United States Department of Labor
Employees' Compensation Appeals Board

C.F., Appellant	)	
	)	**Docket No. 10-951**
and	)	**Issued: February 16, 2011**
	)	
U.S. POSTAL SERVICE, CAMDEN POST OFFICE, Camden, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 24, 2010 appellant, through counsel, filed a timely appeal of the October 15, 2009 merit decision of the Office of Workers' Compensation Programs. 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 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity for which she received schedule awards.

On appeal, counsel contends that the Office erred in according the special weight of the medical evidence to Dr. Jatinkumar Ghandi, a Board-certified orthopedic surgeon and impartial medical specialist, as he did not conduct a thorough medical examination, properly apply the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) or provide medical rationale in support of his impairment ratings. He further contends that an Office medical adviser cannot resolve the conflict in the medical opinion evidence. Counsel contends that the Office attempted to improperly influence Dr. Ghandi's opinion by submitting the medical adviser's critique of his schedule award calculation.

FACTUAL HISTORY

Appellant, then a 44-year-old city carrier technician, filed an occupational disease claim alleging that on April 30, 2003 she became aware of pain in her right wrist and on July 28, 2003 she realized that her wrist condition was caused by moving her arms, hands and wrist while casing and delivering mail over 40 hours per week. The Office accepted her claim for left lateral epicondylitis and right wrist de Quervain's tenosynovitis. On June 14, 2004 appellant underwent right de Quervain's release and tenosynovectomy to treat the accepted right upper extremity conditions.

On March 13, 2006 appellant filed a claim for a schedule award. In a November 17, 2005 medical report, Dr. Nicholas Diamond, an attending osteopath, found that appellant had 41 percent impairment of the right upper extremity, 34 percent impairment of the left upper extremity and 20 percent impairment of both the right and left lower extremities based on the fifth edition of the A.M.A., *Guides*.[1]

On November 18, 2006 Dr. Andrew A. Merola, an Office medical adviser, reviewed the medical record and found that appellant had five percent impairment of the right wrist and three percent impairment of the left elbow based on the A.M.A., *Guides*.

On December 13, 2006 the Office found a conflict in the medical opinion evidence between Dr. David Weiss,[2] a Board-certified orthopedic surgeon, and Dr. Merola regarding the extent of appellant's permanent impairment to the right and left upper extremities. It referred her to Dr. Maria Carta, a Board-certified neurologist, for an impartial medical examination. In a March 5, 2007 report, Dr. Carta found that appellant did not have any ratable impairment. She advised that there were no objective findings to support her continuing subjective complaints of pain and discomfort. Dr. Carta stated that the extent of appellant's orthopedic impairment should be addressed by an appropriate medical specialist.

On August 9, 2007 Dr. Henry Magliato, an Office medical adviser, reviewed the medical record and agreed with Dr. Carta's finding that appellant had no ratable impairment.

In a September 12, 2007 decision, the Office denied appellant's schedule award claim.

On December 13, 2007 the Office reissued its September 12, 2007 decision, denying appellant's claim for a schedule award pursuant to a request from appellant's attorney.

By letter dated December 17, 2007, appellant, through her attorney, requested an oral hearing before an Office hearing representative regarding the Office's December 13, 2007 decision.

[1] The Board notes that appellant filed a claim under OWCP File No. xxxxxx688 for which she received a schedule award for a total 40 percent impairment of the right and left lower extremities.

[2] It appears that the Office inadvertently stated that the conflict in medical opinion evidence was between Dr. Weiss and Dr. Merola rather than between Dr. Diamond and Dr. Merola as the record does not contain a medical opinion from Dr. Weiss. The Board notes that Dr. Weiss is listed as a physician in Dr. Diamond's office.

In a July 3, 2008 decision, an Office hearing representative set aside the December 13, 2007 decision and remanded the case to the Office. The hearing representative found that Dr. Carta's March 5, 2007 impartial opinion was insufficient to resolve the conflict in the medical opinion evidence as she only rated impairment from a neurological standpoint and recommended an orthopedic impairment evaluation. On remand, the hearing representative instructed the Office to refer appellant to a Board-certified orthopedic physician for an impartial medical examination.

