United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 09-846**
	)	**Issued: October 22, 2009**
DEPARTMENT OF DEFENSE, DEFENSE INFORMATION SYSTEMS, Slidell, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 11, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated December 31, 2008 determining her permanent impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than six percent impairment of her left upper extremity for which she has received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board. Appellant filed an occupational disease claim alleging that she developed carpal tunnel syndrome due to her employment duties. The Office accepted her claim for right carpal tunnel syndrome and surgical release on February 17, 1999 and left carpal tunnel syndrome on February 20, 1999. On May 16, 2001 it granted appellant a schedule award for five percent impairment of her right upper extremity and three

percent impairment of her left upper extremity. Appellant requested review by the Board. In an Order Remanding Case dated March 19, 2002,[1] the Board found that the Office improperly utilized the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* rather than the fifth edition in evaluating her permanent impairment. The case was remanded for further development. The facts and the circumstances of the case as set out in the Board's prior decision are incorporated herein by reference.

By decision dated April 22, 2002, the Office granted appellant a schedule award for an additional two percent impairment of her left upper extremity, or a total impairment rating of five percent.

Appellant requested an additional schedule award on July 14, 2008. On July 16, 2008 the Office requested additional information regarding her permanent impairment due to her accepted conditions of bilateral carpal tunnel syndrome and left lateral epicondylitis. In notes dated June 25 and July 23, 2008, Dr. Raymond R. Fletcher, a Board-certified orthopedic surgeon, diagnosed continued chronic bilateral wrist and elbow pain with expansion of pain into trapezius muscles. Using the 5th edition of the A.M.A., *Guides* he found that appellant had five percent impairment of the right upper extremity due to carpal tunnel syndrome, five percent impairment of the left upper extremity due to carpal tunnel syndrome and six percent impairment of the left upper extremity due to left lateral epicondylitis. Dr. Fletcher based his impairment of the left elbow on tendinitis and loss of pinch and grip strength.[2]

The Office medical adviser reviewed appellant's claim on August 12, 2008 and noted that the record did not contain the surgical reports regarding her left carpal tunnel release or left lateral epicondylectomy. He requested the reports, in addition to other medical evidence, be obtained.

In a note dated August 20, 2008, Dr. Fletcher found a positive Tinel's sign at the left carpal tunnel and that appellant was tender bilaterally at the wrist carpal tunnel. He noted that appellant was to undergo a cervical discectomy and fusion in three weeks.

Appellant submitted the March 2, 2001 postoperative report for her left carpal tunnel release. She also submitted the January 2, 2003 postoperative report for her left elbow fasciotomy and lateral epicondylectomy. In notes dated October 6 and November 3, 2008, Dr. Fletcher advised that appellant continued to experience chronic bilateral wrist and elbow pain with tenderness at the lateral epicondyle on the left and positive long arm extension as well as positive Tinel's signs bilaterally slightly worse on the left.

The Office medical adviser reviewed the medical evidence on November 13, 2008 and noted that appellant had received schedule awards for five percent impairment of each of her upper extremities due to carpal tunnel syndrome. He found no additional impairment due to this condition, but found that appellant was entitled to an additional six percent impairment of her left

[1] Docket No. 01-1781 (issued March 19, 2002).

[2] A.M.A., *Guides* 507-08.

upper extremity due to left lateral epicondylitis based on grip strength. The Office medical adviser noted that appellant had no additional impairment in her right upper extremity.

Appellant requested a schedule award on December 19, 2008. By decision dated December 31, 2008, the Office granted her a schedule award for an additional one percent impairment of the left arm or a total of six percent. The award covered the period July 23 to August 13, 2008.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[4] 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.[5] Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[6]

ANALYSIS

The Board finds that this case is not in posture for a decision. Appellant previously received schedule awards totaling five percent of each upper extremity due to the accepted condition of carpal tunnel syndrome. The additional medical evidence received from Dr. Fletcher does not support any additional impairment due to carpal tunnel syndrome. He found that appellant's current impairment rating due to her carpal tunnel syndrome was five percent bilaterally, for which she received schedule awards on May 16, 2001 and April 22, 2002. The Office medical adviser concurred with Dr. Fletcher's conclusion. As there is no medical evidence supporting that appellant has more than five percent impairment of her upper extremities due to bilateral carpal tunnel syndrome, she is not entitled to an additional schedule award due to this condition.

Dr. Fletcher also opined that appellant had six percent impairment to her left upper extremity due to her lateral epicondylitis and corrective surgery. He applied the A.M.A., *Guides* and found that appellant had a loss of grip strength resulting in an additional six percent impairment of the left upper extremity. The Office medical adviser reviewed this report and

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id.*

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

concurred with Dr. Fletcher's impairment rating.[7] However, neither physician provided detailed findings in accordance with the A.M.A., *Guides* to support the impairment rating.

The A.M.A., *Guides* provide that syndromes involving the upper extremity including those diagnosed as epicondylitis are not given a permanent impairment rating unless there is some other factor that must be considered.[8] These additional factors include surgical release which has resulted in permanent weakness of grip strength.[9] As Dr. Fletcher performed corrective surgery for appellant's lateral epicondylitis and opined that she experienced a loss of grip strength, she is eligible to this impairment rating if substantiated under the A.M.A., *Guides*. While grip strength tests are appropriate in this case, there is no evidence in the record establishing that he properly complied with the A.M.A., *Guides* in evaluating appellant's grip strength. Dr. Fletcher did not provide documentation that he tested appellant three times with each hand at different times during the examination or that there was less than 20 percent variation in the readings establishing reliability.[10] He did not provide the results of the grip strength testing or explain how he reached his impairment rating. Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from her physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable decreases in strength or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[11] The medical evidence of record is not sufficient to establish appellant's permanent impairment due to loss of grip strength. On remand, the Office should request additional information from Dr. Fletcher in compliance with the standards of the A.M.A., *Guides*.

CONCLUSION

The Board finds that the case is not in posture for decision.

[7] The Board notes that the Office medical adviser concluded that appellant had an additional six percent impairment of the left upper extremity due to loss of strength as a result of her lateral epicondylitis and surgery. The Office improperly awarded appellant only an additional one percent impairment in the December 31, 2008 decision.

[8] A.M.A., *Guides* 507, tendinitis.

[9] *Id.*

[10] A.M.A., *Guides* 508, grip and pinch strength.

[11] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

ORDER

IT IS HEREBY ORDERED THAT the December 31, 2008 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: October 22, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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