United States Department of Labor
Employees' Compensation Appeals Board

W.I., Appellant	)	
	)	**Docket No. 07-979**
and	)	**Issued: October 5, 2007**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Leavenworth, KS, Employer	)	

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 February 27, 2007 appellant filed a timely appeal of a February 25, 2007 merit decision of the Office of Workers' Compensation Programs denying his claim for an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue is whether appellant is entitled to an increased schedule award pursuant to 5 U.S.C. § 8107.

FACTUAL HISTORY

On July 23, 2001 appellant, then a 47-year-old letter carrier, sustained injury in file number 112003969 when he twisted his right wrist while picking up a tray of mail. The Office accepted appellant's claim for right wrist and right arm strains, respectively. On May 28, 2002 he sustained a recurrence of disability. Appellant subsequently filed an occupational disease claim in file number 112011686. On July 17, 2002 he first realized that his bilateral carpal

tunnel syndrome was caused by his federal employment. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized bilateral carpal tunnel release which was performed on October 25, 2002. He returned to light-duty work on December 4, 2002 and full-duty work on March 4, 2003.

The Office received treatment notes dated December 16, 2002 and January 13, 2003 from Dr. Alan D. Holiday, Jr., an attending Board-certified orthopedic surgeon, who stated that appellant was doing well status post right wrist surgery. He planned to have him increase his activities gradually. A December 26, 2002 note of a Dr. Roy J. Fowler[1] stated that appellant's right wrist and thumb were evaluated on that day.

By letter dated April 8, 2003, the Office requested that Dr. Holiday determine the extent of permanent impairment due to the July 23, 2001 employment-related injuries utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

By letter dated October 29, 2003, the Office expanded the acceptance of appellant's claim to include right scapholunate ligament tear and scaphotrapeziotrapezoid (STT) joint fusion which was performed by Dr. Holiday on September 6, 2002.

By decision dated January 6, 2004, the Office granted appellant a schedule award for a 23 percent impairment of the right upper extremity.

On April 20, 2004 Dr. Holiday performed left carpal tunnel release. Thereafter, appellant underwent physical therapy. On May 3, 2004 Dr. Holiday released him to work with restrictions. On June 18, 2004 appellant was released to full-duty work with no restrictions. Dr. Holiday opined that he had reached maximum medical improvement (MMI).

By decision dated May 13, 2005, the Office granted appellant a schedule award for a 14 percent impairment of the left upper extremity.

On November 25, 2005 appellant filed a claim for an additional schedule award. In a November 9, 2005 treatment note, Dr. Holiday opined that appellant had reached maximum medical improvement regarding his upper extremities and cervical spine.[2] He recommended that Dr. Joe G. Schlageck, a Board-certified family practitioner, perform a functional capacity evaluation and proceed with an impairment rating determination.

On April 19, 2006 appellant submitted the results of an August 29, 2005 nerve conduction study performed by Dr. Nanda N. Kumar, a Board-certified neurologist, who found median neuropathy at both wrists. Dr. Kumar stated that prolongation of the distal motor and

[1] The record does not contain the professional qualifications of Dr. Fowler.

[2] On August 4, 2005 Dr. Frank C. Lyons, Jr., a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's cervical spine. He found disc space narrowing and loss of hydration at all levels, mild anterior compression at C7 which appeared to be chronic and anterior osteophyte formation at C6-7. Dr. Lyons found no evidence of the neural canal or nerve root canals at any level.

sensory latencies could persist in spite of prior successful carpal tunnel release. He found no evidence of bilateral C5-T1 radiculopathy/plexopathy or sensorimotor polyneuropathy.

By letter dated June 8, 2006, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Nicole B. Golding, a Board-certified physiatrist, for a second opinion medical examination.