On September 25, 2008 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Jatinkumar Ghandi, a Board-certified orthopedic surgeon. In an October 14, 2008 report, Dr. Ghandi obtained a history of appellant's accepted employment injuries, medical treatment and employment. He noted her complaints of pain, numbness and stiffness in the right thumb, left hand and forearm, and right and left wrist and elbow. On physical examination of the right and left elbows, Dr. Ghandi found no effusion, synovitis or deformity. Range of motion was 0 to 150 degrees. Pronation and supination were each 80 degrees from the mid-prone position. Appellant experienced pain on range of motion. There was no pain on varus or valgus stress. A Tinel's sign was negative at the ulnar nerve. There was tenderness at the lateral epicondyle and on resistive dorsiflexion of the right wrist. The forearm diameter from 7.5 centimeters distal to the lateral epicondyle on the right was 28 centimeters and 29 centimeters on the left. The upper arm diameter from 7.5 centimeters proximal to the lateral epicondyle was 31 centimeters on both the right and left.

On examination of the right and left wrists, Dr. Ghandi found a transverse surgery scar at the first dorsal compartment of the right wrist with local tenderness at the scar that appeared to be supple. Both wrists had a mildly positive Finkelstein's test. There was no tenderness at the dorsum of either wrist or distal "RU" joint. There was no synovitis. The right wrist had a mildly positive Tinel's sign at the dorsal radial cutaneous nerve. The right and left wrists had a negative Tinel's sign at the median nerve and a negative Phalen's test. Appellant resisted range of motion of the right thumb and held it tightly against the hand and second metacarpal. During gentle examination she was able to bring her right thumb to the tip of the fifth digit. Range of motion measurements for the right wrist included 40 degrees of palmar flexion, 60 degrees of dorsiflexion, 20 degrees of radial deviation and 30 degrees of ulnar deviation with pain. Range of motion measurements for the left wrist included 45 degrees of palmar flexion, 60 degrees of dorsiflexion, 20 degrees of radial deviation and 30 degrees of ulnar deviation.

On examination of the fingers on both hands, Dr. Ghandi found no deformities other than the scar of a previous unrelated tendon repair on the right fifth digit. Range of motion of the second, third, fourth and fifth fingers, was normal. Range of motion of the right thumb was difficult to judge due to appellant's pain and inconsistency during the examination. It had 0 to 80 degrees at the interphalangeal (IP) joint. The metacarpophalangeal (MP) joint had 20 degrees of palmar flexion and 0 degrees of extension. Abduction was 45 degrees. Adduction was four centimeters and opposition of four centimeters. The left thumb had 0 to 80 degrees at the IP joint. The MP joint had 45 degrees of palmar flexion and 0 degrees of extension. Abduction was 50 degrees. Adduction was one centimeter and opposition of eight centimeters. On neurological examination of both hands, Dr. Ghandi found altered sensation at the dorsum. The median nerve distribution did not show any abnormality. Grip strength was difficult to judge on the right due to appellant's pain, but it was normal.

Dr. Ghandi advised that appellant had reached maximum medical improvement on May 21, 2007. Utilizing the fifth edition of the A.M.A., *Guides*, in determining the impairment of the right upper extremity, he found 4 percent impairment due to 20 degrees of palmar flexion at the MP joint, 7 percent impairment due to 25 degrees of abduction, 4 percent impairment due to 4 centimeters of adduction and 9 percent impairment due to 4 centimeters opposition, totaling 24 percent impairment of the right thumb (A.M.A., *Guides* 457, 459, 460, Figure 16-15, Tables 16-8a, 16-8b, 16-9). Under Table 16-1 on page 438 of the A.M.A., *Guides*, Dr. Ghandi converted the 24 percent right thumb impairment to 10 percent impairment of the right hand. Under Table 16-2 on page 439 of the A.M.A., *Guides*, he converted the 10 percent right hand impairment to 9 percent impairment of the right upper extremity. Dr. Ghandi found 3 percent impairment for 40 degrees of palmar flexion, 1 percent impairment for Grade 4 or 25 percent sensory deficit of the radial cutaneous nerve and 3 percent impairment for pain regarding the right wrist (A.M.A., *Guides* 487, 482, 492, 573, Figure 16-28, Tables 16-10, 16-15, section 18-3d). He advised that appellant had a combined total 16 percent impairment of the right upper extremity.

