

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

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**D.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Paoli, PA, Employer**

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**Docket No. 08-189  
Issued: May 21, 2008**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 25, 2007 appellant filed a timely appeal from a May 23, 2007 decision by a hearing representative of the Office of Workers' Compensation Programs that affirmed a schedule award for 20 percent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

**ISSUE**

The issue is whether appellant has established that she has more than 20 percent impairment of the right upper extremity, for which she received a schedule award.

**FACTUAL HISTORY**

On June 17, 2004 appellant, then a 40-year-old part-time flexible clerk, filed an occupational disease claim stating that she developed carpal tunnel syndrome in the performance of duty. In a June 13, 2004 report, Dr. Thomas P. Harder, an internist and Board-certified rheumatologist, diagnosed carpal tunnel syndrome involving the right wrist and hand and noted right wrist synovitis. The Office accepted appellant's claim for right carpal tunnel syndrome,

authorized a right carpal tunnel release and paid appropriate compensation. She stopped work and underwent surgery on July 16, 2004. Appellant returned to a light-duty assignment on September 13, 2004 and resumed full-duty work on November 18, 2004.

An August 27, 2004 electromyogram (EMG) report, by Dr. Steven Mandel, a Board-certified neurologist, diagnosed mild right carpal tunnel syndrome and chronic denervation of the ulnar and radial nerves. In a September 9, 2004 report, he noted appellant's history of carpal tunnel syndrome and complaints of continuing symptoms after surgery. Dr. Mandel stated that appellant reported that her pain was worse after surgery and she had a positive Tinel's sign in her right wrist. In a September 30, 2004 report, Dr. Mark Rekant, a Board-certified orthopedic and hand surgeon, noted appellant's complaints of ongoing pain and numbness. He diagnosed persistent right median nerve neuropathy. Dr. Rekant found that appellant had some decreased sensation in the index, middle and ring fingers, but had full digital range of motion of the right hand.

In a May 26, 2005 report, Dr. Nicholas Diamond, an osteopath, noted appellant's history of carpal tunnel syndrome and complaint of ongoing pain, numbness and tingling in the right upper extremity. He also found a decreased grip strength and difficulty with fine dexterity in the right hand. Dr. Diamond found that appellant's right hand exhibited diminished range of motion with pain at the extremes, decreased sensation and diminished grip and pinch strength. He also noted that appellant's Tinel's sign, Phalen's sign, carpal compression test and pronator compression test were all positive. Dr. Diamond opined that the cumulative and repetitive work-related injury was the competent producing factor for the claimant's subjective and objective findings. He rated appellant's impairment as follows: 31 percent impairment for sensory deficit in the right median nerve and 20 percent impairment for right lateral pinch deficit, which he combined to find 45 percent impairment. Dr. Diamond referenced the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>1</sup> (A.M.A., *Guides*), Table 16-10<sup>2</sup> and Table 16-15<sup>3</sup> in support of his impairment rating for sensory deficit and Table 16-34<sup>4</sup> of the A.M.A., *Guides* in support of his impairment rating for right lateral pinch deficit. He then added 3 percent for pain, citing Figure 18-1<sup>5</sup> of the A.M.A., *Guides*, finding a total of 48 percent impairment of the right arm. Dr. Diamond concluded that appellant reached maximum medical improvement effective May 26, 2005.

On July 25, 2006 appellant claimed a schedule award.

On October 2, 2006 the Office referred appellant, together with a statement of accepted facts, to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion examination to determine the degree of any work-related permanent impairment.

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<sup>1</sup> A.M.A., *Guides*, (5<sup>th</sup> ed. 2001).

<sup>2</sup> *Id.* at 482, Table 16-10.

<sup>3</sup> *Id.* at 492, Table 16-15.

<sup>4</sup> *Id.* at 509, Table 16-34.

<sup>5</sup> *Id.* at 574, Figure 18-1.