In a July 6, 2006 report, Dr. Golding reviewed a history of appellant's July 23, 2001 employment injuries, medical treatment and social and family background. She also provided a detailed review of his medical records. On physical examination, Dr. Golding reported decreased motor strength of both upper extremities. On neurological examination, she reported decreased sensation in the web space between appellant's thumb and second digit and index finger on the right hand. Sensation in the left hand was normal. Dr. Golding found no hyperalgesia or allodynia on the medial volar aspect of the arm.

Dr. Golding reported range of motion findings regarding appellant's right and left wrists and right digits. The right wrist had 10 degrees of flexion, 38 degrees of extension, 25 degrees of ulnar deviation and 20 degrees of radial deviation. The left wrist had 50 degrees of extension, 60 degrees of flexion, 30 degrees of ulnar deviation and 20 degrees of radial deviation. Appellant had -26 degrees of flexion of the right proximal interphalangeal (PIP) joint of the third digit, -19 degrees of flexion of the PIP joint of the fourth digit and -29 degrees of flexion of the PIP joint of the fifth digit. Dr. Golding stated that it did not appear that he had any carpal instability of the right wrist, *i.e.*, there was no evidence of painful clicking and clunking on examination. She indicated that an x-ray of the right scapholunate and radiolunate angles demonstrated 52 degrees and 7.5 degrees, respectively, which were within normal limits.

Dr. Golding did not calculate an impairment rating for appellant's pain based on the A.M.A., *Guides* 576, 577, Table 18-4, because he had pain behaviors that were mixed or ambiguous. She determined that appellant had zero percent impairment for pain based on the A.M.A., *Guides* 580, Table 18-5. Dr. Golding considered giving him a negative score beyond that since appellant complained of pain which he characterized as 10 out of 10 while smiling and in no acute distress. She stated that appellant was status post right and left carpal tunnel releases and right STT fusion which were performed in 2002 and left carpal tunnel release which he had undergone in 2004. Dr. Golding further stated that he had a history of bilateral median neuropathy noting, that his current right hand weakness in grip and sensory deficits were likely related to this condition. He also had a history of right ulnar neuropathy. Dr. Golding diagnosed flexion contracture of the right third, fourth and fifth PIP joints and Dupytren's contracture of the right fourth digit that was likely unrelated.

Dr. Golding calculated impairment ratings for appellant's right hand digits based on her sensory and range of motion deficits which resulted in a 10 percent impairment of the right hand. Regarding appellant's right wrist, she found that 10 degrees of flexion constituted an eight percent impairment and 38 degrees of extension constituted a four percent impairment based on the A.M.A., *Guides*, 466, 467, Figures 16-26 and 16-28. Dr. Golding further found that 25 degrees of ulnar deviation constituted a one percent impairment based on the A.M.A., *Guides*, 468, 469, Figures 16-29 and 16-32. She stated that all other wrist measurements were normal. Dr. Golding determined that motor grip strength weakness was 4+/5. Using Table 16-15 on page

492 of the A.M.A., *Guides*, she found that the maximum impairment of the median nerve below the forearm for sensory motor deficit was 10 percent impairment. She allowed a 20 percent impairment for motor deficit based on the A.M.A., *Guides*, 484, Table 16-11, since appellant was right handed. Dr. Golding multiplied this impairment rating by the 10 percent impairment for the median nerve below the forearm to determine that appellant had a 2 percent impairment of his right wrist. With regard to his left wrist, Dr. Golding found that 50 degrees of flexion constituted a two percent impairment based on the A.M.A., *Guides* 466 and 467, Figures 16-26 and 16-28.

Dr. Golding concluded that appellant's 10 percent impairment of the right hand constituted a 9 percent impairment of the right upper extremity based on the A.M.A., *Guides*. She determined that he had a 15 percent impairment of the right wrist by adding her impairment ratings for loss of motion. Dr. Golding combined the 9 percent impairment of the right hand and the 15 percent impairment of the right wrist to conclude that appellant had a 24 percent impairment of the right upper extremity. She also concluded that appellant had a two percent impairment of the left upper extremity.

