

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

E.L., Appellant

and

**U.S. POSTAL SERVICE, OHARE AIR MAIL
CENTER, Chicago, IL, Employer**

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**Docket No. 07-2421
Issued: March 10, 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 September 24, 2007 appellant filed a timely appeal from an August 2, 2007 merit decision of the Office of Workers' Compensation Programs granting her a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than a three percent permanent impairment of the left upper extremity.

FACTUAL HISTORY

This case is before the Board for the second time. In the first appeal, the Board affirmed the Office's finding that appellant had no impairment of the right upper extremity.¹ The Board found, however, that the Office improperly determined that she had a 10 percent impairment of the left upper extremity. The Board noted that the Office medical adviser based his finding on grip strength measurements; however, in evaluating carpal tunnel syndrome, ratings are generally not to be based on loss of grip strength. The Board remanded the case for the Office to obtain an opinion regarding the extent of appellant's left upper extremity impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

On December 19, 2006 an occupational therapist evaluated appellant for her attending physician, Dr. Mark S. Cohen, a Board-certified orthopedic surgeon.² He listed range of motion findings and measured grip strength as 49 pounds on the right and 44 pounds on the left. The occupational therapist also measured pinch strength and found no sensory deficits.³

On June 7, 2007 the Office requested that the Office medical adviser again review the file and provide an opinion on the extent of appellant's left upper extremity impairment. On June 11, 2007 the Office medical adviser reviewed the December 19, 2006 occupational therapist's report and applied the A.M.A., *Guides* to the clinical findings. He classified appellant's impairment due to loss of strength as a Grade 4 deficit based on the measurement of left grip strength. The Office medical adviser multiplied the Grade 4, or 25 percent impairment, by the maximum impairment in the distribution of the median nerve, 10 percent, to find a 2.5 percent left upper extremity impairment.⁴ He noted that the 2.5 percent award should replace the prior award of 10 percent. The Office medical adviser found the date of maximum medical improvement remained September 2, 2005.

By decision dated August 2, 2007, the Office granted appellant a schedule award for a three percent permanent impairment of the left upper extremity. The period of the award ran for 9.36 weeks from September 2 to November 6, 2005.

¹ *E.L.*, Docket No. 07-347 (issued April 24, 2007). The Office accepted that appellant sustained bilateral carpal tunnel syndrome due to factors of her federal employment. She underwent a right carpal tunnel release on September 7, 2004. Dr. Cohen provided an impairment evaluation dated September 2, 2005. An Office medical adviser reviewed Dr. Cohen's report and found that appellant had a 10 percent impairment of the left upper extremity due to loss of grip strength and no impairment of the right upper extremity.

² In a report dated November 10, 2006, Dr. Cohen discussed appellant's continued complaints of right wrist pain. He diagnosed possible arthritis. On December 22, 2006 Dr. Cohen noted that her right wrist had improved following an injection and therapy.

³ The occupational therapist performed an initial evaluation on December 5, 2006.

⁴ A.M.A., *Guides* 492, 484, Tables 16-5, 16-11.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,⁵ and its implementing federal regulations,⁶ 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 shall 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 standard applicable to all claimants.⁷ 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, 2001.⁸

ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome. On prior appeal, the Board found that she did not have a permanent impairment of the right upper extremity. The Board remanded the case for further development on the issue of the extent of appellant's left upper extremity impairment after finding that the Office medical adviser improperly relied upon grip strength measurements in determining the extent of permanent impairment.⁹

The A.M.A., *Guides* on page 495 provides three scenarios for determining the permanent impairment due to carpal tunnel syndrome after an optimal recovery time following surgical decompression. However, as appellant did not undergo surgical decompression on the left side, the specific method for determining impairment due to carpal tunnel syndrome provided on page 495 of the A.M.A., *Guides* does not apply. Under the fifth edition of the A.M.A., *Guides*, schedule awards for carpal tunnel syndrome are predicated only on motor and sensory impairments.¹⁰

The Office medical adviser applied the A.M.A., *Guides* to the December 19, 2006 clinical findings of an occupational therapist. He determined that appellant had a Grade 4 deficit due to loss of power and motor weakness according to Table 16-11 on page 484. The Office medical adviser multiplied the maximum impairment for Grade 4 muscle weakness, 25 percent, by the maximum impairment of the median nerve, 10 percent, to find a 2.5 percent impairment of the left upper extremity.¹¹ The Office properly rounded the impairment percentages to the

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ 20 C.F.R. § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁹ In evaluating an impairment due to carpal tunnel syndrome, there generally will be no ratings based on loss of grip strength. A.M.A., *Guides* 494-95; *David D. Cumings*, 55 ECAB 285 (2004).

¹⁰ *Robert V. Disalvatore*, 54 ECAB 351 (2003).

¹¹ A.M.A., *Guides* 492, Table 16-15.

nearest whole point and found that appellant had a three percent impairment of the left upper extremity.¹² There is no medical evidence of record which provides an accurate impairment rating of her left upper extremity under the A.M.A., *Guides* showing that she is entitled to a greater award.

On appeal, appellant contends that she is entitled to a greater award for the left upper extremity.¹³ She described her pain and discomfort and her difficulties driving an automobile. Factors such as limitations on daily activities, however, do not go into the calculation of a schedule award.¹⁴

CONCLUSION

The Board finds that appellant has no more than a three percent permanent impairment of the left upper extremity.

ORDER

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

Issued: March 10, 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

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (June 2003).

¹³ Appellant also described difficulties with her right upper extremity. The Board's jurisdiction, however, extends only to the review of final decisions by the Office. 20 C.F.R. § 501.2(c).

¹⁴ *James A. Castagno*, 53 ECAB 782 (2002).