In an October 17, 2006 second opinion report, Dr. Hanley discussed appellant's history of carpal tunnel syndrome and carpal tunnel release. He explained that, although appellant complained of total numbness in her right hand, "it is obvious that she is utilizing the hand during the course of the conversation and one would have to suggest that she has disordered sensation but no absent sensation." Dr. Hanley also noted that appellant had full range of motion in the small joints and that her hands appeared normal, with none of the "abnormality of the skin that would typically be seen in an individual who has complete loss of sensation." He found that she did have a positive Tinel's sign and some sensitivity in the surgical area. Dr. Hanley diagnosed right carpal tunnel syndrome. In rating appellant's right upper extremity impairment, he utilized Tables 16-10<sup>6</sup> and 16-15<sup>7</sup> of the A.M.A., *Guides*. Dr. Hanley explained that appellant had positive clinical findings of median nerve dysfunction and distorted superficial tactile sensibility with diminished light touch and two-point discrimination with abnormal sensation. Therefore, appellant fit into the Grade 3 category for sensory deficit pursuant to Table 16-10.<sup>8</sup> Dr. Hanley determined, based on clinical judgment, that appellant's sensory deficit "should be rated at 50 percent."<sup>9</sup> He noted that, based on Table 16-15,<sup>10</sup> the maximum impairment for sensory deficit or pain of the median nerve was 39 percent. Dr. Hanley calculated appellant's impairment at 19.5 percent or 50 percent of 39 percent, which he rounded up to 20 percent. He explained that he did not find pinch strength deficit, motor loss or any other basis for rating appellant's impairment. In a work capacity evaluation, also prepared on October 17, 2006, Dr. Hanley indicated that appellant could work for eight hours per day without restrictions.

In an October 28, 2006 report, an Office medical adviser reviewed the medical evidence. He concurred with Dr. Hanley's ratings that appellant's right upper extremity impairment was 20 percent. The medical adviser explained that "Dr. Hanley specifically addressed the accepted condition of right carpal tunnel syndrome and he provided full documentation of how he arrived at the claimant's right upper extremity rating." By contrast, he noted that Dr. Diamond's rating did not reflect the physical examination results and that the doctor did not give a detailed explanation of his calculation methods. The medical adviser also noted that Dr. Diamond recommended an additional three percent impairment for pain, which was already addressed in the rating for the sensory component of median nerve dysfunction under Table 16-10 of the A.M.A., *Guides*.

By decision dated November 13, 2006, the Office granted appellant a schedule award for 20 percent impairment of the right upper extremity.

On November 17, 2006 appellant requested an oral hearing, which was held on March 20, 2007. In a February 19, 2007 report, Dr. Mandel noted appellant's continuing

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<sup>6</sup> See *supra* note 2.

<sup>7</sup> See *supra* note 3.

<sup>8</sup> See *supra* note 2.

<sup>9</sup> See *id.* A Grade 3 classification for sensory deficit or pain provides for a range of a 26 to 60 percent deficit for the affected nerve.

<sup>10</sup> See *supra* note 3.

complaints of tingling and numbness. He indicated that she had weakness and difficulty with manipulation in both hands. Dr. Mandel noted that a February 15, 2007 EMG and nerve conduction study revealed prolonged median responses and carpal tunnel syndrome bilaterally, although he found normal sensation. He diagnosed bilateral carpal tunnel syndrome. Appellant also provided a copy of the February 15, 2007 nerve conduction study.

By decision dated May 23, 2007, the hearing representative affirmed the November 13, 2006 schedule award. She noted that Dr. Hanley's impairment rating was based on more current test results and objective findings and conformed with the A.M.A., *Guides*.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>11</sup> and its implementing regulations<sup>12</sup> 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>13</sup>

### **ANALYSIS**

The Board finds that appellant has not established that she has more than 20 percent impairment of the right arm, for which she received a schedule award.

In support of her claim, appellant provided a May 26, 2005 report from Dr. Diamond, who determined that she had 31 percent impairment due to sensory deficit and 20 percent impairment for right lateral pinch deficit with reference to Tables 16-10 and 16-15 of the A.M.A., *Guides*. In finding 20 percent impairment for right lateral pinch deficit, Dr. Diamond referenced Table 16-34. However, he did not provide a full explanation or discussion of how he utilized the cited provisions in determining appellant's impairment rating. Although Dr. Diamond noted his physical examination findings, he did not explain how he applied the A.M.A., *Guides* to reach his impairment rating. Furthermore, he did not explain why he used pinch strength testing to rate impairment due to carpal tunnel syndrome when in the A.M.A., *Guides* do not provide for using loss of pinch strength to rate impairment in case of carpal tunnel

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<sup>11</sup> 5 U.S.C. § 8107.

