United States Department of Labor
Employees' Compensation Appeals Board

SHARON B. JONES, Appellant	)	
and	)	**Docket No. 05-1597**
	)	**Issued: November 17, 2005**
DEPARTMENT OF VETERANS AFFAIRS, St. Louis, MO, Employer	)	

Appearances:
Sharon B. Jones, 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
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On July 25, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated April 12, 2005, in which an Office hearing representative affirmed an Office decision on appellant's entitlement to a schedule award. Under 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 seven percent permanent impairment to the right upper extremity and more than two percent impairment to the left upper extremity due to her accepted condition of bilateral carpal tunnel syndrome, for which she received a schedule award. On appeal, appellant asserts she is entitled to a greater award as the Office did not consider all the pertinent medical evidence of file, such as pain complaints and problems with her ulnar nerve, when granting her schedule award.

FACTUAL HISTORY

On September 14, 2001 appellant, then a 53-year-old oral surgery assistant, filed a claim for occupational disease asserting that she developed bilateral carpal tunnel syndrome as a result of repetitious activities she performed with her hands while in the performance of her federal duties. On November 28, 2001 the Office accepted appellant's claim for the condition of bilateral carpal tunnel syndrome.[1] Appellant underwent a left carpal tunnel release on November 11, 2002 and a right carpal tunnel release on January 27, 2003, which were performed by her treating physician Dr. Francis Dysarz, a Board-certified general surgeon. On March 13, 2003 appellant retired from the employing establishment.

In a June 29, 2003 letter, Dr. Dysarz opined that appellant reached maximum medical improvement from a carpal tunnel standpoint and that she did not appear to sustain any permanent impairment.

On October 7, 2004 appellant filed a claim for a schedule award for her bilateral carpal tunnel conditions. The record reflects that appellant had a prior injury to her right shoulder on September 10, 1992, which the Office accepted for the condition of right rotator cuff tear.[2] By decision dated March 23, 2004, the Office awarded appellant compensation for an 11 percent impairment of the right upper extremity. Because the same body part was involved, the Office subsequently "doubled" the file relating to appellant's bilateral carpal tunnel syndrome into the file relating to the right shoulder injury.[3]

In further developing appellant's bilateral carpal tunnel syndrome schedule award claim, the Office referred appellant, together with the medical record, a statement of accepted facts and a list of questions to be answered to Dr. John Gragnani, a Board-certified physiatrist, for a second opinion.

In a November 29, 2004 report, Dr. Gragnani noted that appellant indicated that her left hand was very good but that she still had trouble with her right hand grip strength and numbness in the right little finger. His impression was bilateral carpal tunnel syndrome and bilateral carpal tunnel decompression surgeries. Dr. Gragnani described findings on examination, noting that the results of grip strength measurements and pinch grips, two-point discrimination and range of motion of both wrists. He indicated that there was no atrophy and no evidence of redness or swelling about the wrists. Dr. Gragnani also noted reviewing appellant's prior medical records. Dr. Gragnani stated that appellant had reached maximum medical improvement January 2004 and evaluated appellant's upper extremities pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[4] From Figure 16-31, page 469, and Figure 16-28, page 467, Dr. Gragnani considered range of motion findings, noting that pain was not in appellant's history. Range of motion findings for ulnar deviation measured 30

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[1] The case was assigned File No. 11-2004732.

[2] This claim was assigned File No. 11-0128003.

[3] The master file number is 11-0128003.

[4] Fifth edition 2001 (hereinafter A.M.A., *Guides*).

degrees for the right side and 28 degrees for the left side which equated to a 0 percent impairment. Range of motion findings for radial deviation of 34 degrees on the right side and 32 degrees on the left side equated to 0 percent impairment. Range of motion findings for flexion of 44 degrees on the right side equated to 3 percent impairment, and 54 degrees on the left side equated to 2 percent impairment. Range of motion for extension of 42 degrees on the right equated to 4 percent impairment, and 58 degrees on the left equated to 0 percent impairment. Based on the individual range of motion results, Dr. Gragnani found that appellant had a seven percent impairment on the right side and a two percent impairment on the left side. He found that there were no sensory or motor deficits for the left hand and opined that Tables 16-10 and 16-11 were not applicable. For the right hand, Dr. Gragnani found that Table 16-10 was not applicable but, due to decreased grip strength, a Grade 4 was estimated from Table 16-11 for a 10 percent motor deficit. He multiplied the 10 percent motor deficit by 10 percent from Table 16-15 for the medium nerve below the mid forearm to obtain an additional 1 percent of the right upper extremity at the wrist. In calculating the impairment for the right upper extremity, Dr. Gragnani utilized the combined values table on page 604 and combined the seven percent loss of range of motion with the one percent motor loss to yield an eight percent total impairment value. Dr. Gragnani found that appellant's total impairment for the left upper extremity was two percent.

