United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 07-2097**
	)	**Issued: January 29, 2008**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Kansas City, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 17, 2007 appellant filed an appeal from a merit decision by the Office of Workers' Compensation Programs dated July 26, 2007, finding 10 percent impairment of her right upper extremity. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant has more than a 10 percent impairment of her right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On June 4, 1993 appellant, then a 33-year-old senior claims examiner, sustained left and right carpal tunnel syndrome and tendinitis as a result of repetitive typing, keying and grasping movements required by her federal employment. The Office accepted her claim for right wrist

carpal tunnel syndrome. On November 29, 1994, the Office issued a schedule award for a 10 percent impairment of appellant's right upper extremity.

By letter dated November 9, 2006, appellant requested an increase in her schedule award. She submitted an October 18, 2006 medical report from Dr. Pedro A. Murati, a Board-certified physiatrist, who diagnosed bilateral carpal tunnel syndrome, low back pain secondary to radiculopathy and left S1 joint dysfunction. Dr. Murati noted that appellant's diagnoses resulted from a 1990 work injury, with subsequent injury to her low back in 2003. He noted that appellant reached maximum medical improvement as of September 9, 2006. Dr. Murati utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001) to determine that appellant had a 25 percent impairment of the left upper extremity, 12 percent impairment of the right lower extremity and 13 percent of the left lower extremity. He stated:

> "According to the [A.M.A., *Guides*], for the right carpal tunnel syndrome producing weakness in the abductors of the thumb using [T]ables 16-15 and 16-11 she receives [three] [percent] right upper extremity impairment. For the sensory loss and pain in the right upper extremity as a result of the carpal tunnel syndrome using [T]ables 16-5 and 16-10 she obtains 23 [percent] right upper extremity impairment. These combine to 25 [percent] right upper extremity impairment."

On April 2, 2007 the Office referred the case record to an Office medical adviser, for an impairment rating of the right upper extremity. The Office also asked the Office medical adviser to determine whether the date of maximum medical improvement should be changed from the date on which the November 29, 1994 schedule award was based. It also asked that he address the issue of impairment to appellant's left upper extremity and impairment of the lower extremities. The Office medical adviser responded on April 6, 2007 that it was necessary to obtain an updated electromyogram (EMG) and nerve conduction studies (NCS). Once these results were available, an appropriate impairment rating could be made based on the A.M.A., *Guides.*

By letter dated May 3, 2007, the Office requested that appellant have an EMG and NCS conducted on her left and right upper extremities. These tests were conducted on May 18, 2007, by Dr. Srinivas Nalamachu, a physiatrist, who concluded that there was evidence of mild carpal tunnel syndrome on the left side based on sensory findings but no evidence of cubital tunnel syndrome on either side.

On June 6, 2007 the Office medical adviser reviewed the evidence and noted that appellant's claim had been accepted for right carpal tunnel syndrome. He saw no evidence to establish that her other diagnoses were related to her employment. The Office medical adviser listed the date of maximum medical improvement as May 18, 2007. With regard to the impairment to her right upper extremity, the Office medical adviser stated:

> "The next question asks whether or not the medical evidence supports that the claimant has sustained an increase in the permanent partial impairment to the right upper extremity above and beyond the 10 percent which was awarded on November 29, 1994. No the medical evidence does not support an increase. In

fact, the EMG and [NCS] performed on May 18, 2007 are negative for the right carpal tunnel syndrome. Based on the [fifth] [e]dition of the [A.M.A., *Guides*] a normal EMG and [NCS] of the right upper extremity results in a 0 percent impairment rating. For the specific reference please see the [fifth] [e]dition of the [A.M.A., *Guides*], the section on [c]arpal [t]unnel [s]yndrome."

By decision dated July 26, 2007, the Office found that the Office medical adviser properly applied the A.M.A., *Guides* and that there was no basis to increase the impairment to appellant's right upper extremity. He noted that, as appellant's claim had not been accepted for an employment-related condition in her left upper extremity, it was ineligible for a schedule award at this time.[1]

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[2] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides*, as the appropriate standard for evaluating schedule losses.[3] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[4]

Section 8123(a) of 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 person who shall make an examination.[5] In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[6]

[1] The Board notes that the Office made an error in its decision when discussing the medical report of Dr. Murati. In its decision, the Office noted that he found that appellant had a 12 percent impairment of her right upper extremity and a 13 percent impairment of her left upper extremity. In fact, Dr. Murati found that appellant had a 25 percent impairment to each upper extremity.

[2] For a total, or 100 percent loss of use of the arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2000).

[3] 20 C.F.R. § 10.404.

[4] Federal (FECA) Procedure Manual, Part 3 -- *Medical, Schedule Awards*, Chapter 3.700.2 (June 2003).

[5] *See* 5 U.S.C. § 8123(a); *Roger W. Griffith*, 51 ECAB 491 (2000).

[6] *Rose V. Ford*, 55 ECAB 449 (2004); *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

The fifth edition of the A.M.A., *Guides*, regarding impairment due to carpal tunnel syndrome, provides:

> "If, after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present--
>
> > (1) Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described [in Tables 16-10a and 16-11a].
> >
> > (2) Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [EMG] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present and an impairment rating not to exceed five percent of the upper extremity may be justified.
> >
> > (3) Normal sensibility (two point discrimination and Semmes-Weinstein monofilament testing) opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.[7]

The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.[8]

In the instant case, Dr. Murati found that the first scenario applied to appellant's condition. He found that appellant had sensory and motor deficits in her right upper extremity causally related to her accepted carpal tunnel syndrome. Dr. Murati found a 25 percent impairment based on a 3 percent right upper extremity impairment due to right carpal tunnel syndrome producing weakness in the abductors of her thumb using Tables 16-15 and 16-11 and a 23 percent impairment based on Tables 16-5 and 16-10 for sensory and loss and pain in her right upper extremity. However, the Office medical adviser utilized the third scenario and determined that based on the normal EMG and NCS of the right upper extremity, appellant had a zero percent impairment rating.

Both Dr. Murati, and the Office medical adviser used the A.M.A., *Guides* in reaching their conclusions. However, these opinions conflict as to the ratings provided and the application of the proper criteria under the A.M.A., *Guides* to be utilized in determining appellant's impairment to her right upper extremity. Accordingly, the Board finds that there is a conflict in medical evidence requiring further development of the medical evidence.[9]

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[7] A.M.A., *Guides* 495.

[8] *Kimberly M. Held*, 56 ECAB 670 (2005).

[9] *Id.*

The case will be remanded to the Office to refer appellant to an appropriate impartial medical specialist for a determination with regard to the extent of impairment to her right upper extremity. After such development as the Office deems necessary, an appropriate decision should be issued regarding the extent of appellant's impairment to her right upper extremity.

CONCLUSION

The Board finds that this case is not in posture for decision due to a conflict in the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 26, 2007 is set aside and the case is remanded for further action consistent with this decision.[10]

Issued: January 29, 2008
Washington, DC

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

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

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

[10] Appellant contends on appeal that the Office medical adviser failed to answer all questions set forth by the Office, including questions regarding her impairment to her left upper extremity or her lower extremities. The only condition accepted by the Office was right wrist carpal tunnel syndrome. These issues are not before the Board in the present appeal. *See* 20 C.F.R. § 501.2(c).