Regarding the left wrist, he found 3 percent impairment due to 40 degrees of palmar flexion, 1 percent impairment for Grade 4 or 25 percent sensory of the deficit radial cutaneous nerve and 3 percent impairment for pain, resulting in a combined total 7 percent impairment of the left upper extremity (A.M.A., *Guides* 467, 482, 492, 573, Figure 16-28, Tables 16-10, 16-15, section 18-3d).

On December 18, 2008 Dr. Morley Slutsky, an Office medical adviser, reviewed the medical record, including Dr. Ghandi's October 14, 2008 findings. Dr. Slutsky advised that appellant had reached maximum medical improvement on October 14, 2008. He disagreed with Dr. Ghandi's seven percent impairment for right thumb abduction, advising that 45 degrees of abduction constituted zero percent impairment. Dr. Slutsky added the 7 percent right thumb abduction impairment rating to Dr. Ghandi's other loss of range of motion impairment ratings to calculate 18 percent impairment of the right thumb. Under Table 16-1 on page 438 of the A.M.A., *Guides*, he converted the 18 percent thumb impairment into 7 percent impairment of the hand. Under Table 16-2 on page 439 of the A.M.A., *Guides*, Dr. Slutsky converted the seven percent hand impairment into six percent impairment of the right upper extremity. He advised that appellant was not entitled to an additional impairment rating for pain as it was included in the loss of range of motion measurements for the right thumb and wrist. Dr. Slutsky further advised that an additional impairment rating for pain was not allowed because impairment for sensory loss also covered pain.[3] He concluded that appellant had 10 percent impairment of the right upper extremity. Regarding the left upper extremity, Dr. Slutsky stated that the Office only accepted left elbow epicondylitis which was not ratable unless there was some other objective evidence present such as, tendon/muscle inflammation as demonstrated by a magnetic resonance imaging (MRI) scan (A.M.A., *Guides* 507, Table 16.7d). He found no ratable impairment of the left thumb or wrist as there was no evidence of loss of motion of either body part. Dr. Slutsky opined that appellant had no ratable impairment of the left upper extremity. However, he stated

[3] *See* A.M.A., *Guides* 565-86; Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 Exhibit 4 (June 2003). *See also Philip A. Norulak*, 55 ECAB 690 (2004) (a separate pain calculation under Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain as outlined in Chapters 13, 16 and 17 of the fifth edition of the A.M.A., *Guides*.

that, if the Office wished to rate impairment of the left upper extremity impairment, then it would be four percent. Dr. Slutsky determined that 80 degrees of flexion at the IP joint constituted 0 percent impairment, 0 degrees of extension constituted 1 percent impairment and 45 degrees of flexion at the MP joint constituted 2 percent impairment. He added the range of motion impairment ratings to calculate three percent impairment of the left thumb. Dr. Slutsky converted the three percent impairment into a one percent impairment of the left hand (A.M.A., *Guides* 438, Table 16-1). He converted the one percent left hand impairment into one percent impairment of the left upper extremity (A.M.A., *Guides* 439, Table 16-2). Regarding the left wrist, he found 3 percent impairment due to 45 degrees of flexion, 0 percent impairment due to 60 degrees of extension, 0 percent impairment due to 20 degrees of radial deviation and 0 percent impairment due to 30 degrees of ulnar deviation, resulting in 3 percent impairment (A.M.A., *Guides* 467, 469, Figure 16-28 and Figure 16-31). Dr. Slutsky found that 150 degrees of flexion, 0 degrees of extension, 80 degrees of pronation and 80 degrees of supination each resulted in 0 percent impairment of the left elbow (A.M.A., *Guides* 472, 475, Figure 16-34 and Figure 16-37). He combined the one percent left upper extremity impairment and the three percent left wrist impairment to calculate four percent impairment of the left upper extremity (A.M.A., *Guides* 604, Combined Values Chart).