On December 3, 2004 an Office medical adviser reviewed Dr. Gragnani's evaluation and concurred with his findings. The Office medical adviser found, however, that, since appellant had previously been awarded compensation for an 11 percent impairment of the right upper extremity, the residuals due to the right carpal tunnel syndrome must be combined with the previously awarded right shoulder impairment to determine the total right upper extremity impairment. The Office medical adviser therefore combined the 8 percent right upper extremity rating for the carpal tunnel condition with the 11 percent right upper extremity impairment due to the accepted shoulder condition and concluded that appellant had an 18 percent impairment of the right upper extremity due to her right shoulder condition and the right wrist condition. As appellant had already received compensation for the 11 percent impairment of the right upper extremity, the Office medical adviser concluded that appellant was entitled to an additional 7 percent impairment of the right upper extremity.

By decision dated December 13, 2004, the Office awarded appellant an additional 7 percent of the right upper extremity and a 2 percent impairment of the left upper extremity. The period of the award ran from January 31 to August 14, 2004 for a total of 28.08 weeks of compensation.

In a letter dated December 29, 2004, appellant requested a review of the written record. She argued that the schedule award did not take into account that she had serious problems with both arms and referred medical evidence which she alleged supported her ongoing problems. Appellant additionally alleged that she told Dr. Gragnani that she had pain in both wrists and that she did not tell him that her left hand was good, rather she said that she had less problems with her left hand than her right hand. She additionally alleged that the schedule award did not take into account her scarring, which have been a source of itching and pain since the surgeries, or her problems with the ulnar nerve at the elbow. Appellant resubmitted medical records previously of file.

By decision dated April 12, 2005, an Office hearing representative affirmed the December 13, 2004 decision, finding that the Office medical adviser's December 3, 2004 report in conjunction with Dr. Gragnani's November 29, 2004 report represented the weight of the medical opinion evidence and that appellant submitted no additional medical opinion evidence to establish that she had a greater impairment to either upper extremity than that already awarded. The Office hearing representative further found that although appellant indicated that she had an impairment to her upper extremities due to a problem with the ulnar nerve at both elbows, she never claimed such an injury as work related nor had the Office ever accepted such a condition as work related.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[5] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[6]

Under section 8107 of the Act[7] and section 10.404 of the implementing federal regulation,[8] schedule awards are payable for permanent impairment of specified body members, functions or organs. However, the Act does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses. Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is utilized to calculate any awards.[9]

ANALYSIS

The Office found that appellant established an 18 percent total impairment to the right upper extremity and 2 percent impairment to the left upper extremity. Because appellant had previously received a schedule award for 11 percent impairment to the right upper extremity, the Office awarded appellant an additional 7 percent impairment to the right upper extremity and a 2 percent impairment to the left upper extremity. The Office found that the Office medical adviser's December 3, 2004 report in conjunction with Dr. Gragnani's November 29, 2004 report represented the weight of the medical evidence. While appellant asserts on appeal that the medical evidence supports an impairment due to an ulnar nerve condition at the elbows, appellant has not submitted any medical evidence explaining how such condition has caused a

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[5] 5 U.S.C. §§ 8101-8193.

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404 (1999).

[9] *Rose V. Ford*, 55 ECAB ___ (Docket No. 04-15, issued April 6, 2004); *see* FECA Bulletin No. 01-05 (issued January 29, 2001).

ratable impairment under the A.M.A., *Guides* nor does the medical evidence support causal relationship between such claimed conditions and the conditions accepted by the Office.[10] As previously noted, appellant bears the burden of proof to establish the essential elements of her claim.[11]

