

**United States Department of Labor
Employees' Compensation Appeals Board**

S.A., Appellant

and

**U.S. POSTAL SERVICE, WEST BILOXI
STATION, Biloxi, MS, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-2209
Issued: June 23, 2008**

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 August 29, 2007 appellant filed a timely appeal from the August 2, 2007 schedule award decision of the Office of Workers' Compensation Programs. 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 one percent permanent impairment of her right upper extremity and more than five percent impairment of her left upper extremity, for which she received schedule awards.

FACTUAL HISTORY

On January 10, 1997 appellant, then a 47-year-old letter carrier, filed an occupational disease claim for burning, numbness and tingling from her left elbow to her fingers due to factors of her federal employment. The Office accepted the claim for left wrist and elbow tendinitis and later expanded it to include bilateral carpal tunnel syndrome. In May, September and

December 2000, respectively, appellant underwent bilateral carpal tunnel releases and right wrist and a transposition of the left ulnar nerve near her elbow.

On February 24, 2003 appellant filed a claim for a schedule award. On May 21, 2003 her treating physician, Dr. Robert Hillier, a Board-certified orthopedic surgeon, placed her on total disability. On June 30, 2003 the Office requested that Dr. Hillier determine the extent of appellant's permanent impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed., 2001).

In a July 24, 2003 report, Dr. Hillier reported that appellant had reached maximum medical improvement for her upper extremity conditions. He noted that her bilateral wrist scars and left elbow scar were well healed, but that she had decreased light-touch sensation over her median nerves, weakness in the intrinsic muscles and decreased sensation in the ulnar nerve distribution. Using Table 16-10 in the A.M.A., *Guides*, Dr. Hillier found that appellant's bilateral carpal tunnel syndrome caused a Grade 2, 70 percent, sensory deficit of the median nerve below the forearm of each arm. This resulted in a 28 percent impairment of each upper extremity when combined with the maximum 39 percent impairment allowed under Table 16-15. Dr. Hillier found a Grade 4, 20 percent, motor deficit on Table 16-11 related to weakness in each hand. Under Table 16-15, this motor weakness yielded 2 percent upper extremity impairment based on the 10 percent maximum allowed. Dr. Hillier opined that appellant had 30 percent permanent impairment in each upper extremity related to her carpal tunnel syndrome. Using a similar method to evaluate appellant's bilateral ulnar cubital condition, he found Grade 2, 70 percent, sensory deficit and Grade 4, 20 percent, motor deficit in both upper extremities. Dr. Hillier stated that this resulted in 14 percent permanent impairment in each arm. Using the combined values table, he found that appellant had 40 percent permanent impairment in each upper extremity because of her carpal tunnel and cubital tunnel syndromes.

On September 2, 2003 the Office provided Dr. Hillier's report to the Office medical adviser to determine whether appellant was entitled to a schedule award. The medical adviser recommended a second opinion examination because the impairment rating approved excessive for the accepted conditions. On September 23, 2003 the Office referred appellant for a second opinion examination.

On November 14, 2003 Dr. Tim Jackson, a Board-certified orthopedic surgeon, reviewed appellant's medical records and conducted a physical examination. He noted that appellant had full range of motion in her elbows and wrists. There was mild pain at the wrists with maximum extension and flexion, but no tenderness with pronation or supination. Dr. Jackson found intact, but subjectively diminished, light-touch sensation in all fingers. He noted no muscle atrophy, a 5/5 intrinsic opposition strength in the wrists and 4/5 grip strength bilaterally. Dr. Jackson noted that Dr. Hillier had found moderate recurrent slowing of appellant's left median nerve through the carpal tunnel based on a May 6, 2003 electromyogram (EMG) study. He did not review the nerve conduction results himself. Dr. Jackson referred appellant for a functional capacity evaluation with a hand specialist.

