United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 08-1770**
	)	**Issued: April 9, 2009**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Melbourne, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 10, 2008 appellant filed a timely appeal from a June 26, 2007 merit decision of the Office of Workers' Compensation Programs concerning his schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award claim.

ISSUE

The issue is whether appellant has established more than five percent right upper extremity impairment and more than five percent left upper extremity impairment, for which he received a schedule award.

FACTUAL HISTORY

On October 12, 2004 appellant, then a 53-year-old revenue officer, filed an occupational disease claim for a bilateral upper extremity condition he attributed to his employment. The Office accepted the claim for bilateral carpal tunnel syndrome and authorized bilateral carpal tunnel release, which appellant underwent December 8, 2004 and April 15, 2005 for his right and

left side, respectively. Both surgeries were performed by Dr. Jeffrey O'Brien, a Board-certified hand surgeon. Appellant returned to limited-duty work February 21, 2006 and elected retirement benefits effective May 2, 2006. By decision dated July 27, 2006, the Office found the position of modified revenue officer fairly and reasonably represented appellant's wage-earning capacity.

On February 7, 2006 appellant claimed a schedule award. On February 22, 2006 the Office requested that Dr. O'Brien provide additional information necessary to determine the percentage of permanent impairment necessary under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[1]

In a March 28, 2006 medical report, Dr. O'Brien provided range of motion measurements for the wrists and findings on physical examination. He stated that appellant reached maximum medical improvement on December 14, 2005 on both sides and had a three percent impairment of each upper extremity.

In a July 20, 2006 report, an Office medical adviser reviewed the record and Dr. O'Brien's March 28, 2006 impairment rating. He indicated that Dr. O'Brien's calculation of impairment was not correct for an impairment rating due to carpal tunnel syndrome. The Office medical adviser explained that range of wrist motion could only be used for intrinsic wrist pathology, such as arthritis or old fracture deformity, in determining a schedule award for an upper extremity. He noted that wrist pathology such as arthritis and contracture were not part of the accepted condition in this case and concluded that loss of motion of the wrist was not ratable for carpal tunnel syndrome. The Office medical adviser advised that scenario number two on page 495 of the A.M.A., *Guides* would be appropriate to rate appellant's bilateral carpal tunnel syndrome. He opined that from the permitted range of zero to five percent, five percent impairment rating would be appropriate for both the right and the left upper extremity.

By decision dated August 16, 2006, the Office granted appellant a schedule award for five percent right upper extremity impairment and five percent left upper extremity impairment. The award covered the period February 19 to September 25, 2006.

Appellant disagreed with this decision and requested an oral hearing, which was held April 18, 2007. He indicated that he believed he had greater impairment as he had pain every day. Appellant also indicated that his right hand was worse than his left hand and he did not understand how the impairment rating could be the same for both hands. He noted that, with his current symptoms he was advised surgery was an option for his right hand but he was hesitant to undergo more surgery.

Medical status reports from Dr. O'Brien were also received for March 1, 2006 and thereafter. He reported appellant's complaints of worsening symptoms, particularly in the right hand. Dr. O'Brien did not offer any further impairment ratings in these reports.

By decision dated June 26, 2007, an Office hearing representative affirmed the Office's August 16, 2006 decision.

[1] A.M.A., *Guides* (5th ed. 2001).

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[2] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides.*[3]

Office procedures[4] provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[5] The A.M.A., *Guides* makes clear: In compression neuropathies, such as carpal tunnel syndrome, additional impairment values are not given for decreased grip strength. In the absence of complex regional pain syndrome (CRPS), additional impairment values are not given for decreased motion.[6]

Chapter 16 of the fifth edition of the A.M.A., *Guides* provides the framework for assessing upper extremity impairments.[7] Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

> "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 CTS is rated according to the sensory and/or motor deficits as described earlier.[8]
> >
> > (2) Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] testing of the

[2] 5 U.S.C. § 8107.

[3] *See* 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001). *See also Linda Beale*, 57 ECAB 429 (2006).

[4] *See* Federal (FECA) Procedure Manual, Part 3 -- *Medical*, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). *See also Cristeen Falls*, 55 ECAB 420 (2004).

[5] A.M.A., *Guides* 491, 482, 484, 492, respectively; *see Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[6] A.M.A., *Guides* 494.

[7] *Id.* at 433-521.

[8] Section 16.5b of the A.M.A., *Guides* describes the methods for evaluating upper extremity impairments due to peripheral nerve disorders and provides that the severity of the sensory or pain deficit and motor deficit should be classified according to Tables 16-10a and 16-11a respectively. The impairment is evaluated by multiplying the grade of severity of the sensory or motor deficit by the respective maximum upper extremity value resulting from sensory or motor deficits of each nerve structure involved. When both sensory and motor functions are involved, the impairment values derived for each are combined. *Id.* at 481; *Kimberly M. Held*, 56 ECAB 670 (2005).

> thenar muscles: a residual CTS 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.[9]"

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with his providing rationale for the percentage of impairment specified.[10]

ANALYSIS

Appellant received a schedule award for five percent right upper extremity impairment and five percent left upper extremity impairment for his accepted bilateral carpal tunnel conditions which he underwent surgical release. The Office based its award on the report of its Office medical adviser, who reached his impairment rating after reviewing Dr. O'Brien's March 28, 2006 report.

In his March 28, 2006 report, Dr. O'Brien found three percent impairment for each arm based on loss of range of motion of the wrist. As noted above, additional impairment values are not given for decreased motion in the absence of CRPS. Dr. O'Brien did not note the presence of CRPS in conjunction with the accepted bilateral carpal tunnel syndrome, thus, appellant is not entitled to a schedule award for decreased motion.[11] The Office medical adviser also correctly noted that the A.M.A., *Guides* generally preclude ratings based on loss of motion in carpal tunnel cases. He noted that since intrinsic wrist pathology, such as arthritis and contracture, were not part of the accepted condition in this case, range of wrist motion could not be used in determining a schedule award. However, Dr. O'Brien's report did not offer a proper basis, under the A.M.A., *Guides*, for rating appellant's permanent impairment. His additional reports offer no additional information from which an impairment rating can be obtained.

The Office medical adviser assigned the five percent impairment rating for both the right and left upper extremities respectively based on the fact that appellant exhibited normal motor deficits postoperatively but abnormal electrodiagnostic studies preoperatively. The Board notes that this is consistent with option two on page 495 of the A.M.A., *Guides* which allow for an impairment rating not to exceed five percent in situations where a person has normal sensibility and abnormal sensory with optimal recovery time after surgical decompression. The Board finds that the Office medical adviser's opinion is well rationalized and based on a proper factual background and establishes that appellant has no more than five percent permanent impairment of each arm.

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

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

[11] *Supra* note 4.

As the evidence does not establish more than five percent impairment for both the right and the left upper extremities respectively, the Board will affirm the Office's finding on appellant's permanent impairment. Although appellant, on appeal, asserts that he has continuing symptoms, the medical evidence does not support any greater impairment, pursuant to the A.M.A., *Guides*, than that for which he has received a schedule award.

CONCLUSION

The Board finds appellant has no more than five percent right upper extremity impairment and no more than five percent left upper extremity impairment, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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