In his report, Dr. Gragnani provided his findings on range on examination and correlated these findings with the A.M.A., *Guides* to conclude that appellant had an 8 percent impairment of the right upper extremity and a 2 percent impairment of the left upper extremity.[12] In arriving at these figures, Dr. Gragnani noted that for the left arm 28 degrees of ulnar deviation and 32 degrees of radial deviation, under Figure 16-31 page 469 of the A.M.A., *Guides*, equated to no impairment. Flexion of 54 degrees on the left side equated to 2 percent impairment while extension of 42 degrees equated to no impairment under Figure 16-28, page 467 of the A.M.A., *Guides*. For the right arm, Dr. Gragnani calculated that ulnar deviation of 30 degrees and radial deviation of 34 degrees, under Figure 16-31, page 469 of the A.M.A., *Guides*, equated to no impairment. Flexion of 44 degrees and extension of 42 degrees, under Figure 16-28, page 467 of the A.M.A., *Guides*, equated to 3 percent and 4 percent impairment, respectively. Dr. Gragnani further found that as there were no sensory or motor deficits for the right or left hand, there was no impairment under Tables 16-10 at page 482 and 16-11 at page 484 of the A.M.A, *Guides.* While appellant asserts on appeal that she has pain, there is no mention of pain on Dr. Gragnani's evaluation and appellant has not submitted any medical evidence supportive of such condition. For the right hand, Dr. Gragnani found decreased grip strength and estimated a Grade 4 from Table 16-11 at page 484 of the A.M.A., *Guides,* and a 10 percent motor deficit within the 1 to 25 percent allowed under Grade 4. He multiplied this by the maximum percentage of 10 percent due to a median nerve below the midforearm from Table 16-15 page 492 of the A.M.A., *Guides* to obtain an additional 1 percent of the right upper extremity at the wrist. Using the Combined Values Chart at page 604 of the A.M.A., *Guides*, Dr. Gragnani concluded that appellant's cumulative impairment for the seven percent loss of range of motion with the one percent motor loss yielded a total impairment of the right upper extremity of eight percent.

The Office medical adviser concurred with Dr. Gragnani's findings but noted that the total impairment value for appellant's right arm must encompass the previously awarded 11 percent impairment for appellant's right shoulder condition. Utilizing the Combined Values Chart at page 604 of the A.M.A., *Guides*, the Office medical adviser combined the previously awarded 11 percent impairment for appellant's right shoulder condition with the 8 percent right upper extremity impairment for appellant's current accepted condition which yielded a total permanent impairment of the right upper extremity of 18 percent.[13]

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[10] Although in his February 23, 2004 report, Dr. Dysarz noted that appellant's nerve conduction studies were consistent with bilateral cubital tunnel syndrome and recommended various options, including cubital tunnel release and ulnar nerve transposition, he offered no opinion on the causal relationship of this condition.

[11] *See Gary J. Watling, supra* note 6.

[12] While appellant asserts on appeal that she does have pain, there is no mention of pain on Dr. Gragnani's evaluation and appellant has not submitted any medical evidence supportive of such condition.

[13] *See* A.M.A., *Guides*, pp. 9-10 regarding the philosophy and use of the Combined Values Chart.

The Board concludes that the Office properly determined that appellant had a two percent impairment of the left upper extremity and eight percent impairment of the right upper extremity based on the findings of Dr. Gragnani and the Office medical adviser. The Board further finds that the Office medical adviser correctly combined the 8 percent impairment rating of the right arm based on the findings of Dr. Gragnani with appellant's previously awarded 11 percent impairment to the right arm in determining that appellant had a total permanent impairment of the right upper extremity of 18 percent. There is no medical evidence of record, based on the A.M.A., *Guides*, establishing that appellant has greater than 2 percent impairment of the left upper extremity or greater than 18 percent of the right upper extremity. As appellant had previously been awarded 11 percent impairment to the right upper extremity, the Office properly determined that appellant was entitled to an additional award of 7 percent impairment to the right upper extremity.

Accordingly, the Office properly awarded appellant compensation for two percent left arm impairment and seven percent right arm impairment for a total upper extremity impairment of nine percent. Section 8107(b)(1) of the Act provides that for total or 100 percent loss of use of the arm an employee is entitled to 312 weeks of compensation.[14] Nine percent impairment of the upper extremities equals 28.08 weeks of compensation (312 weeks multiplied by 9 percent), which appellant received.

CONCLUSION

The Board finds that appellant has no more than seven percent permanent impairment of the right upper extremity and no more than two percent impairment for the left upper extremity, for which she received a schedule award.

[14] 5 U.S.C. § 8107(b)(1).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2005 and December 13, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 17, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board