U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD R. COOK and DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

Docket No. 99-1103; Submitted on the Record;
Issued July 18, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant has established that he has greater than a three percent permanent impairment for the loss of use of the right and left arms, for which he received a schedule award.

On January 29, 1996 appellant, a 55-year-old inside machinist, filed a Form CA-2, claim for benefits, alleging that he had sustained bilateral carpal tunnel syndrome due to repetitive cutting and sawing and that he became aware this condition was caused or aggravated by his employment on December 26, 1995. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome on April 26, 1996.

On May 17, 1996 Dr. Larry M. Gorman, a Board-certified orthopedic surgeon, performed carpal tunnel release surgery on appellant's left wrist. He performed release surgery on appellant's right wrist on May 31, 1996. Appellant returned to work on July 1, 1996 and retired from the employing establishment on August 1, 1996.

On May 2, 1997 appellant filed a claim for a schedule award based on partial loss of use of his left and right arms. In support of his claim, appellant submitted a November 12, 1996 report and impairment evaluation from Dr. Gorman. He noted that he had performed release surgery on both of appellant's wrists and stated:

> "No further improvement or digression is anticipated. [Appellant] has residual abnormality of his hands with fairly marked decrease in grip strength estimated at approximately one-half normal. Light touch sensation is within normal limits. Range of motion is within normal limits. He has negative Tinel['s] and Phalen['s] tests. Nerve conduction studies which have been repeated and compared to ones taken prior to surgery show residual compression neuropathy of the median nerves, bilaterally. There is improvement in both of these but they are not up to normal capacities.

> "Because of the residual weakness in both hands, I would recommend that a permanent restriction of avoiding hammering blows to the hands, such as using hammers, reciprocating tools which cause heavy vibration to the hand, or pneumatic hammers and saws, should be avoided. Repetitive lifting over 25 pounds should be avoided and maximum lifting capacity is set at 50 pounds. Range of motion of all joint[s] is within normal limits. It is to be noted that [appellant] has significant decrease in grip strength. Because of the significant grip strength loss and the residual abnormality of the nerve conduction studies, I would recommend a 20 percent permanent disability [for] loss of [use of] … both upper extremities."

In a memorandum dated May 2, 1997, an Office medical adviser found, based on Dr. Gorman's November 12, 1996 report, that appellant had a three percent permanent impairment of the right and left arms pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition). The Office medical adviser stated that the A.M.A., *Guides* discourage the use of strength measurements in determining impairments, citing page 64 of the A.M.A., *Guides*. The Office medical adviser noted that, pursuant to Table 15, page 54 of the A.M.A., *Guides*, a maximum of 10 percent permanent impairment is allowed for motor deficit secondary to median nerve entrapment at the wrist. He applied Table 12, page 49 of the A.M.A., *Guides*, to find that appellant had a Grade 4 muscle function, which provides a maximum of 25 percent for motor deficit. The Office medical adviser calculated that 25 percent of the maximum 10 percent allowed for motor deficit amounted to a 3 percent permanent impairment for median nerve entrapment with Grade 4 muscle function and no sensory impairment. The Office medical adviser found that appellant had no indication of sensory impairment, noting that appellant had experienced relief from his sensory symptoms, normal two point perception, no atrophy and no other symptoms or sign of sensory impairment. The Office medical adviser concluded that appellant had a three percent permanent impairment for loss of use of both arms pursuant to the A.M.A., *Guides*.

On May 19, 1997 the Office granted appellant a schedule award for three percent permanent impairment of the left and right arms.

By letter dated June 16, 1997, appellant requested an oral hearing, which was held on February 25, 1998. He did not submit any additional medical evidence with his request.

By decision dated May 5, 1998, an Office hearing representative affirmed the May 19, 1997 decision. The hearing representative found that the Office medical adviser's opinion represented the weight of the medical evidence. He noted that Dr. Gorman had submitted a report indicating appellant had a 20 percent permanent impairment in both hands, but that Dr. Gorman failed to cite to the applicable protocols or tables of the fourth edition of the A.M.A., *Guides* in making his impairment rating.

By letter dated August 11, 1998, appellant's attorney requested reconsideration. In support of his claim, appellant submitted an April 28, 1998 report from Dr. Gorman, who stated that appellant had moderate symptoms in the right hand of tingling, weakness and discomfort with mild to moderate use, which was further complicated by loss of grip strength. He further stated:

> "Nerve conduction study supports this showing a very significant residual abnormality on the right with complete absence of measurable median sensory nerve conduction velocity and a decreased amplitude. On the left side, [appellant] has mild symptoms of a similar variety, but not as aggressive as those seen on the right. This correlates with an abnormal, although not as severe, nerve conduction velocity change and drop in amplitude of this nerve.
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> "In my opinion then, [appellant] has 20 percent loss of the right side and a 10 percent loss of the left side, for a total of 30 percent, based on the nerve conduction study and reference to Table 16, Chapter 3, Page 57 of [the A.M.A., *Guides*]."

By decision dated September 29, 1998, the Office denied modification of the May 19, 1997 decision.

