United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 09-862**
	)	**Issued: November 12, 2009**
U.S. POSTAL SERVICE, NORTH PHILADELPHIA STATION, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, 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 February 25, 2009 appellant, through his attorney, filed a timely appeal from the January 22, 2009 decision of the Office of Workers' Compensation Programs, which denied his additional schedule award claims for both upper extremities. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has more than a 16 percent impairment of his right arm and a 4 percent impairment of his left arm, for which he received schedule awards.

On appeal, appellant, through his attorney, contends that the Office failed to follow the Board's remand order in that the impartial medical specialist failed to clarify whether appellant had any motor loss involving his upper extremities. Counsel also argued that the impairment rating should be increased to reflect 36 percent right upper extremity impairment and a 24 percent left upper extremity impairment.

FACTUAL HISTORY

This is the third appeal before this Board. The law and the facts of the case as set forth in the Board's prior decisions are hereby incorporated by reference.[1] The relevant facts are set forth below.

The Office accepted appellant's claim for bilateral carpal tunnel syndrome. Appellant's treating Board-certified physiatrist, Dr. George L. Rodriguez, found that appellant had a 27 percent impairment of the left upper extremity and 37 percent of the right upper extremity. A second opinion physician, Dr. Kevin F. Hanley, found that appellant had a 16 percent impairment of the right upper extremity and a 4 percent impairment of the left upper extremity. In a decision dated June 5, 2007, the Board found that the impairment ratings of Drs. Rodriguez and Hanley were in conflict and remanded the case for further development of the medical evidence.[2]

On remand, the Office referred appellant to Dr. Joseph J. Mesa, a Board-certified orthopedic surgeon, for an impartial medical examination. In a medical opinion dated August 29, 2007, Dr. Mesa found that appellant had 35.6 percent impairment of the right upper extremity and a 24 percent impairment of the left upper extremity. However, the Board found that Dr. Mesa erred in that he combined findings of grip strength loss with findings of sensory impairment of the median nerve when impairment arising from carpal tunnel syndrome should be rated based on motor and sensory deficits. The Board noted that pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* in compression neuropathies, additional impairment values are not given for decreased grip strength. The Board directed that the Office ask Dr. Mesa to clarify whether appellant had any motor loss involving his upper extremities.[3]

By letter dated June 30, 2008, the Office requested that Dr. Mesa clarify his opinion. It asked Dr. Mesa whether appellant had any motor loss involving the upper extremities and to further address the impairment arising from the accepted conditions of bilateral carpal tunnel syndrome and trigger finger based on motor and sensory deficits in accordance with the A.M.A., *Guides*.

In an October 9, 2008 report, Dr. Mesa noted that his initial assessment included a grip strength evaluation of appellant's overall disability. However, upon further review of the A.M.A., *Guides*, additional impairment values were not given for grip strength. He stated that, when not allowing for grip strength, the right upper extremity impairment was 15.6. With regard to the left upper extremity, Dr. Mesa found that appellant had four percent impairment of the left arm.

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[1] Docket No. 08-184 (issued June 17, 2008); Docket No. 07-339 (issued June 5, 2007).

[2] Docket No. 07-339, *supra* note 1. The Board found that Dr. Rodriguez found a range of motion impairment to appellant's right 3rd and 4th fingers whereas Dr. Hanley concluded that appellant's trigger finger condition had resolved without any impairment.

[3] Docket No. 08-184 (issued June 17, 2008).

By letter dated November 7, 2008, the Office asked Dr. Mesa for further clarification of his opinion. On December 3, 2008 it sent the impartial medical examiner a copy of an October 30, 2008 magnetic resonance imaging (MRI) scan.[4] Dr. Mesa responded on January 21, 2009. He reviewed the 2008 MRI scan findings showing no muscular atrophy and an electromyogram study obtained in 2005. There was a slow median motor conduction delay across the right wrist, but his previous diagnosis and ratings remain unchanged. He opined that there was no motor loss involving the upper extremities.

By decision dated January 22, 2009, the Office found that appellant was not entitled to an additional schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[5] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[6] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[7] The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[8]

Where there exist 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 upon a proper factual background, must be given special weight.[9]

ANALYSIS

A conflict in medical opinion was found between appellant's treating physician, Dr. Rodriguez, and the second opinion physician, Dr. Hanley. The Office properly referred appellant to Dr. Mesa for an impartial medical examination. Dr. Mesa conducted a complete physical examination and review of the medical records. On August 29, 2007 he opined that appellant had a 35.6 percent impairment of the right upper extremity and a 24 percent impairment of the left upper extremity. However, the Board subsequently noted that Dr. Mesa improperly applied measurements for loss of grip strength. The case was remanded for Dr. Mesa

[4] The October 30, 2008 MRI scan was interpreted by Dr. Howard C. Hutt, a Board-certified radiologist, as evincing no evidence of bony abnormality; intrinsic ligaments and triangular cartilage complex are maintained; flexor tendons have normal position with normal signal; and no abnormal enhancement.

[5] 5 U.S.C. §§ 8101-8193.

[6] *Id*. at § 8107.

[7] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[8] 20 C.F.R. § 10.404.

[9] *Darlene Kennedy*, 57 ECAB 414 (206).

to clarify his opinion as to the extent of permanent impairment. Dr. Mesa was asked to clarify whether appellant had any motor loss involving the upper extremities and provide an impairment rating conforming with the protocols of the A.M.A., *Guides.*

Dr. Mesa acknowledged that he improperly rated loss of grip strength. He amended the impairment ratings to omit grip strength as an impairment. He found 16 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity. With regard to the right arm, he noted that appellant had a right median nerve sensory Grade 3 deficit under Table 16-10, page 482 of the A.M.A., *Guides*. This allows between 26 and 60 percent for a Grade 3 sensory deficit. Dr. Mesa rated appellant with a sensory deficit of 40 percent. Under Table 16-15, page 492 of the A.M.A., *Guides*, a maximum impairment of 39 percent is allowed for sensory impairment to the median nerve. Dr. Mesa properly determined that appellant had a 15.6 percent impairment of his right upper extremity, which was rounded to 16 percent. With regard to the left upper extremity, he determined that appellant had a Grade 4 sensory deficit, for which Table 16-10 allows from 1 to 25 percent. Dr. Mesa found that appellant had a 10 percent sensory deficit. He multiplied 10 percent by the 39 percent maximum for sensory deficit to the median nerve to rate a 3.9 percent impairment to the left upper extremity, which was rounded to 4 percent. Dr. Mesa removed the factor of grip strength from the impairment rating and advised that there was no motor loss involving the upper extremities. Accordingly, the Office properly granted schedule awards for 16 percent impairment of the right arm and 4 percent impairment of the left arm.

Contrary to appellant's contention, the Office followed the Board's instructions on remand. Dr. Mesa acknowledged his error in rating for grip strength and provided new ratings that comply with the A.M.A., *Guides*. As noted, in cases of compression neuropathy, additional impairment is not given for decreased grip strength.

When a case is referred to an impartial medical examiner to resolve a conflict in evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[10] The Board finds that the report of the impartial medical examiner, Dr. Mesa, constitutes the special weight of the medical evidence and establishes that appellant has no more than a 16 percent impairment of the right upper extremity and a 4 percent impairment of the left upper extremity, for which he received schedule awards.

CONCLUSION

The Board finds that appellant has not established impairment greater than a 16 percent impairment of his right upper extremity and a 4 percent impairment of his left upper extremity, for which he received schedule awards.

[10] *Darlene Kennedy, supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 22, 2009 is affirmed.

Issued: November 12, 2009
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