United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant **and** **SOCIAL SECURITY ADMINISTRATION, Spokane, WA, Employer**	)	**Docket No. 07-681** **Issued: June 14, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 16, 2007 appellant filed a timely appeal of an October 27, 2006 decision of the Office of Workers' Compensation Programs with respect to a schedule award. 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 arm permanent impairment.

FACTUAL HISTORY

On September 3, 2002 appellant, then a 51-year-old social insurance representative, filed an occupational claim (Form CA-2), alleging that he sustained carpal tunnel syndrome causally related to his federal employment. The Office accepted the claim for right carpal tunnel syndrome. Appellant underwent right carpal tunnel release surgery on January 6, 2003.

By report dated August 24, 2004, Dr. William Britt, Jr., a neurologist, provided a history and results on examination. He noted that six months after the carpal tunnel surgery appellant

developed discomfort along the flexor tendon of the right ring finger, with cramping when he began writing. Dr. Britt stated that appellant had focal dystonia of the dominant hand.

An Office medical adviser reviewed the medical evidence. In a December 6, 2004 report, he provided an opinion that appellant had a five percent right arm permanent impairment. The Office medical adviser explained that under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant's situation fit scenario number two regarding carpal tunnel syndrome, for normal sensibility and opposition strength with abnormal sensory and/or motor latencies. The Office medical adviser opined that appellant had a five percent permanent impairment of the right arm and the date of maximum medical improvement was August 24, 2004.

By decision dated June 28, 2005, the Office issued a schedule award for a five percent permanent impairment to the right arm. The period of the award was 15.6 weeks from August 24, 2004.

Appellant requested reconsideration and submitted an October 4, 2005 report from Dr. Britt who indicated that appellant had manifestations of limb dystonia which had progressed beyond writers cramp. By decision dated November 30, 2005, the Office denied modification of the June 28, 2005 schedule award decision. Appellant again requested reconsideration and submitted a December 30, 2005 report from Dr. Britt, who stated that appellant's cramping with writing and use of certain tools was typical of action dystonia. Dr. Britt noted that electrodiagnostic testing in February 2005 was normal with no evidence of persisting median neuropathy. He reported that there was extensive medical literature supporting the development of occupational dystonia in workers engaged in repetitive activities and such focal dystonias can also result after trauma to tissues, including limb dystonia subsequent to peripheral nerve injury as occurs in carpal tunnel. Dr. Britt stated that appellant had done a great deal of handwriting in his job as well as typing and each activity was sufficient to induce an occupational dystonia in susceptible individuals and may be more likely to occur in the presence of peripheral nerve injury.

By decision dated February 7, 2006, the Office determined that the evidence was insufficient to warrant further merit review of the claim.

Appellant requested reconsideration and submitted a May 2, 2006 report from Dr. Paula Lantsberger, an occupational medicine specialist, who provided a history and results on examination, including right finger ranges of motion. She indicated that in December 2005, Dr. Britt noted that nerve conduction studies showed no persisting median neuropathy. Dr. Lantsberger diagnosed right carpal tunnel syndrome with residual carpal tunnel findings and right hand focal dystonia. She referred to range of motion figures in the A.M.A., *Guides* and opined that appellant had a 24 percent right arm impairment due to loss of finger range of motion.

In a report dated October 17, 2006, an Office medical adviser reviewed the medical evidence. He indicated that the assessment of impairment by Dr. Lantsberger for loss of finger range of motion was presumably based on the action dystonia observed on attempts at repetitive movement. The Office medical adviser stated, "The action dystonia is not an accepted condition.

Although there is a theoretical possibility of some connection between the work activities and the action dystonia the medical reports are insufficient to support a medical finding and conclusion that there is any quite likely or more probable than not connection between the work duties and the focal dystonia [right] hand." The medical adviser indicated that it was not clear whether the right wrist loss of motion was related to carpal tunnel or dystonia, but the five percent impairment did not exceed the prior award in any case.

By decision dated October 27, 2006, the Office denied modification of the prior decisions. The Office found that the weight of the evidence was represented by the Office medical adviser with respect to whether the dystonia was employment related.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[1] and section 10.404 of the implementing federal regulation,[2] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, 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.[3]

ANALYSIS

The original schedule award dated June 28, 2005 was based on a diagnosis of right carpal tunnel syndrome. As noted by the Office medical adviser in the October 17, 2006 report, the evidence from Dr. Lantsberger regarding permanent impairment appeared to be based on the diagnosis of dystonia. Therefore, the issue of whether dystonia is an employment-related condition must be resolved before the issue of the degree of permanent impairment under the Act can properly be adjudicated.

In this regard, the evidence of record is in conflict. Dr. Britt provided an opinion that the dystonia was employment related based on appellant's history of repetitive activities and carpal tunnel syndrome. The Office medical adviser opined that the evidence did not establish that the dystonia was causally related to federal employment. The Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the

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[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.404.

[3] *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

examination.[4] This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[5]

The Office should refer appellant and the relevant evidence to a referee examiner for an opinion as to whether dystonia is related to work duties or a consequence of an accepted employment injury. The referee examiner should then provide an opinion as to the degree of permanent impairment under the A.M.A., *Guides* as a result of an employment-related condition. After such further development as the Office deems necessary, it should issue an appropriate merit decision.

CONCLUSION

There is a conflict in the medical evidence with respect to the diagnosis of dystonia and the issue must be resolved to properly adjudicate the schedule award issue.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 27, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: June 14, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

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[4] 5 U.S.C. § 8123.

[5] 20 C.F.R. § 10.321 (1999).