The Board finds that appellant has no more than a three percent permanent impairment for loss of use of his right and left arms.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] 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 loss of use.[3] However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.[4]

In the instant case, the Office determined that appellant had a three percent permanent impairment of both arms by adopting the findings of the Office medical adviser, who determined the impairment rating by taking Dr. Gorman's findings showing a residual abnormality and residual compression neuropathy of the median nerves of both hands, based on nerve conduction studies. The medical adviser rated the motor deficit impairment under Table 15 to find a maximum 10 percent for motor deficit secondary to median nerve entrapment at the wrists (below mid forearm). The medical adviser calculated that appellant's impairment classified as a Grade 4 muscle function, equivalent to 25 percent motor deficit by applying Table 12, page 49, of the A.M.A., *Guides* for a total of 3 percent impairment based on median nerve entrapment. The Office properly discounted Dr. Gorman's findings of additional impairment based on loss of

[1] 5 U.S.C. §§ 8101-8193*; see* 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.304.

[3] 5 U.S.C. § 8107(c)(19).

[4] *Thomas D. Gunthier,* 34 ECAB 1060 (1983).

grip strength, noting that the standards enunciated in the A.M.A., *Guides* at page 64 discouraged the use of strength measurements in determining impairments. That section of the A.M.A., *Guides*, under the heading "Strength Evaluation," states:

> "Because strength measurements are functional tests influenced by subjective factors that are difficult to control and the [A.M.A.,] *Guides* for the most part is based on *anatomic* impairment, the [A.M.A.,] *Guides* does not assign a large role to such measurements. Those who have contributed to the [A.M.A.,] *Guides* believe further research is needed before loss of grip and pinch strength is given a larger role in impairment evaluation.
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> "In a rare case, if the examiner believes the patient's loss of strength represents an impairing factor that has not been considered adequately, the loss of strength may be rated separately. The loss of strength impairment would be *combined* (Combined Values Chart, p. 322) with other upper extremity impairments."[5] (Emphasis in the original.)

On reconsideration, appellant submitted Dr. Gorman's April 28, 1998 report, in which he opined that appellant had sustained a 20 percent loss of use of the right arm and a 10 percent loss of use of the left hand due to his accepted bilateral carpal tunnel condition. The Board finds that Dr. Gorman's report is not sufficient to negate the Office's medical adviser's determination that appellant has a three percent impairment of both arms. In support of his impairment rating Dr. Gorman cited to Table 16 at page 57 of the A.M.A., *Guides*, which pertains to entrapment neuropathy. At page 56 of the A.M.A., *Guides*, under the heading "Entrapment Neuropathy," it is stated:

> "Impairment of the hand and upper extremity secondary to entrapment neuropathy may be derived by measuring the sensory and motor deficits as described in preceding parts of this section.
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> "An alternative method is provided in Table 16 (p.57). The evaluator *should not* use both methods. Impairment of the upper extremity secondary to an entrapment neuropathy is estimated according to the severity of involvement of each major nerve at each entrapment site…. The upper extremity impairment due to a mild residual carpal tunnel syndrome is 10 percent (Table 16, p.57), ... no additional impairment is allotted for loss of grip strength."[6] (Emphasis in the original.)

The Board finds that Dr. Gorman's opinion is of diminished probative value, as his April 28, 1998 report is not in conformance with either of the impairment evaluation methods cited above. He noted moderate symptoms of weakness complicated by grip strength, as indicated by nerve conduction studies. However, the applicable section of the A.M.A., *Guides* cited by Dr. Gorman explicitly forbids the allotment of additional impairment based on loss of

[5] A.M.A., *Guides*, p. 64.

[6] A.M.A., *Guides*, p. 56, 57.

grip strength. That section indicates that an impairment of the hand and upper extremity secondary to entrapment neuropathy may be derived either by measuring the sensory and motor deficits as described in preceding parts of the A.M.A., *Guides,* or by using Table 16 at page 57, which advises the impairment evaluator to estimate impairment of the upper extremity secondary to an entrapment neuropathy by gauging the severity of involvement of each major nerve at each entrapment site. Dr. Gorman did not rely on either of these methods in arriving at his estimates of impairment. Although Dr. Gorman calculated a 20 percent impairment in appellant's right hand based on carpal tunnel syndrome, the applicable section specifically states that the upper extremity impairment due to a mild residual carpal tunnel syndrome, pursuant to Table 16, page 57, is 10 percent. As he failed to adequately explain his application of the A.M.A., *Guides* under the protocols set forth above and failed to provide an impairment rating in accordance with the applicable figures and tables of the A.M.A., *Guides*, the Board finds that appellant has failed to submit sufficient medical evidence establishing a greater impairment than that awarded by the Office.

The Board finds that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a three percent permanent impairment for loss of use of his right and left arms, for which he has received a schedule award from the Office. Appellant has failed to provide sufficient medical evidence that he has greater than the three percent impairment awarded.

The decisions of the Office of Workers' Compensation Programs dated September 29 and May 5, 1998 are hereby affirmed.

Dated, Washington, D.C.
July 18, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member