

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SILVESTER DeLUCA and DEPARTMENT OF THE NAVY,
MIRAMAR MARINE CORPS AIR STATION, San Diego, CA

*Docket No. 01-1904; Submitted on the Record;
Issued April 12, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to receive a schedule award for permanent impairment of his upper extremities.

The Board has duly reviewed the case record and appellant's contentions on appeal and finds that appellant has not established entitlement to a schedule award in this case.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.404 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. 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 under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) has been adopted by the Office of Workers' Compensation Programs.

On July 30, 2000 appellant, then a 45-year-old project manager/engineering technician, filed an occupational disease claim, alleging that factors of employment caused bilateral carpal tunnel syndrome (CTS) which the Office accepted as being employment related. On September 28 and October 30, 2000 appellant underwent surgical releases on the left and right respectively. On January 12, 2001 he filed a claim for a schedule award. By decision dated June 13, 2001, the Office denied the schedule award claim. The Office found that, under the A.M.A., *Guides*, appellant had no impairment due to loss of range of motion or sensory deficit.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides* (5th ed. 2001).

The Office further found that any loss of grip strength should not be evaluated until at least one year had passed following surgery and advised appellant that he could have his condition reevaluated at that time. The instant appeal follows.

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

“If, after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present:

“Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS is rated according to the sensory and/or motor deficits as described earlier.

“Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: a residual CTS is still present and an impairment rating not to exceed 5 percent of the upper extremity may be justified.

“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.”⁴

Section 16.5d of the A.M.A., *Guides* further provides that, in compression neuropathies, additional impairment values are not given for decreased grip strength.⁵ Section 16.8a provides that, since maximum strength is usually not regained for at least a year after an injury or surgical procedure and impairment is evaluated when an individual has reached maximum medical improvement, “strength can only be applied as a measure when a year or more has passed since the time of injury or surgery.”⁶

The relevant medical evidence in the instant case includes a January 12, 2001 report in which Dr. Arnold Markman, who is Board-certified in preventive medicine and family practice, noted findings on wrist testing that included normal range of motion, negative Tinel’s, Phalen’s, Watson’s and Finkelstein’s tests, absent swelling and equal circumference measurements at the biceps, forearms and wrists. There was no crepitation or thenar atrophy and sensation was intact. Examination revealed no tenderness over the radial and ulnar styloids, carpal bones or carpal tunnel. Dr. Markman diagnosed severe left carpal tunnel syndrome status post release and moderately severe right carpal tunnel syndrome status post release. He also provided measurements which indicated that appellant’s grip strength was decreased bilaterally. Dr. Markman opined that appellant’s condition was permanent and stationery.

⁴ A.M.A., *Guides*, *supra* note 3 at 495.

⁵ *Id.* at 494.

⁶ *Id.* at 508.

Dr. Ellen Pichey, who is also Board-certified in preventive medicine and family practice and an Office medical adviser, reviewed Dr. Markman's January 12, 2001 report and, in an April 17, 2001 report, noted Dr. Markman's finding of zero loss of range of motion and zero loss of sensory deficit. Regarding grip strength, Dr. Pichey noted that, under the A.M.A., *Guides*, strength should only be assessed when a year or more had passed following surgery. She concluded that appellant was, therefore, not entitled to a schedule award at that time.

As stated above, the A.M.A., *Guides* provide three scenarios for interpreting carpal tunnel syndrome.⁷ The findings at this time regarding this case fall into the third scenario.⁸ Furthermore, while Dr. Markman advised that appellant had decreased grip strength, the A.M.A., *Guides* provides that strength should not be evaluated until a year or more have passed following surgery.⁹ The Board therefore finds that, as Dr. Pichey provided an explanation of her reasoning in applying the values found in the A.M.A., *Guides*, appellant had not established entitlement to a schedule award under 5 U.S.C. § 8107 at the time the Office issued the June 13, 2001 decision.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 13, 2001 is hereby affirmed.

Dated, Washington, DC
April 12, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Supra* note 5.

⁸ The record indicates that, while nerve conduction studies were conducted prior to appellant's surgery, such studies have not been done since.

⁹ *Supra* note 7.