On December 16, 2003 Joseph Church, a certified hand therapist, conducted an upper extremity evaluation. He tested range of motion and strength in all of appellant's upper extremity joints. Mr. Church noted mild deficits in active range of motion at the left wrist and

elbow that yielded a left upper extremity impairment rating of one percent. He stated that he did not include grip strength as a factor in the rating because it was “inconsistently low.”

In a supplemental report dated January 26, 2004, Dr. Jackson stated that he had reviewed Mr. Church’s findings. He stated that appellant had reached maximum medical improvement as of December 16, 2003, with residual sensory and strength deficits. Dr. Jackson reported that appellant’s active flexion was normal at both wrists and right elbow and limited to 130 degrees at the left elbow. Appellant’s active extension was normal at her left wrist and limited to 60 degrees on the right. Dr. Jackson stated that appellant had two percent impairment of function in each arm due to sensory deficit, pain or loss of strength. He recommended an impairment rating of two percent for each upper extremity.

Dr. James Dyer, a Board-certified orthopedic surgeon acting as an Office medical adviser, reviewed the medical records and stated that appellant had reached maximum medical improvement on July 24, 2003. He stated that appellant’s condition was similar to the second scenario in the A.M.A., *Guides* section on carpal tunnel syndrome, page 495, in which impairment ratings are limited to five percent when an individual has normal sensibility and opposition strength and abnormal EMG testing. Dr. Dyer found that a two percent left upper extremity impairment rating would be appropriate given appellant’s abnormal nerve conduction study combined with her minimal symptoms. At the Office’s instruction, Dr. Dyer provided no right arm rating.

On June 30, 2004 the Office provided Dr. Jackson’s reports and Dr. Dyer’s recommendation to Dr. Hillier for his comments. It requested that he state whether he concurred with the findings and, if he did not, that he provide rationale for his rating. Dr. Hillier did not respond.

By decision dated August 18, 2004, the Office granted appellant a schedule award for two percent of her left upper extremity. Appellant was compensated for 6.24 weeks, from July 24 to September 5, 2003.

On September 15, 2004 appellant requested an oral hearing. By decision dated March 29, 2005, the Office hearing representative determined that appellant’s case was not in a posture for a hearing. She vacated the August 18, 2006 decision and remanded the case to the Office for further development. The Office hearing representative found that Dr. Jackson’s report appeared internally inconsistent and provided no rationale or citations from the A.M.A., *Guides* to support his assessment. She stated that the Office erroneously instructed Dr. Dyer to provide only a left arm rating. The Office hearing representative also noted that Dr. Dyer did not provide adequate rationale for his rating.

On July 11, 2005 the Office requested that Dr. Dyer conduct another review of the medical record and provide a rationalized opinion in accordance with the Office hearing representative’s decision. On July 12, 2005 Dr. Dyer stated that he was in full agreement with Dr. Jackson’s recommendation of two percent impairment for each upper extremity. He indicated that Dr. Hillier failed to correctly combine the A.M.A., *Guides* Table 16-15 with Tables 16-10 and 16-11 to rate the motor and sensory losses of the median and ulnar nerves.

By decision dated August 5, 2005, the Office amended appellant's schedule award to include compensation for two percent impairment of her right arm. Appellant was compensated for the period September 6 to October 19, 2003. On August 15, 2005 he requested a review of the written record.

By decision dated November 14, 2005, the Office hearing representative vacated the August 5, 2005 decision. She found that there was a conflict between the impairment ratings of Dr. Hillier and Dr. Dyer. The Office hearing representative remanded the case and ordered referral to an impartial medical examiner for an examination and an opinion on the level of appellant's permanent impairment.

On November 29, 2005 the Office referred appellant's medical record to Dr. Byron Jeffcoat, a Board-certified orthopedic surgeon, selected as an impartial medical specialist. In a report dated December 14, 2005, Dr. Jeffcoat concurred with Dr. Dyer's rating. He stated that his opinion was based on appellant's medical history and the A.M.A., *Guides* section on "Impairment of the Upper Extremities Due to Peripheral Nerve Disorders," pages 480-96. Dr. Jeffcoat noted that the most recent examination report, dated April 7, 2005, indicated that appellant had pain in the median nerve distribution and left elbow.