By letter dated October 13, 2006, the Office medical adviser informed Dr. Golding about the proper tables of the A.M.A., *Guides* that must be utilized to determine an impairment rating for carpal tunnel syndrome. He advised that since appellant's claim had not been accepted for any range of motion limitations of his digits on either upper extremity, her ratings for the ring, middle and little fingers due to range of motion deficits must be deleted. The Office medical adviser requested that Dr. Golding submit an addendum report. He recommended that any rating for pain, sensory deficit or discomfort be based on Table 16-10 of the A.M.A., *Guides*.

On December 21, 2006 Dr. Golding requested that her July 6, 2006 calculations regarding impairment of appellant's right hand digits be disregarded. Instead, she determined that he had a 12 percent sensory deficit based on the A.M.A., *Guides* 482, Table 16-10. Dr. Golding further determined that the ulnar side of appellant's thumb which constituted an 11 percent impairment and the radial side of his index finger which constituted a 5 percent impairment were affected. She combined these impairment ratings to determine that he had a 16 percent impairment of the thumb and index finger. Dr. Golding multiplied 12 percent impairment for sensory deficit by 16 percent impairment of the right hand to determine that appellant had a 1.92 or 2 percent impairment of the right hand for sensory deficit based on the A.M.A., *Guides* 492, Table 16-5.

Dr. Golding determined that appellant had a 20 percent impairment for motor deficit utilizing the A.M.A., *Guides* 484, Table 16-11. She multiplied this impairment rating by 10 percent impairment for motor deficit of the median nerve below the forearm which was the maximum allowed under Table 16-10 on page 492 of the A.M.A., *Guides* to determine that appellant had a 2 percent impairment. Dr. Golding then multiplied this impairment rating by the two percent impairment for sensory deficit to conclude that appellant had a four percent impairment for motor sensory deficit. She combined her prior impairment ratings for appellant's right wrist to determine that he had a 15 percent impairment for decreased range of motion. Dr. Golding added this impairment rating and the 4 percent impairment for motor sensory deficit to conclude that appellant sustained a 19 percent impairment of the right upper extremity.

On December 30, 2006 the Office medical adviser reviewed Dr. Golding's supplemental report. He stated that her July 6, 2006 report contained a great deal of extraneous input about digit conditions that had not been accepted by the Office. The Office medical adviser stated that Dr. Golding's calculation of sensory and motor deficits of the right upper extremity was incorrect since digit conditions had not been accepted by the Office. He noted that these digit conditions had not been deemed to be at maximum medical improvement by anyone who had evaluated appellant. Regarding the right wrist, the Office medical adviser determined that 10 degrees of flexion constituted an 8 percent impairment, 30 degrees of extension constituted a 4 percent impairment, 25 degrees of ulnar deviation constituted a 1 percent impairment and 20 degrees of radial deviation constituted a 0 percent impairment, resulting in a 13 percent impairment based on the A.M.A., *Guides* 467, 469, Figures 16-28 and 16-31. He combined the 13 percent impairment rating for loss of range of motion with the 4 percent impairment for motor sensory deficit to calculate a 16 percent impairment of appellant's right upper extremity based on the A.M.A., *Guides* 604-07 Combined Values Chart. The Office medical adviser found that appellant had a two percent impairment of the left wrist. He concluded that appellant did not have any additional permanent impairment to his right and left upper extremities.

By decision dated February 5, 2007, the Office denied appellant's claim for an additional schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] set 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 of loss of use.[5] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[6]

ANALYSIS

The Office accepted that appellant sustained right wrist and right arm strains, bilateral carpal tunnel syndrome, right scapholunate ligament tear due to his July 23, 2001 and July 17, 2002 employment injuries. On January 6, 2004 appellant received a schedule award for a 23 percent impairment of the right upper extremity. On May 13, 2005 he received a schedule award for a 14 percent impairment of the left upper extremity. Appellant filed a claim for an additional schedule award on November 25, 2005 and May 5, 2006. To establish entitlement to an

[3] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[4] 20 C.F.R. § 10.404.

