United States Department of Labor
Employees' Compensation Appeals Board

L.N., Appellant	)	
and	)	**Docket No. 06-1735**
	)	**Issued: January 24, 2007**
SOCIAL SECURITY ADMINISTRATION, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2006 appellant filed a timely appeal from the decision of an Office of Workers' Compensation Programs' hearing representative decision dated March 1, 2006 and a September 6, 2005 schedule award decision. 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 is entitled to an impairment greater than the five percent permanent impairment of the right upper extremity and eight percent permanent impairment of the left lower extremity already awarded.

FACTUAL HISTORY

Appellant, a 48-year-old service representative, injured her right wrist and left knee on March 28, 2002 when she slipped on a wet floor. Appellant filed a claim for benefits on April 2, 2002, which the Office accepted for left knee strain, contusion of the left knee and contusion of the right wrist. She underwent arthroscopic surgery for the right wrist on January 14, 2003.

In a report dated September 2, 2004, Dr. Nicholas Diamond, an osteopath in orthopedic surgery, found that appellant had a right upper extremity impairment of 26 percent and a left lower extremity impairment of 11 percent pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) fifth edition. He stated:

> "Ambulation: She is noted to ambulate with an antalgic gait and a limp, which she notes is intermittent due to knee pain.
>
> "Right wrist: Examination of the right wrist reveals as well-healed portal surgical scars over the right scapholunate measuring 2.5 cm [centimeters]. There is tenderness noted over the dorsal aspect of the scapholunate and over the ulnar and radial aspect of the right wrist. Finkelstein test is positive. Range of motion is restricted with dorsiflexion of 0-65/75 degrees and palmar-flexion of 0-65/75 degrees. Range of motion is painful with radial deviation and ulnar deviation.
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> "Upper arm circumferences: Upper arm circumferencial measurements reveal 43 cm on the right versus 40.5 on the left.
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> "Lower arm circumferences: Lower arm circumferencial measurements reveal 32 cm on the right versus 30 cm on the left.
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> "Grip strength: Grip strength testing performed *via* Jamar Hand Dynameter at Level [3] reveals 12.5 kg [kilograms] of force strength on the right versus 18 kg of force strength on the left. She is right hand dominant.
>
> "Muscle strength: Gross motor strength testing of the upper extremities reveals grip is graded at 4/5, radial and ulnar deviation is graded at 4/5.
>
> "Sensory examination: Sensory examination reveals a perceived sensory deficit over the radial nerve distribution of the right upper extremity to light touch and pin prick.
>
> "Left knee: Examination of the left knee reveals an effusion noted. There is peripatellar tenderness noted as well as crepitance. Range of motion is restricted and painful with flexion-extension of 0-130/140 degrees. Petafemoral compression produces pain and crepitance at 30 degrees.
>
> "Gastrocnemius circumferences: Gastrocnemius circumferencial measurements at 10 cm above the patella reveal 50 cm on the right versus 49 cm on the left.
>
> "Quadriceps circumferences: Quadriceps circumferencial measurements at 10 cm above the patella reveal 50 cm on the right versus 49 cm on the left.
>
> "Muscle strength testing: Manual muscle strength testing of the lower extremities reveals the quadriceps and gastrocnemius are graded at 4/5 to 4 + 5 on the left.
>
> "Neurological testing: Neurological testing reveals abnormal bulk."

Based on the above measurements and findings, Dr. Diamond derived the following impairment ratings: sensory deficit right radial nerve, 4 percent impairment under Table 16-10, page 482 and Table 16-15, page 492; right grip strength deficit, 20 percent impairment under Table 16-32 and Table 16-34, page 509. This amounted to a combined right upper extremity impairment of 23 percent impairment. He added 3 percent impairment for pain pursuant to Table 18-1, page 574, for a total 26 percent right upper extremity impairment. For the left lower extremity, Dr. Diamond found a left thigh atrophy of 8 percent under Table 17-6, page 530; and pain-related impairment of 3 percent, under Table 18-1, page 574 of the A.M.A., *Guides*, for a total 11 percent impairment of the left lower extremity.

In a report dated February 9, 2005, an Office medical adviser found that appellant had a five percent permanent impairment of the right upper extremity and an eight percent permanent of the left lower extremity pursuant to the A.M.A., *Guides*. The Office medical adviser found that, under section 16.8a at page 508 of the A.M.A., *Guides*, decreased strength calculations cannot be rated together with a rating based on pain. He, therefore, disallowed Dr. Diamond's rating based on strength grip. The Office medical adviser found that, with regard to the right upper extremity, appellant had a 5 percent impairment based on radial sensory loss, the maximum rating under Table 16-15 at page 492; this 5 percent rating translated to a Grade 3 impairment, 60 percent, at Table 16-10, page 482. He then multiplied 60 times the 5 percent impairment to arrive at a 3 percent radial impairment. The Office medical adviser calculated an additional two percent pain-related impairment, pursuant to relied on Table 18.1 at page 574, for a total right upper extremity impairment of five percent.

