United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 11-244**
	)	**Issued: October 25, 2011**
U.S. POSTAL SERVICE, ROXANNE JONES STATION, Philadelphia, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 8, 2010 appellant, through counsel, filed a timely appeal from a July 22, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 established that she has more than a five percent impairment of her right upper extremity, for which she received a schedule award.

On appeal appellant's attorney contends there is an unresolved conflict in the medical opinion evidence regarding the extent of appellant's permanent impairment, which requires a referral to an impartial medical specialist.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 1, 2001 appellant, then a 44-year-old letter carrier, filed an occupational disease claim alleging that on January 12, 2000 she first realized that her carpal tunnel condition had been aggravated by a fall occurring in the performance of duty. OWCP accepted her claim for aggravation of right carpal tunnel syndrome.

In a December 4, 2008 report, Dr. Nicholas Diamond, an osteopath, diagnosed cumulative and repetitive trauma disorder, right carpal tunnel syndrome, right shoulder brachial plexitis, post-traumatic right calcaneal fracture and right ankle sprain/strain. He noted that he reviewed nerve conduction velocity (NCV) and electromyography (EMG) studies performed on April 23, 1996 and March 31, 1999, a January 12, 2000 x-ray of appellant's hands and wrist and medical reports. Dr. Diamond performed a physical examination which revealed right palmar aspect tenderness, no thenar or hypothenar atrophy, positive carpal compression, positive one-minute Phalen's sign and positive Tinel's sign. He reported right wrist range of motion to include 60 degrees dorsiflexion, 60 degrees palmar flexion and 15 degrees ulnar deviation. Dr. Diamond related that appellant reported difficulties in personal care and increased pain while performing household duties. He reported diminished grip and pinch strength as well as six millimeters two-point discrimination in the right hand. Dr. Diamond provided a correlation of his findings with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) awarding appellant a 31 percent impairment due to a grade 2 sensory deficit of the right median nerve,[2] a 3 percent impairment for right wrist range of motion deficits[3] and a 30 percent impairment due to right lateral pinch deficit.[4] He combined these impairments to reach a total 59 percent total impairment of the right upper extremity.

Appellant requested a schedule award on April 9, 2009.

OWCP referred appellant to Dr. Zohar Stark, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine an impairment rating for appellant's right upper extremity. By report dated March 3, 2009, Dr. Stark noted findings on examination of the right upper extremity. He concluded that appellant had reached maximum medical improvement and had no right upper extremity impairment. Dr. Stark noted that appellant had no residual findings from her right carpal tunnel and that her discomfort may be due to the surgery she underwent for removal of a giant cell tumor of the thumb tendon sheath.

OWCP's medical adviser, Dr. Morley Slutsky, a physician Board-certified in preventative and occupational medicines, reviewed the reports from Drs. Diamond and Stark on April 17, 2009. He disagreed with Dr. Diamond's finding of a grade 2 sensory deficit based on a normal two-point discrimination and decreased light touch. The medical adviser related that this finding of a grade 2 sensory deficit was inconsistent with Table 16-10, page 482, of the A.M.A., *Guides*. He also stated that the A.M.A., *Guides* do not allow for ratings for lateral pinch strength

[2] A.M.A., *Guides*, Table 16-10, page 482 and Table 16-15, page 492.

[3] *Id.* at Figure 16-31, page 469.

[4] *Id.* at Tables 16-33 and 16-34, page 509.

when rating carpal tunnel syndrome. Dr. Slutsky further related that the medical records showed appellant had no evidence of clinical right median nerve dysfunction based on Dr. Stark's recent report, which was consistent with other medical records. He related that appellant was entitled to an impairment rating based on the 2006 EMG testing which showed some median nerve involvement across the wrist, which is consistent with carpal tunnel syndrome. Using page 495 of the A.M.A., *Guides*, Dr. Slutsky concluded that appellant had a five percent right upper extremity impairment based upon abnormal findings from a 2006 EMG test.

By decision dated April 28, 2009, OWCP granted appellant a schedule award for a five percent permanent impairment of the right upper extremity.

On May 1, 2009 appellant's counsel requested an oral hearing before OWCP's hearing representative, which was held on May 17, 2010.