<sup>12</sup> 20 C.F.R. § 10.404 (1999).

<sup>13</sup> See *id.*; B.C., 58 ECAB \_\_\_\_ (Docket No. 06-925, issued October 13, 2006).

syndrome.<sup>14</sup> Similarly, Dr. Diamond did not explain the basis for attributing an additional three percent impairment for pain under Chapter 18 of the A.M.A., *Guides* when he had already rated sensory loss under Chapter 16. The Board has held that physicians should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.<sup>15</sup> Dr. Diamond therefore provided a duplicative rating for sensory loss. Moreover, the Board notes that Table 16-10,<sup>16</sup> which he referenced, rates pain in determining impairment for peripheral nerve disorders. Accordingly, the Board finds that Dr. Diamond's impairment rating is of diminished probative value. He did not properly explained how his rating comports with the provisions of the A.M.A., *Guides*.<sup>17</sup>

By contrast, Dr. Hanley's October 17, 2006 report was detailed and reasoned. He presented his findings on physical examination and thoroughly explained how he applied the specific provisions of the A.M.A., *Guides* to reach his impairment rating. Dr. Hanley related his physical examination findings to the A.M.A., *Guides*, noting that appellant fit into the Grade 3 category for sensory deficit pursuant to Table 16-10.<sup>18</sup> Appellant exhibited positive clinical findings of median nerve dysfunction and distorted superficial tactile sensibility with diminished light touch and two-point discrimination with abnormal sensation. Dr. Hanley used his clinical judgment to find that appellant's sensory deficit was 50 percent (within the Grade 3 range of 26 to 60 percent). He multiplied the 50 percent deficit grade by the maximum 39 percent impairment of the median nerve allowed under Table 16-15.<sup>19</sup> The Board finds that Dr. Hanley properly explained how he calculated impairment pursuant to Tables 16-10 and 16-15. He found no other basis on which to attribute permanent impairment. Dr. Hanley noted that appellant had full range of motion in the small joints of the hands, no motor deficit and no pinch strength deficit. In an October 28, 2006 report, an Office medical adviser reviewed the record and concurred with Dr. Hanley's findings. The Board finds that Dr. Hanley's October 17, 2006 report establishes that appellant has no more than 20 percent permanent impairment of the right arm.

On appeal, appellant asserts that there is a conflict in the medical evidence between Dr. Diamond and Dr. Hanley. However, there is no conflict in the medical evidence To

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<sup>14</sup> See A.M.A., *Guides*, at 495 (sets forth three scenarios for rating impairment after optimal recover from surgical decompression), 508 (provides that impairment ratings based on objective anatomic findings should take precedence over ratings based on loss of strength based on measurements of grip and pinch strength); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (November 2002) (grip and/or pinch strength should not be used to calculate upper extremity impairment caused by a compression neuropathy such as carpal tunnel syndrome).

<sup>15</sup> *Linda Beale*, 57 ECAB 429 (2006).

<sup>16</sup> See *supra* note 2.

<sup>17</sup> See *Carl J. Cleary*, 57 ECAB 563 (2006) (an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's impairment).

<sup>18</sup> See *supra* note 2.

<sup>19</sup> See *supra* note 3.

constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale.<sup>20</sup> As noted Dr. Diamond's and Dr. Hanley's reports are not of virtually equal weight and rationale. Dr. Diamond did not present adequate explanation or reasoning in support of his impairment rating conform with the A.M.A., *Guides* and Office procedures. Rather, he simply noted his recommended rating and cited generally to certain tables of the A.M.A., *Guides* without explaining his calculation methods or discussing the physical examination findings. Dr. Hanley's report, as noted, properly applied the A.M.A., *Guides* in determining impairment and detailed his calculation methods.

### **CONCLUSION**

The Board finds that appellant has not established that she had more than 20 percent impairment of the right upper extremity, for which she received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>20</sup> *John D. Jackson*, 55 ECAB 465 (2004).