On February 18, 2009 the Office requested that Dr. Ghandi review Dr. Slutsky's December 18, 2008 report and provide whether he agreed with his findings. On February 23, 2009 Dr. Ghandi stated that he agreed with Dr. Slutsky's findings that the right thumb abduction impairment rating was incorrect and that an additional impairment rating for pain for the right upper extremity was not warranted. He reiterated his finding that appellant had 4 percent impairment due to 20 degrees of palmar flexion at the MP joint, 4 percent impairment due to four centimeters of adduction and 9 percent impairment due to four centimeters opposition which totaled a 17 percent impairment of the right thumb (A.M.A., *Guides* 456, 459, 460, Figure 16-12, Table 16-8a, Table 16-8b and Table 16-9). Under Table 16-1 on page 438 of the A.M.A., *Guides*, Dr. Ghandi converted the 17 percent right thumb impairment to 7 percent impairment of the hand. Under Table 16-2 on page 439 of the A.M.A., *Guides*, he converted the seven percent hand impairment to six percent impairment of the upper extremity. Dr. Ghandi combined the 6 percent hand impairment and 4 percent right wrist impairment to find that appellant had 10 percent impairment of the right upper extremity (A.M.A., *Guides* 467, 482, 492, Figure 16-28, Table 16-10 and Table 16-15). He reiterated his opinion that she had four percent impairment of the left upper extremity (A.M.A., *Guides* 467, 482, 492, Figure 16-26, Table 16-10 and Table 16-15).

On March 6, 2009 Dr. Slutsky agreed with Dr. Ghandi's finding that appellant had 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity.

In an April 14, 2009 decision, the Office granted appellant a schedule award for 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity.

By letter dated April 21, 2009, appellant, through counsel, requested an oral hearing.

In an October 15, 2009 decision, an Office hearing representative affirmed the April 14, 2009 decision, finding the medical evidence insufficient to establish that appellant had more than 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulations[5] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[6] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[7]

Section 8123(a), in pertinent part, provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[8]

ANALYSIS

The Office accepted appellant's claim for left lateral epicondylitis and right wrist de Quervain's tenosynovitis. On June 14, 2004 appellant underwent right de Quervain's release and tenosynovectomy to treat the accepted right upper extremity condition. On April 14, 2009 she received schedule awards for 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity. The Board finds that appellant did not meet her burden of proof to establish that she sustained greater impairment.

The Board notes that a conflict arose in the medical opinion evidence between Dr. Diamond, an attending physician, who found that appellant had 41 percent impairment of the right upper extremity and 34 percent impairment of the left upper extremity and Dr. Merola, an Office referral physician, who found that appellant had 5 percent impairment of the right upper extremity and 3 percent impairment of the left upper extremity. In order to resolve the conflict, the Office referred appellant to Dr. Ghandi, for an impartial medical evaluation.

In an October 14, 2008 report, Dr. Ghandi found, based on the fifth edition of the A.M.A., *Guides* that appellant sustained 16 percent impairment of the right upper extremity and

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[4] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[5] 20 C.F.R. § 10.404.

[6] 5 U.S.C. § 8107(c)(19).

[7] *Supra* note 5.

[8] 5 U.S.C. § 8123(a).

7 percent impairment of the left upper extremity. Dr. Ghandi's report was reviewed by Dr. Slutsky, an Office medical adviser, as appropriate under Office procedures.[9] The Office medical adviser found that Dr. Ghandi had not properly utilized the A.M.A., *Guides* in determining appellant's right upper extremity impairment and he was asked by the Office to provide a supplemental report stating whether he agreed with the medical adviser's finding that appellant had 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity. On February 23, 2009 Dr. Ghandi agreed with Dr. Slutsky's opinion that appellant had 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity.

