United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 09-929**
	)	**Issued: October 26, 2009**
DEPARTMENT OF THE ARMY, RED RIVER ARMY DEPOT, Texarkana, TX, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2009 appellant filed a timely appeal from a February 2, 2009 decision of the Office of Workers' Compensation Programs adjudicating his claim for a schedule award. 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 any left upper extremity impairment or more than 12 percent impairment to his right upper extremity causally related to his accepted bilateral carpal tunnel syndrome and left ulnar neuropathy.

FACTUAL HISTORY

On June 25, 2007 appellant, then a 49-year-old heavy mobile equipment repair inspector, filed an occupational disease claim for bilateral carpal tunnel syndrome caused by using jack hammers, sledge hammers and pneumatic air tools. On August 13, 2007 his claim was accepted for bilateral carpal tunnel syndrome. The Office subsequently accepted a lesion of the right ulnar nerve. Appellant underwent a left carpal tunnel release and transposition of the ulnar nerve at

the left elbow on October 23, 2007. On February 19, 2008 he underwent a right carpal tunnel release.[1] On October 20, 2008 appellant filed a claim for a schedule award.

In an October 10, 2008 report, Dr. Phillip W. Osborne, a specialist in preventive medicine, reviewed appellant's medical history, provided findings on physical examination and diagnosed bilateral carpal tunnel syndrome and left ulnar palsy (neuropathy). He stated that two-point discrimination was intact. Tinel's sign was positive bilaterally for the median nerve in the hands and for the cubital (ulnar) nerve in the left elbow. Phalen's sign was positive bilaterally in the hands. Appellant had distorted superficial tactile sensibility, abnormal sensations and moderate pain. Dr. Osborne did not determine whether appellant's sensory deficit prevented or interfered with his activities. He found 10 percent right upper extremity impairment and 10 percent left upper extremity impairment based on Table 16-15 and 16-10 at pages 492 and 482, respectively, of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*), (39 percent maximum for sensory deficit of the median nerve based on Table 16-15 multiplied by 25 percent for Grade 4 deficit based on Table 16-10 equals 9.75 percent, rounded to 10 percent). Dr. Osborne indicated that appellant had no impairment for motor deficit of the median and ulnar nerves of his upper extremities based on unreliable test results from grip strength testing with a Jamar dynamometer. He found 2 percent left upper extremity impairment for sensory deficit of the ulnar nerve based on Tables 16-15 and 16-10 (7 percent maximum for the ulnar nerve multiplied by 25 percent for Grade 4 deficit equals 1.75 percent, rounded to 2 percent). Dr. Osborne indicated that he applied 25 percent sensory deficit for Grade 4 from Table 16-10 because there were no valid tests for determining how appellant's sensory deficit affected his activities. Combining 10 percent for left median nerve sensory deficit with 2 percent for left ulnar nerve sensory deficit equals 12 percent left upper extremity impairment according to the Combined Values Chart at page 604 of the fifth edition of the A.M.A., *Guides*.

On November 25, 2008 Dr. Ronald Blum, an Office medical adviser, calculated 12 percent left upper extremity impairment for sensory deficit of the median and ulnar nerves based on Dr. Osborne's report.[2] He found 10 percent right upper extremity impairment for sensory deficit of the median nerve. On January 15, 2009 Dr. Blum noted that he had previously provided an impairment rating for appellant's upper extremities on November 25, 2008. He noted that appellant received a schedule award based on 18 percent impairment to the right upper extremity in file number xxxxxx326, 12 percent of which was based on median nerve

[1] It appears that the surgery on February 19, 2008 was the second carpal tunnel release of appellant's right hand. A right carpal tunnel release was authorized and performed under appellant's accepted claim for a right upper extremity injury in Office file number xxxxxx326.

[2] *See* Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (October 2005) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

abnormality.[3] Therefore, the previous award for right median nerve sensory deficit should be subtracted from the current finding of 10 percent median nerve sensory deficit which would equal 0 percent additional impairment for the right upper extremity (12 percent subtracted from 10 percent equals -2 percent or 0 percent).

By decision dated February 2, 2009, the Office denied appellant's claim for additional impairment to the right upper extremity. It failed to address the issue of appellant's left upper extremity impairment.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[4] 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*.[5]

ANALYSIS

The Board finds that this case is not in posture for a decision. The case must be remanded for further development of the medical evidence.