By decision dated January 23, 2006, the Office denied an increase in appellant's schedule award. It found that Dr. Jeffcoat's report was entitled to the weight of the medical opinion evidence because it was not vague, speculative or equivocal and was supported by substantial medical reasoning.

On January 31, 2006 appellant requested an oral hearing. On April 4, 2007 the Office hearing representative stated that appellant had telephoned him prior to the hearing to inform him that she had additional medical information to submit. He gave her 30 days to do so and notified her that she did not need to appear at the hearing.

By decision dated May 23, 2007, the Office hearing representative vacated the January 23, 2006 decision on the grounds that the Office erred in failing to refer appellant for an examination by the impartial medical examiner. On June 21, 2007 the Office referred appellant to Dr. Jeffcoat for an examination in accordance with the Office hearing representative's decision.

On July 19, 2007 Dr. Jeffcoat reviewed appellant's medical history and conducted a physical examination. He found full range of motion in all of appellant's upper extremity joints, including full extension and flexion of her elbows and wrists. Dr. Jeffcoat found decreased sensation over the volar surface of the third finger and the dorsal surface of her left hand and over her right little finger. He noted normal strength in her hands and wrists, negative Tinel's signs at both wrists and elbows, and negative Phalen's tests bilaterally. Dr. Jeffcoat stated that Table 16-15, page 492, of the A.M.A., *Guides* listed sensory deficit of the ulnar palmar nerve of the little finger as a three percent upper extremity impairment. He opined that appellant's level of impairment was consistent with Grade 4, 25 percent, on Table 16-10, page 482, which would give her a 0.75 percent impairment of the right arm. Dr. Jeffcoat stated that her decreased sensation over the dorsum and middle finger of the left hand were consistent with Grade 3, 50 percent, deficit on Table 16-10, page, 482. Noting that appellant did not have any decreased

sensation of her forearms on either side, the doctor reported that ulnar palmar and radial palmar digitals decreased sensation had a maximum upper extremity impairment of 9 percent of the left upper extremity based on Table 16-15, which when multiplied by 50 percent of Grade 3, yielded a 4.5 percent of the left upper extremity.¹ Dr. Jeffcoat found that appellant reached maximum medical improvement by July 18, 2007.

On July 30, 2007 an Office medical adviser reviewed Dr. Jeffcoat's report. He concurred with the finding that appellant had one percent impairment of her right upper extremity and five percent of her left upper extremity.

By decision dated August 2, 2007, the Office granted appellant an additional three percent for her left arm or a total of five percent and one percent of her right arm. Appellant was compensated for the period October 20 to December 24, 2003.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss should be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standards applicable to all claimants.⁴ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁵

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.⁶ Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.⁷

¹ The Board notes that Dr. Jeffcoat's report revealed a maximum of 90 percent impairment for the ulnar palmar and radial palmar digitals' decreased sensation. The Board notes that this is an apparent typographical error as the maximum impairment for both when added together is nine percent. See A.M.A., *Guides* 492, Table 16-15.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ 20 C.F.R. § 10.404(a).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁶ See *Paul A. Toms*, 28 ECAB 403 (1987).

⁷ A.M.A., *Guides* 433-521, Chapter 16, The Upper Extremities, (5th ed. 2001).

Section 8123(a) of the Act provides, in pertinent part: “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 an examination.”⁸ 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.⁹

ANALYSIS

The Office granted appellant a schedule award for one percent of her right upper extremity and five percent of her left upper extremity. The issue to be determined is whether she has established that her upper extremity impairment was greater than that for which she received compensation.