By decision dated July 22, 2010, OWCP's hearing representative affirmed the April 28, 2009 schedule award determination.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing regulations[6] 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, FECA 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.[7] Effective February 1, 2001, OWCP adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[8]

In evaluating carpal tunnel syndrome, the A.M.A., *Guides* provide that, if after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias or difficulties in performing certain activities three possible scenarios can be present. The first situation is: Positive clinical finding of median nerve dysfunction and electrical conduction delay(s): The impairment due to residual (carpal tunnel syndrome) is rated according to the sensory and/or motor deficits as described earlier.[9] In this situation, the impairment due to residual carpal tunnel syndrome is evaluated by multiplying the grade of

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id.*

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

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

severity of the sensory or motor deficit by the respective maximum upper extremity impairment 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.[10] In the second scenario: Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles: a residual (carpal tunnel syndrome) is still present and an impairment rating not to exceed five percent of the upper extremity may be justified. In the final scenario: 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.[11]

To accurately evaluate sensory impairment clinically and reduce the subjective nature of these findings,[12] the A.M.A., *Guides* recommend either the two-point test for fine discrimination, the monofilament touch pressure threshold test or the pinprick test.[13]

ANALYSIS

Appellant's claim was accepted by OWCP for aggravation of right carpal tunnel syndrome. She received a schedule award for a five percent permanent impairment to her right upper extremity based on the accepted condition. This rating was based on sensory loss affecting the medial nerve at the wrist. The Board finds that appellant has not established greater impairment.

On appeal appellant contends that OWCP erred in failing to refer appellant for an impartial medical examination as there was an unresolved conflict in the medical opinion evidence between Dr. Diamond, appellant's physician, who found a 59 percent total impairment of the right upper extremity and OWCP's referral physician who found no impairment and the medical adviser, who found a 5 percent right upper extremity impairment.

As noted above, the A.M.A., *Guides* at section 16.8 do not assign a large role to grip or pinch strength measurements as they are too influenced by subjective factors. Dr. Diamond reported physical examination findings included tenderness over the right palmar aspect, no thenar or hypothenar atrophy, positive carpal compression, positive one-minute Phalen's sign and positive Tinel's sign. He noted her right wrist range of motion was 60 degrees for dorsiflexion and palmar flexion and 15 degrees ulnar deviation as well as diminished grip strength and pinch strength and six millimeters two-point discrimination in the right hand. In light of the principles found at section 16.8, Dr. Diamond provided no explanation as to why appellant's loss of strength was not adequately considered with reference to other methods of the AM.A., *Guides*. He merely listed measurements obtained on grip and strength testing. Dr. Diamond did not address any of the factors listed under section 16.8a or acknowledge the

[10] *Id*. at 494, 481.

[11] *Id.* at 495.

[12] *Id.* at 446

[13] *Id.* at 445.

caution that decreased strength cannot be rated in the present of painful conditions that prevent effective application of maximal force.

Dr. Stark, OWCP's referral physician, found appellant had no permanent impairment.

OWCP's medical adviser, Dr. Slutsky, properly applied the A.M.A., *Guides* to the findings on examination provided by Drs. Diamond and Stark and explained why he disallowed the 3 percent impairment for right wrist range of motion deficit and 30 percent impairment due to right lateral pinch deficit found by Dr. Diamond, the examining physician, under section 16.8a, as there were inconsistent with the A.M.A., *Guides* when rating carpal tunnel syndrome.

Dr. Slutsky, an OWCP medical adviser, also explained why he classified the extent of appellant's sensory loss under Table 16-10, page 482, as grade 4. He cited to page 495 of the A.M.A., *Guides* and advised that based on the abnormal 2006 EMG test appellant would be entitled to an impairment rating of five percent of the upper extremity. This is consistent with the second criterion noted on that page of the A.M.A., *Guides*. As noted above, no consideration was given for grip strength deficit as the A.M.A., *Guides* provides that, in compression neuropathies, additional impairment values are not given for decreased grip strength.[14]

The Board finds that OWCP properly applied the A.M.A., *Guides* to the medical evidence in the record and determined that appellant had a five percent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant has no more than a five percent impairment of the right upper extremity.

[14] See page 494, (5th ed.) of the A.M.A., *Guides*; *see also Robert V. Disalvatore*, 54 ECAB 351 (2003) (where the Board found that the (5th ed.) of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory impairments only).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 22, 2010 is affirmed.

Issued: October 25, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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