Dr. Osborne found 10 percent right upper extremity and 12 percent left upper extremity impairment. He stated that two-point discrimination of appellant's upper extremities was intact but he provided no test results.[6] Dr. Osborne found a positive Tinel's sign bilaterally for the median nerve in the hands and for the ulnar nerve in the left elbow. Phalen's sign was positive bilaterally in the hands. He found 10 percent right upper extremity impairment and 10 percent left upper extremity impairment based on Table 16-15 and 16-10 at pages 492 and 482, respectively, of the fifth edition of the A.M.A., *Guides*, (39 percent maximum for sensory deficit of the right median nerve based on Table 16-15 multiplied by 25 percent for Grade 4 deficit based on Table 16-10 equals 9.75 percent, rounded to 10 percent). Appellant had distorted superficial tactile sensibility, abnormal sensations and moderate pain. Dr. Osborne's description of appellant's sensory deficit is not complete because he did not determine whether the sensory deficit prevented or interfered with his activities. Dr. Osborne's description of appellant's sensory deficit is more consistent with Grade 3 in Table 16-10, "Distorted superficial tactile sensibility … with some abnormal sensations or slight pain, that interferes with some activities"

[3] Dr. Blum referenced an August 10, 2007 report from a Dr. Mobley in file number xxxxxx326 which is not of record in this appeal. On remand of the case, the files for appellant's two accepted upper extremity cases should be combined by the Office.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

[6] The fifth edition of the A.M.A., *Guides* describes the proper method for performing the two-point discrimination testing at pages 445 to 450.

or possibly Grade 2. The description of Grade 4 as "Distorted superficial tactile sensibility …, with or without minimal abnormal sensations or pain that is forgotten during activity" is not consistent with the findings provided by Dr. Osborne. He indicated that appellant had no impairment for decreased motor function of his upper extremities due to median or ulnar nerve abnormalities because of unreliable test results from grip strength testing with a Jamar dynamometer. The A.M.A., *Guides* provides that, in compression neuropathies such as carpal tunnel syndrome, additional impairment values are not given for decreased grip strength.[7] The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.[8] Dr. Osborne should have rated motor deficit by applying pages 483 to 495 of the A.M.A., *Guides,* fifth edition, regarding the proper procedures for rating impairment due to motor deficit. Dr. Osborne found 2 percent left upper extremity impairment for sensory deficit of the ulnar nerve based on Tables 16-15 and 16-10 (7 percent maximum for the ulnar nerve multiplied by 25 percent for Grade 4 deficit equals 1.75 percent, rounded to 2 percent). He indicated that he applied 25 percent sensory deficit for Grade 4 because there were no valid tests for determining how much appellant's sensory deficit affected his motor function. However, pages 483 to 484 of the A.M.A., *Guides* instruct the evaluating physician as to the proper clinical methods for determining motor deficit. Due to these deficiencies, Dr. Osborne's evaluation is not sufficient to determine appellant's right and left upper extremity impairment due to his accepted bilateral carpal tunnel syndrome and left ulnar neuropathy.

On November 25, 2008 Dr. Blum found that appellant had 12 percent left upper extremity impairment for sensory deficit of the median and ulnar nerves based on Dr. Osborne's report. He found 10 percent right upper extremity impairment for sensory deficit of the median nerve. Dr. Blum noted that appellant received a schedule award based on 18 percent impairment to the right upper extremity in file number xxxxxx326, 12 percent of which was based on median nerve abnormality. He stated that the previous award for right median nerve sensory deficit should be subtracted from the current finding of 10 percent median nerve sensory deficit which would equal 0 percent additional impairment for the right upper extremity. The Board is unable to confirm the information provided by Dr. Blum regarding the previous schedule award of appellant's right upper extremity under file number xxxxxx326 because that file is not available for review.

On appeal, appellant argues that the Office, in its February 2, 2009 decision, failed to address the issue of his entitlement to a schedule award for his left upper extremity. On remand, the Office will further development the medical evidence on the issue of his left and right upper extremity impairment and issue an appropriate decision.

CONCLUSION

The Board finds that this is not in posture for a decision. The case will be remanded for further development of the medical evidence on the issue of appellant's right and left upper

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

[8] *Kimberly M. Held,* 56 ECAB 670 (2005).

extremity impairment.[9] After such further development as the Office deems necessary, it should issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 2, 2009 is set aside and the case is remanded for further action consistent with this decision.

Issued: October 26, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[9] As noted, the Office should combine the two cases involving appellant's accepted upper extremity conditions.