On July 24, 2003 Dr. Hillier, a Board-certified orthopedic surgeon, found that appellant had 40 percent impairment in each upper extremity based on 70 percent sensory and 20 percent motor deficits in the median nerve below the forearm and the cubital nerve. On January 26, 2004 Dr. Jackson, a Board-certified orthopedic surgeon, opined that appellant had two percent impairment in each upper extremity due to sensory deficit, pain or loss of strength in the median nerve. On July 11, 2005 Dr. Dyer a Board-certified orthopedic surgeon acting as an Office medical adviser, concurred with Dr. Jackson’s opinion and found that Dr. Hillier did not accurately utilize the A.M.A., *Guides*. The Office hearing representative correctly found that there was a conflict between the reports of Dr. Hillier and Drs. Jackson and Dyer, which were of equal weight.

Dr. Jeffcoat, a Board-certified orthopedic surgeon, was selected as an impartial medical examiner to resolve the conflict in the medical evidence. On July 19, 2007 he reviewed appellant’s medical records and conducted a physical examination. Dr. Jeffcoat found that appellant had a full range of motion in all the joints in her upper extremities, including her elbows and wrists. He noted decreased sensation over the volar surface of the left third finger, the dorsal surface of the left hand and right little finger. Dr. Jeffcoat reported that appellant had normal strength in her hand and wrists, as well as negative Tinel’s signs and Phalen’s tests bilaterally. He stated that Table 16-15, page 492, of the A.M.A., *Guides* limited sensory deficit of the ulnar palmar nerve of the little finger to a maximum of three percent upper extremity impairment. Dr. Jeffcoat opined that the sensory deficit in appellant’s right little finger was Grade 4, 25 percent, on Table 16-10, page 482, which resulted in a 0.75 percent impairment of the right arm. He stated that the decreased sensation over the dorsum and middle finger of her left hand were consistent with Grade 3, 50 percent, deficit on Table 16-10, page, 482. Dr. Jeffcoat further stated that appellant did not show any decreased sensation of her forearms on either side and noted that ulnar palmar and radial palmar digital decreased sensation is a maximum of nine percent upper extremity impairment per Table 16-15. He found that, by multiplying the 9 percent impairment by Grade 3 or 50 percent impairment, appellant had a

⁸ 5 U.S.C. § 8123(a).

⁹ *Roger Dingess*, 47 ECAB 123 (1995); *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

4.5 percent permanent impairment of her left upper extremity. Dr. Jeffcoat found that appellant reached maximum medical improvement by July 18, 2007. The Board finds that the medical opinion of Dr. Jeffcoat is entitled to the special weight of the medical evidence because it is well rationalized and based on a proper factual background.

The Board finds that the Office properly relied on Dr. Jeffcoat's report in granting appellant a schedule award for one percent of her right arm and five percent of her left arm.¹⁰ The Office medical adviser found that Dr. Jeffcoat correctly utilized the A.M.A., *Guides* to determine appellant's level of impairment. A.M.A., *Guides* Table 16-15, page 492, provides that a sensory deficit of the ulnar palmar nerve of the little finger has a maximum upper extremity impairment of 3 percent. When multiplied by the Grade 4, 25 percent, deficit in appellant's right little finger, as determined by Table 16-10, page 482, the result is 0.75 percent impairment of the right arm. Table 16-15 states that an ulnar palmar digital deficit of the middle finger has a maximum impairment of four percent and that a radial palmar digital deficit of the middle finger has a maximum of five percent upper extremity impairment. Together, they have up to nine percent upper extremity impairment. This percentage is then multiplied by the degree of deficit according to Table 16-10, page 482. The decreased sensation over the dorsum and middle finger of her left hand was found to be Grade 3, 50 percent, which yields a 4.5 percent permanent impairment in appellant's left arm.

The Board notes that appellant has not presented medical evidence to overcome the weight of Dr. Jeffcoat's opinion.

CONCLUSION

The Board finds that appellant does not have more than one percent permanent impairment of her right upper extremity and five percent impairment of her left upper extremity.

¹⁰ The Board notes that the Office properly rounded Dr. Jeffcoat's impairment ratings of 0.75 and 4.5 percent to 1 and 5 percent, respectively, because its policy is to round the calculated percentage of impairment to the nearest whole number. See *Robert E. Cullison*, 55 ECAB 570 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 2, 2007 is affirmed.

Issued: June 23, 2008
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