[5] 5 U.S.C. § 8107(c)(19).

[6] 20 C.F.R. § 10.404.

additional award, the medical evidence must show that impairment due to the accepted employment injuries has increased.[7]

The July 6, 2006 report of Dr. Golding provided range of motion findings regarding appellant's right and left wrists. The right wrist had 10 degrees of flexion, 38 degrees of extension, 25 degrees of ulnar deviation and 20 degrees of radial deviation. The left wrist had 50 degrees of extension, 60 degrees of flexion, 30 degrees of ulnar deviation and 20 degrees of radial deviation. Dr. Golding determined that appellant had zero percent impairment for pain based on the A.M.A., *Guides* 580, Table 18-5 since he complained of pain that was 10 out of 10 while he smiled and was not in acute distress. She noted appellant's 2002 right and left carpal tunnel releases and right STT fusion, his 2004 left carpal tunnel release and right ulnar neuropathy condition. Dr. Golding stated that appellant's current right hand weakness in grip and sensory deficits were likely related to his bilateral median neuropathy condition. She diagnosed flexion contracture of the right third, fourth and fifth PIP joints and Dupytren's contracture of the right fourth digit that was likely unrelated.

Dr. Golding calculated impairment ratings for appellant's right hand digits based on sensory and range of motion deficits which resulted in a 10 percent impairment of the right hand. She stated that it did not appear that appellant had any carpal instability of the right wrist, *i.e.*, there was no evidence of painful clicking and clunking on examination. An x-ray of the right scapholunate and radiolunate angles demonstrated 52 degrees and 7.5 degrees, respectively, which Dr. Golding found to be within normal limits. Regarding appellant's right wrist, she determined that 10 degrees of flexion constituted an 8 percent impairment and 38 degrees of extension constituted a four percent impairment based on the A.M.A., *Guides*, 466, 467, Figures 16-26 and 16-28. Dr. Golding found that 25 degrees of ulnar deviation constituted a one percent impairment based on the A.M.A., *Guides*, 468, 469, Figures 16-29 and 16-32. She stated that all other wrist measurements were normal. Dr. Golding stated that motor grip strength weakness was 4+/5. Using Table 16-15 on page 492 of the A.M.A., *Guides*, she found that the maximum impairment of the median nerve below the forearm was 10 percent impairment. Dr. Golding allowed a 20 percent impairment for motor deficit based on the A.M.A., *Guides*, 484, Table 16-11 since appellant was right handed. She multiplied this impairment rating by 10 percent impairment of the median nerve below the forearm to determine that appellant had a 2 percent impairment of the right wrist. With regard to appellant's left wrist, Dr. Golding found that 50 degrees of flexion constituted a two percent impairment based on the A.M.A., *Guides* 466 and 467, Figures 16-26 and 16-28.

Dr. Golding concluded that appellant's 10 percent impairment of the right hand constituted a 9 percent impairment of the right upper extremity based on the A.M.A., *Guides*. She determined that he had a 15 percent impairment of the right wrist by adding her impairment ratings for loss of motion. Dr. Golding combined the 9 percent impairment of the right hand and the 15 percent impairment of the right wrist to conclude that appellant had a 24 percent impairment of the right upper extremity. She further concluded that appellant had a two percent impairment of the left upper extremity.

[7] *See Dana Bruce*, 44 ECAB 132, 142-43 (1992).

Dr. Golding rated appellant according to sensory and range of motion deficits of his right hand digits. The Board, however, notes that his claim has not been accepted for a digit injury. Further, Dr. Golding's 2 percent impairment of the left upper extremity is less than the 14 percent impairment rating for which appellant received a schedule award on May 13, 2005. The Board, therefore, finds that Dr. Golding's impairment rating of the right and left upper extremities is of diminished probative value.