The Board has carefully reviewed Dr. Ghandi's report and finds that he properly utilized the A.M.A., *Guides* in rating the impairment to appellant's right and left upper extremities. Regarding the right thumb, Dr. Ghandi found that appellant had 45 degrees of abduction which represented 0 percent impairment, 20 degrees of palmar flexion at the MP joint which represented 4 percent impairment, 4 centimeters of adduction which represented 4 percent impairment and 4 centimeters opposition which represented 9 percent impairment, resulting in 17 percent impairment (A.M.A., *Guides* 456, 459, 460, Figure 16-12, Table 16-8a, Table 16-8b, Table 16-9). He converted the 17 percent right thumb impairment into 7 percent impairment of the hand (A.M.A., *Guides* 43, Table 16-1). Dr. Ghandi then converted the seven percent right hand impairment into six percent impairment of the right upper extremity (A.M.A., *Guides* 439, Table 16-2). Regarding the right wrist, he found that 40 degrees of palmar flexion represented 3 percent impairment and Grade 4 or 25 percent sensory loss at the radial cutaneous nerve represented 1 percent impairment, resulting in 4 percent impairment (A.M.A., *Guides* 467, 482, 492, Figure 16-28, Table 16-10 and Table 16-15). Dr. Ghandi combined the six percent right hand impairment rating and the four percent right wrist impairment rating to find that appellant had 10 percent impairment of the right upper extremity (A.M.A., *Guides* 604, Combined Values Chart). Regarding the left wrist, he found that appellant had 45 degrees of palmar flexion which constituted 3 percent impairment and Grade 4 or 25 percent sensory loss at the radial cutaneous nerve which constituted 1 percent impairment and resulted in 4 percent impairment of the left upper extremity (A.M.A., *Guides* 467, 482, Figure 16-28, Table 16-10 and Table 16-15). In a March 6, 2009 report, the Office medical adviser reiterated his opinion that appellant had 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity, relying on Dr. Ghandi's supplemental findings (A.M.A., *Guides* 438, 439, 456, 459, 460, 467, 469, 482, 492, Figure 16-12, Figure 16-28 and Figure 16-31, Table 16-1, Table 16-2, Table 16-8a, Table 16-8b, Table 16-9, Table 16-10 and Table 16-15).

The Board finds that Dr. Ghandi's opinion is sufficient to resolve the conflict in the medical evidence. His report establishes that appellant has no more than 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity. Appellant has not established greater impairment than previously awarded.

On appeal, counsel contends that Dr. Ghandi did not conduct a thorough medical examination, properly apply the A.M.A., *Guides* or provide medical rationale in support of his

[9] *See C. J.*, 60 ECAB __ (Docket No. 08-2429, issued August 3, 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

impairment ratings. The Board notes that, in addition to examining appellant, he reviewed a history of her accepted employment injuries, medical treatment and presented findings based on a full examination of the injured members. Dr. Ghandi corrected his initial right upper extremity impairment rating as properly pointed out by the Office medical adviser. Based upon his examination and the Office's concurrence, the Board finds that appellant sustained no additional employment-related impairment.

Counsel is correct that an Office medical adviser cannot resolve the conflict in the medical opinion evidence. In the instant case, the Office did not find that Dr. Slutsky's opinion resolved the conflict in the medical opinion evidence. Rather, it found that Dr. Ghandi's opinion was the weight of the evidence. The Office found appellant has 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity consistent with the impartial medical specialist and supported by the Office medical adviser. As stated above, the Board finds that as Dr. Ghandi resolved the conflict in medical opinion and supported his findings with the applicable tables of the A.M.A., *Guides,* his opinion constitutes the special weight of the evidence.

Lastly, counsel asserts that the Office attempted to improperly influence Dr. Ghandi by providing him with the Office medical adviser's critique of his schedule award calculation. The Office did so in order to obtain clarification from Dr. Ghandi regarding several errors in his initial schedule award rating. The Office's procedures provide that the Office may request a clarifying report from an impartial medical specialist if there is a deficiency in the original report.[10] As Dr. Ghandi had not properly applied the A.M.A., *Guides* in his initial report, the Office advised him of the deficiencies in his report, as explained by the Office medical adviser, and requested a supplemental report. The Board finds that the Office properly requested a supplemental report and forwarded the Office medical adviser's calculations to Dr. Ghandi to confirm the rating was appropriate under the A.M.A., *Guides*. Dr. Ghandi provided the supplemental report in accordance with Board precedent and properly applied the A.M.A., *Guides*. His report constitutes the special weight of the medical evidence and establishes that appellant has no more than 10 percent right upper extremity impairment and 4 percent left upper extremity, for which he received schedule awards.

CONCLUSION

The Board finds that appellant has no more than 10 percent impairment of the right upper extremity and 4 percent impairment of the left upper extremity.

[10] See Federal (FECA) Procedure Manual Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.5b(2) (March 1994). This section of the Office's procedure manual provides that the Office claims examiner "will review the specialist's report to ensure that it meets the tests for a referee examination and that it addresses all issues posed. "If clarification or additional information is necessary, the claims examiner will write to the specialist to obtain it." *See also Guiseppe Aversa*, 55 ECAB 164 (2003) (the Board held that where the Office obtains an opinion from a referee medical specialist to resolve a conflict of medical opinion evidence and the specialist's report requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist to correct the deficiency in the original opinion).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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