pain,[11] for a total 33 percent permanent impairment for each upper extremity. In making these impairment ratings of appellant's upper extremities, Dr. Weiss did not provide an explanation as to why the rating could not be adequately considered based on the objective anatomic findings such that a grip strength rating should be used. Additionally, Dr. Weiss used Figure 18-1 of Chapter 18 of the A.M.A., *Guides*[12] to allow three percent impairment for pain in each arm. However, FECA Bulletin 01-05 and Office procedures caution against using Chapter 18 to evaluate impairments due to pain, noting that section 18.3b of the A.M.A., *Guides* provides that "examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the [A.M.A.,] *Guides*."[13] Office procedures state that Chapter 18 "is not to be used in combination with other methods to measure impairment due to sensory pain (Chapters 13, 16 and 17)."[14] The Board finds that Dr. Weiss' impairment evaluation was not in conformance with the A.M.A., *Guides* and Office procedures.

Dr. Gordon, an Office referral physician, provided findings on examination in a report dated February 27, 2002 and determined that appellant had a five percent permanent impairment of the right extremity based on the second scenario presented at page 495 of the fifth edition of the A.M.A., *Guides*. This section of the A.M.A., *Guides* provides for up to five percent impairment where residual carpal tunnel syndrome is present with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles after there has been optimal recovery time following surgical decompression.

However, Dr. Gordon improperly applied the second scenario noted on page 495 to appellant's left arm. The Board notes that, although the Office accepted left carpal tunnel syndrome and authorized left carpal tunnel release, appellant did not undergo surgical decompression. Therefore page 495 does not apply as it is relevant to claimants who continue to be symptomatic after "an optimal recovery time following surgical decompression."[15] As appellant did not undergo surgery, none of the three scenarios following surgical decompression apply to her left arm. Consequently, the Office erred in finding entitlement to five percent impairment for the left arm based on Dr. Gordon's finding that the second scenario applied.

[10] *Id*. at 509, Table 16-32, 16-34.

[11] *Id*. at 574, Figure 18-1.

[12] *Id.* at 574.

[13] *See supra* note 6; *Id*. at 571.

[14] *See supra* note 6.

[15] A.M.A., *Guides* at 495.

As Dr. Gordon's report did not properly apply the A.M.A., *Guides* to determine appellant's left upper extremity impairment, the Office's February 5, 2004 decision will be set aside and the case remanded to the Office for further medical development.[16]

CONCLUSION

The Board finds that appellant has not established entitlement to more than five percent impairment of the right arm for which she has received a schedule award. Regarding the left arm, the February 5, 2004 decision will be set aside and the case remanded to the Office for further development.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded to the Office for further development consistent with this opinion of the Board.

Issued: January 18, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[16] *See also Mae Z. Hackett*, 34 ECAB 1421 (1983) (where the Office referred appellant to a second opinion physician, it has the responsibility to obtain an evaluation that will resolve the issue involved in the case).