In a supplemental report, Dr. Golding requested that her July 6, 2006 calculations regarding impairment of appellant's right hand digits be disregarded. Instead, she determined that he had a 12 percent sensory deficit based on the A.M.A., *Guides* 482, Table 16-10. Dr. Golding further determined that the ulnar side of appellant's thumb which constituted an 11 percent impairment and the radial side of his index finger which constituted a 5 percent impairment were affected. She combined these impairment ratings to determine that appellant had a 16 percent impairment of the right hand. Dr. Golding multiplied 12 percent impairment for sensory deficit by 16 percent impairment of the thumb and index finger to determine that appellant had a 1.92 or 2 percent impairment of the right hand for sensory deficit based on the A.M.A., *Guides* 492, Table 16-5.

Dr. Golding determined that appellant had a 20 percent impairment for motor deficit utilizing the A.M.A., *Guides* 484, Table 16-11. She multiplied this impairment rating by 10 percent impairment for motor deficit of the median nerve below the forearm which was the maximum allowed under Table 16-10 on page 492 of the A.M.A., *Guides* to determine that appellant had a 2 percent impairment. Dr. Golding then multiplied this impairment rating by the two percent impairment for sensory deficit to conclude that appellant had a four percent impairment for motor sensory deficit. She combined her prior impairment ratings for appellant's right wrist to determine that he had a 15 percent impairment for decreased range of motion. Dr. Golding added this impairment rating and the 4 percent impairment for motor sensory deficit to conclude that he had a 19 percent impairment of the right upper extremity. She provided an impairment rating for appellant's right hand digits. As stated by the Board, appellant's claim has not been accepted for a right hand digit injury. Moreover, Dr. Golding's 19 percent impairment of the right upper extremity is less than the 23 percent impairment rating for which appellant received a schedule award on January 6, 2004. The Board finds that Dr. Golding's impairment rating of the right and left upper extremities is of diminished probative value.

The Office medical adviser reviewed Dr. Golding's reports and opined on December 30, 2006 that appellant did not have any additional impairment. He stated that Dr. Golding's calculation of sensory and motor deficit impairments of appellant's right hand digits was incorrect since no conditions had been accepted by the Office for these digits. The Office medical adviser also stated that the digit conditions had not been deemed to be at maximum medical improvement by anyone who had evaluated appellant. He applied Dr. Golding's range of motion and motor sensory deficit findings for appellant's right wrist in accordance with the A.M.A., *Guides*, 467, 469, 604-7, Figures 16-28 and 16-31 and Combined Values Chart. The

Office medical adviser determined that appellant sustained a 16 percent impairment of the right upper extremity.[8] He concurred with Dr. Golding's finding that appellant had a two percent impairment of the left upper extremity for loss of range of motion based on the A.M.A., *Guides*. The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* and thus, his opinion constitutes the weight of the medical evidence in establishing that appellant has no more than a 23 percent impairment of the right upper extremity and a 14 percent impairment of the left upper extremity.

Based on the probative evidence of record, appellant did not establish that he had more than a 23 percent impairment of the right upper extremity and a 14 percent impairment of the left upper extremity which were previously awarded by the Office on January 6, 2004 and May 13, 2005. Accordingly, the Board finds that he is not entitled to an additional schedule award.

CONCLUSION

The Board finds that appellant did not establish entitlement to an additional schedule award in this case.

[8] The Board notes that since 30 degrees of extension is the equivalent of a 5 percent impairment of the right wrist and not a 4 percent impairment as reported by Dr. Golding and the Office medical adviser, when adding this to the other impairments of the right wrist, it equals a 14 percent impairment and not a 13 percent impairment. Thus, when utilizing the Combined Values Chart, *i.e.*, 14 percent impairment combined with the 4 percent impairment for sensory motor deficit yields a 17 percent impairment of the right upper extremity. This is still less than the 23 percent previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 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