

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

V.W., Appellant

and

**DEPARTMENT OF THE ARMY, TINGAY
DENTAL CLINIC, Fort Gordon, GA, Employer**

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**Docket No. 07-1773
Issued: March 21, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 20, 2007 appellant filed a timely appeal of a May 21, 2007 merit decision of the Office of Workers' Compensation Programs, finding that she had no more than five percent impairment of the left upper extremity, for which she received a 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 has more than a five percent impairment of the left upper extremity, for which she received a schedule award.

FACTUAL HISTORY

This case has previously been on appeal before the Board. In a September 18, 2006 decision, the Board reversed the Office's August 8 and November 22, 2005 decisions terminating appellant's wage loss and medical compensation.¹ The Board found that the medical

¹ Docket No. 06-1051 (issued September 18, 2006).

opinion of Dr. William J. Vanderyt, an impartial medical specialist, was not entitled to special weight as to whether appellant had any continuing medical condition or disability causally related to her accepted employment-related bilateral carpal tunnel syndrome and epicondylitis. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.² The facts and the history relevant to the present issue are hereafter set forth.

Prior to the Board's September 18, 2006 decision, appellant filed a claim for a schedule award on March 13, 2006. She submitted medical reports dated February 27 and March 7, 2006 of Dr. John D. Marshall, an attending family practitioner, who found that she had de Quervain's tenosynovitis, carpal tunnel syndrome and epicondylitis of the left arm. Dr. Marshall opined that she had an eight percent permanent impairment of the left arm based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). In a January 25, 2006 work capacity evaluation, he opined that appellant could not perform her usual work duties but she could work eight hours per day with restrictions. Dr. Marshall stated that she could not tolerate work requiring the use of her arm and hand and listed her permanent restrictions.

On February 15, 2007 the Office advised appellant that her schedule award claim was not in posture for a decision as the February 27, 2006 assessment only provided the percentage of impairment. It did not provide any clinical evidence or an impairment rating based on the fifth edition of the A.M.A., *Guides*.

By letter dated February 16, 2007, the Office requested that Dr. Marshall determine the extent of permanent impairment of appellant's left wrist due to the accepted employment-related injury based on the fifth edition of the A.M.A., *Guides*.

In a March 20, 2007 report, Dr. Marshall stated that appellant had severe left arm pain. He noted that her employment injury had not resolved and it was medically present. Dr. Marshall opined that appellant's condition was permanent and that she was disabled for all work.

On March 28, 2007 Dr. Marshall stated that appellant reached maximum medical improvement in 2003. He reported 10 degrees of radial deviation, 15 degrees of ulnar deviation, 80 degrees of dorsiflexion and 60 degrees of palmar flexion. Dr. Marshall stated that there was no additional impairment of the arm due to weakness, atrophy, pain or discomfort. He concluded that appellant sustained an eight percent impairment of the left upper extremity.

On March 30, 2007 appellant filed another claim for a schedule award.

² On September 27, 2002 appellant, then a 55-year-old dental assistant, filed a claim for an occupational disease. On February 23, 1998 she first realized that she had carpal tunnel syndrome. On September 3, 2002 appellant realized that her condition was caused by constant movement of her wrist, fingers and elbows while passing instruments at the employing establishment. She also noticed extreme pain and tingling in her fingers. By letter dated March 18, 2003, the Office accepted the claim for bilateral carpal tunnel syndrome and epicondylitis.

On April 10, 2007 Dr. G.M. Pujadas, an Office medical adviser, reviewed the medical records. He stated that appellant had bilateral carpal tunnel syndrome that was more severe in the left wrist, together with symptoms of bilateral epicondylitis. Dr. Pujadas noted that she had not undergone surgery. He opined that appellant reached maximum medical improvement in 2003 based on Dr. Marshall's March 28, 2007 report. Dr. Pujadas determined that 10 degrees of radial deviation constituted a two percent impairment and 15 degrees of ulnar deviation constituted a three percent impairment (A.M.A., *Guides* 469, Figure 16-31). He further determined that 80 degrees of dorsiflexion and 60 degrees of palmar flexion each constituted a zero percent impairment (A.M.A., *Guides* 467, Figure 16-28). Dr. Pujadas added the range of motion impairment ratings to determine that appellant sustained a five percent impairment of the left upper extremity. He further determined that she had a zero percent impairment of the right upper extremity. Dr. Pujadas stated that Dr. Marshall did not properly follow the A.M.A., *Guides* in rating appellant with an eight percent impairment of the left upper extremity.

By decision dated May 21, 2007, the Office granted appellant a schedule award for a five percent impairment of the left upper extremity based on Dr. Pujadas' opinion.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the protocols of the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. In such cases, the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.⁷

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and epicondylitis while working at the employing establishment. Dr. Marshall, an attending

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.

⁷ *See John L. McClanic*, 48 ECAB 552 (1997); *see also Paul R. Evans*, 44 ECAB 646, 651 (1993).

physician, noted in a March 28, 2007 report that appellant had 10 degrees of radial deviation, 15 degrees of ulnar deviation, 80 degrees of dorsiflexion and 60 degrees of palmar flexion. He stated that she had no additional impairment of the arm due to weakness, atrophy, pain or discomfort. Dr. Marshall concluded that appellant sustained an eight percent impairment of the left upper extremity. He failed to identify which tables and figures of the A.M.A., *Guides* that he used to determine the impairment of appellant's left upper extremity. Moreover, Dr. Marshall did not state that appellant's impairment was causally related to her accepted employment injury. The Board, therefore, finds that Dr. Marshall's impairment rating is of diminished probative value.

Dr. Pujadas, an Office medical adviser, reviewed appellant's case record, including Dr. Marshall's findings and provided an accurate medical background of the accepted employment injury. He determined that 10 degrees of radial deviation constituted a two percent impairment and 15 degrees of ulnar deviation constituted a three percent impairment (A.M.A., *Guides* 469, Figure 16-31). Dr. Pujadas further determined that 80 degrees of dorsiflexion and 60 degrees of palmar flexion each constituted a zero percent impairment (A.M.A., *Guides* 462, Figure 16-28). He added the range of motion impairment ratings to find that appellant sustained a five percent impairment of the left upper extremity. Dr. Pujadas further determined that she had no impairment of the right upper extremity. He noted that Dr. Marshall did not properly follow the A.M.A., *Guides* in finding that appellant had an eight percent impairment of the left upper extremity.

Dr. Pujadas properly applied the A.M.A., *Guides* and provided rationale for rating a five percent impairment of the left upper extremity. The Board finds that Dr. Pujadas' opinion represents the weight of the medical evidence of record. Appellant has no more than a five percent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant failed to establish that she has more than a five percent impairment to the left upper extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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