U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY A. CLONTZ and DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, Clearfield, UT

Docket No. 00-1304; Submitted on the Record;
Issued March 28, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has a ratable impairment of his right upper extremity, for which he is entitled to a schedule award.

The Office of Workers' Compensation Programs accepted that in 1998 appellant, then a 56-year-old aircraft mechanic, sustained an aggravation of right carpal tunnel syndrome. Surgery for a right carpal tunnel release was performed on April 15, 1999.

On May 31, 1999 appellant applied for a schedule award for permanent impairment of his right upper extremity.

In support of his request, appellant submitted a September 20, 1999 report from Dr. James W. Adams, a Board-certified orthopedic surgeon specializing in hand surgery, which summarized appellant's September 17, 1999 physical therapy testing and permanent impairment evaluation results. Dr. Adams stated:

> "[Appellant] had undergone a repeat carpal tunnel surgery for recurrence of numbness and paresthesias in his right hand. The surgery was accomplished on the April 15, 1999 and when last seen, [appellant] did not have any complaints from the standpoint of tenderness or loss of sensation. He was therefore returned to regular duty on the July 12, [1999] and was seen in therapy on the September 17, [1999] to obtain his final permanent impairment rating. Based upon that testing, only a bit of diminished light touch was present in the tip of the right thumb. [Appellant's] grips as well as his strength had returned to acceptable levels.
>
> "Therefore at this point in time I think from the standpoint of an absolute evaluation using the A[merican] M[edical] A[ssociation], *Guides to* [*the Evaluation of*] *Permanent … Impairment* [r]ating, [appellant] does not have any significant ratable impairment. However, he has undergone two surgical

procedures and I feel that having undergone this, that with the second procedure, he has probably a seven to eight percent permanent impairment on the right side. I do not feel this will significantly improve with the passage of time."

Attached to Dr. Adams's report were the graphic findings of the physical therapy impairment evaluation. These results demonstrated normal right upper extremity sensation, range of motion identical with the nonaffected extremity and comparable grip strength.

On September 29, 1999 the Office referred Dr. Adams's report and appellant's medical records to an Office medical adviser for an impairment rating determination in accordance with the A.M.A., *Guides* (4th ed. 1993). The Office medical adviser replied that on the basis of the A.M.A., *Guides* that there was no objective ratable findings to justify permanent impairment. The Office medical adviser noted that Dr. Adams' impairment rating was not based on objective findings.

By decision dated October 7, 1999, the Office denied appellant's claim for a schedule award. The Office found that Dr. Adams's suggested rating of seven to eight percent due to surgery was not in accordance with the A.M.A., *Guides* and therefore was not compensable under the Federal Employees' Compensation Act.

The Board finds that appellant has no ratable permanent impairment of his right upper extremity.

A claimant seeking compensation under the Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[2] Section 8107 provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[3] Therefore, appellant bears the burden of proof in establishing that he has a ratable permanent impairment sufficient to entitle him to a schedule award.

The schedule award provisions of the Act[4] and the implementing regulations[5] provide for payment of compensation for the permanent loss or loss of use of specified members, functions, and organs of the body. No schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the implementing regulations.[6] Further, no schedule

[1] 5 U.S.C. §§ 8101-8193.

[2] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[3] 5 U.S.C. § 8107(a); *see Raymond E. Gwynn*, 35 ECAB 247 (1983), *Philip N.G. Barr*, 33 ECAB 948 (1982).

[4] 5 U.S.C. § 8107(a). Section 8107 provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.

[5] 20 C.F.R. § 10.404.

[6] *Ted W. Dietderich*, 40 ECAB 963 (1989); *Thomas E. Stubbs*, 40 ECAB 647 (1989); *Thomas E. Montgomery*, 28 ECAB 294 (1977).

award is payable for a specified member, function or organ lacking evidence of loss, loss of use, or other objective impairment.

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[7] All factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment. Chapter 15 of the A.M.A., *Guides* (fourth edition) provides grading considerations for determining impairment of an affected body part due to pain, discomfort, or loss of sensation.[8] The element of pain may serve as the sole basis for determining the degree of impairment for scheduled compensation purposes.[9] However, in this case appellant demonstrated neither an objective loss in range of motion or grip strength, nor pain, discomfort or a loss of sensation.

Chapter 3 of the A.M.A., *Guides* discussed determination of permanent impairment to an upper extremity. Diagnosis-based estimates of upper extremity impairment or impairment estimates due solely to carpal tunnel release, which healed without objective residuals, are not provided for in this section, or in any other section of the A.M.A., *Guides*. As the A.M.A., *Guides* have been determined to be the standard for determining schedule award entitlement under the Act, awards for considerations or situations not contemplated by the A.M.A., *Guides* are not cognizable under the Act.

In this case, Dr. Adams admitted that according to the A.M.A., *Guides* appellant had no objective ratable impairment, but then suggested that appellant should be entitled to a seven to eight percent impairment rating because he had undergone carpal tunnel surgery twice. This suggested "impairment" is not provided for in the A.M.A., *Guides*. No quantifiable objective deficits or impairments were identified. When an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on specific application of the A.M.A., *Guides*, the Office is correct to follow the advice of its medical adviser or consultant where he or she has properly used the A.M.A., *Guides*.[10] If the attending physician does not utilize the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of any permanent impairment.[11]

Dr. Adams did not indicate that he applied any section or part of the A.M.A., *Guides* in assessing appellant's permanent impairment due to two successful carpal tunnel releases. He

[7] *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

[8] A.M.A., *Guides* (4th ed. 1993).

[9] *Paul A. Toms*, 38 ECAB 403 (1987); *Robin L. McClain*, 38 ECAB 398 (1987).

[10] *See Ronald J. Pavlik*, 33 ECAB 1596 (1982); *Robert R. Snow*, 33 ECAB 656 (1982); *Quincy E. Malone*, 31 ECAB 846 (1980).

[11] *See Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Raymond Montanez*, 31 ECAB 1475 (1980).

simply suggested, with reference to no specific source or guidelines, that appellant had a seven to eight percent permanent impairment of the right upper extremity because he had undergone two carpal tunnel surgeries. Accordingly, this report is of diminished probative value.

By contrast, the Office medical adviser relied on Dr. Adams's post-rehabilitative physical therapy objective testing results and summary report to assess the permanent impairment of appellant's right upper extremity and properly applied the A.M.A., *Guides* to those findings to determine that appellant had no objective physical findings sufficient to constitute a permanent impairment. As the Office medical adviser's report was based on the proper application of the A.M.A., *Guides*, it constitutes the weight of the medical opinion evidence and establishes that appellant has no ratable permanent impairment entitling him to a schedule award under the Act.

The October 7, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 28, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member