Regarding the left lower extremity, the Office medical adviser relied on Dr. Diamond's measurements to find a 1-3.0 radial circumference differential pursuant to Table 17-6.a. This corresponded to a mild-to-moderate impairment due to unilateral leg muscle atrophy, which resulted in a three to eight range of impairment based on circumferential difference in the left thigh. The Office medical adviser concurred with Dr. Diamond's rating of an eight percent left lower extremity impairment based on these measurements; however, he felt that the pain appellant manifested on examination was not of sufficient severity to warrant an impairment based on pain.

On September 6, 2005 the Office granted appellant a schedule award for a five percent permanent impairment to her right upper extremity and an eight percent permanent impairment to her left lower extremity for the period September 2, 2004 to May 30, 2005, for a total of 38.64 weeks of compensation.

On September 8, 2005 appellant's attorney requested an oral hearing, which was held on December 19, 2005. Appellant did not submit any additional medical evidence.

By decision dated March 1, 2006, an Office hearing representative affirmed the September 6, 2005 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] sets forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[2] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, fifth edition, as the standard to be used for evaluating schedule losses.[3]

ANALYSIS

The Board finds that this case is not in posture for decision.

In this case, the Office medical adviser took Dr. Diamond's findings, measurements and conclusions regarding appellant's right wrist and left knee and applied them to the relevant tables and charts of the A.M.A., *Guides*. The Office medical adviser derived his five percent right upper extremity impairment rating by using Table 16-10, page 482, which pertains to impairments due to sensory deficit or pain. He calculated that appellant had a 60 percent sensory deficit due to sensory deficit or pain of the right radial nerve in her right wrist; then he multiplied 60 percent times 5 for a 3 percent radial impairment pursuant to Table 16-15, page 492. The Office medical adviser combined this three percent impairment with an additional two percent impairment for pain pursuant to Chapter 18 to arrive at a five percent permanent impairment of the right upper extremity. According to section 18.3b of the A.M.A., *Guides*, however, "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*." This chapter is not to be used in combination with other methods to measure impairment due to sensory pain (Chapters 13, 16 and 17).[4] The evidence of record currently does not explain why appellant would be entitled to an additional rating for pain pursuant to Chapter 18. This case, therefore, requires further development of the medical evidence. On remand, the Office shall obtain an explanation as why and how appellant's pain was rated pursuant to Chapter 18.

[1] 5 U.S.C. §§ 8101-8193*; see* 5 U.S.C. § 8107(c).

[2] 5 U.S.C. § 8107(c)(19).

[3] 20 C.F.R. § 10.404.

[4] A.M.A., *Guides*, at page 571; Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 Exhibit 4 (June 2003).

Although Dr. Diamond calculated a moderate loss of grip strength, the Office medical adviser correctly found that appellant was not entitled to any impairment rating based on this calculation. The Board notes that the A.M.A., *Guides* only provide for limited circumstances where grip strength can be the basis for rating strength loss; none of these circumstances exist in this case.[5]

With regard to the left lower extremity, the Office medical adviser properly relied on Dr. Diamond's calculation of eight percent impairment under Table 17-6, which measures impairments based on muscle atrophy at section 17.2d of the A.M.A., *Guides*. Section 17.2d instructs the examiner to measure muscle atrophy by comparing the leg circumference of one leg to that of the other leg at equal distance from the joint line or another palpable anatomic structure. Using this method, Dr. Diamond compared quadriceps circumferencial measurements at 10cm above the patella on both legs, which indicated 50cm on the right versus 49cm on the left. He extrapolated these findings and, utilizing Table 17-6, calculated left thigh atrophy of eight percent under Table 17-6, page 530. The Office medical adviser relied on Dr. Diamond's measurements and concurred with his finding that appellant had an eight percent left lower extremity impairment, in conformance with Dr. Diamond's reliance on Table 17-6.a. Dr. Diamond accorded an additional 3 percent based on pain appellant manifested through flexion-extension of her left knee at 0-130/140 degrees, in addition to pain reflected by petafemoral compression and crepitance at 30 degrees. The Office medical adviser, however, did not consider these symptoms sufficiently significant to find impairment based on pain for the left lower extremity. The Board concludes that the Office medical adviser has properly applied the A.M.A., *Guides* in determining that appellant has no more than an eight percent permanent impairment of the left lower extremity.

CONCLUSION

The Board finds that the case is not in posture for decision regarding the degree of impairment to appellant's right upper extremity. The Board also finds that appellant has not established that she has more than an eight percent permanent impairment to her left lower extremity.

[5] Pursuant to section 16.8a of the A.M.A., *Guides*, an impairment based on grip strength is allowable only under circumstances where the examiner believes the employee's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*. *See* A.M.A., *Guides*, page 508. This case does not present such a circumstance. Dr. Diamond did not mention any such additional impairing factors due to loss of strength in his September 2, 2004 report.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2006 and September 6, 2005 decisions of the Office of Workers' Compensation Programs are hereby set aside regarding the degree of impairment to appellant's right upper extremity and affirmed regarding the degree of impairment to the left lower extremity. After such further development as necessary, the Office shall issue a *de novo* decision.

Issued: January 24, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board