U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE C. PARHAM and DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

Docket No. 02-332; Submitted on the Record;
Issued June 24, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 10 percent impairment of each upper extremity for which he received a schedule award.

The Board has duly reviewed the case record and finds that appellant has no greater than a 10 percent impairment of each upper extremity.

Under section 8107 of the Federal Employees' Compensation Act[1] and section 10.404 of the implementing federal regulation,[2] schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulation 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] has been adopted by the Office of Workers' Compensation Programs and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[4] Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is utilized to calculate any awards.[5]

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002).

[4] *See Joseph Lawrence, Jr., supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[5] FECA Bulletin No. 01-05 (issued January 29, 2001).

On February 29, 1996 appellant, then a 44-year-old welder, filed an occupational disease claim alleging that factors of his federal employment caused carpal tunnel syndrome. On March 27, 1996 he underwent a left carpal tunnel release. By letter dated August 14, 1996, the Office accepted that appellant sustained employment-related bilateral carpal tunnel syndrome. On February 26, 1997 he filed a claim for a schedule award and on July 16, 1997 underwent a right carpal tunnel release. In a decision dated October 13, 1998, the Office found that appellant was not entitled to a schedule award, based on the opinion of his attending physician, Dr. Stephen L. Cash, who is Board-certified in orthopedic surgery. By letter dated December 30, 1998, appellant requested reconsideration and submitted two reports from Dr. Thomas G. Bergfield, who is also a Board-certified orthopedic surgeon. In a decision dated April 19, 1999, the Office denied modification of the prior decision, finding that, based on Dr. Bergfield's reports, appellant had not reached maximum medical improvement.

Appellant continued to submit medical evidence and by letter dated October 20, 1999, the Office requested that Dr. Cash evaluate appellant's degree of permanent impairment. He provided a report dated November 2, 1999, that was reviewed by an Office medical adviser on January 19, 2000. In a decision dated February 1, 2000, appellant was granted a schedule award for a 10 percent impairment of each arm, for a total of 62.40 weeks of compensation, to run from November 2, 1999 to January 12, 2001. The Office based its decision on the January 19, 2000 opinion of the Office medical adviser who applied the standards of the A.M.A., *Guides* to Dr. Cash's finding of bilateral mild median nerve entrapment.[6]

On November 17, 2000 appellant requested reconsideration and submitted treatment notes dated March 20 and June 21, 2000 from Dr. Errol Ger, a Board-certified orthopedic surgeon. Based on the recommendation of an Office medical adviser, by letter dated January 10, 2001, the Office referred appellant, along with the medical record, a set of questions and a statement of accepted facts, to Dr. Charles A. Mauriello, an osteopathic physician who practices orthopedic surgery. In a decision dated March 6, 2001, the Office denied modification of the February 1, 2000 schedule award. The Office based its decision on the March 1, 2001 opinion of the Office medical adviser who applied the standards of the fifth edition of the A.M.A., *Guides* to Dr. Mauriello's findings of mild impairment.

By letter dated March 30, 2001, appellant again requested reconsideration and submitted a March 26, 2001 report from Dr. Ger, who found under the fourth edition of the A.M.A., *Guides*, that appellant had a 15 percent impairment of each arm. In a decision dated July 2, 2001, the Office denied modification of the prior decisions. The Office based its decision on a July 2, 2001 opinion of the Office medical adviser who noted that under the fifth edition of the A.M.A., *Guides* appellant would only be entitled to a five percent impairment of each upper extremity. In a letter dated August 2, 2001, appellant again requested reconsideration and submitted a July 24, 2001 letter, in which Dr. Ger asserted that the Office was obligated to evaluate appellant under the fourth edition of the A.M.A., *Guides*. In a September 24, 2001 decision, the Office denied modification of the prior decision. The Office noted that under

[6] At the time of the July 23, 1990 schedule award, the Office utilized the fourth edition of the A.M.A., *Guides*. (4th ed. 1993).

Office procedures, as provided in FECA Bulletin 01-05, reconsideration of schedule awards are to be evaluated under the current edition of the A.M.A., *Guides*. The instant appeal follows.

Office procedures direct the use of the fifth edition of the A.M.A., *Guides* for schedule awards determined on and after February 1, 2001.[7] As outlined in FECA Bulletin No. 01-05, Office procedures provide that "a claimant who has received a schedule award calculated under a previous edition may later make a claim for an increased award, which should be calculated according to the fifth edition."[8] The procedures specifically provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[9]

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--
>
> > (1) Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS [computerized tomography scan] is rated according to the sensory and/or motor deficits as described earlier.
> >
> > (2) 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.
> >
> > (3) 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."[10]

Section 16.5d of the A.M.A., *Guides* further provides that in rating compression neuropathies, additional impairment values are not given for decreased grip strength.[11] 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

[7] *Joseph Lawrence, Jr., supra* note 3.

[8] The Bulletin further provides that "Should the later calculation result in a percentage which is lower than the original award, the [Office] should make the finding that the claimant has no more than the percentage of impairment originally awarded and that, therefore, the Office has no basis for declaring an overpayment." FECA Bulletin No. 01-05, *supra* note 5.

[9] FECA Bulletin No. 01-05, *supra* note 5.

[10] A.M.A., *Guides*, *supra* note 3 at 495.

[11] *Id.* at 494.

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."[12]

The medical evidence indicates that an EMG performed on May 4, 1999 revealed borderline mild left comparable to right median neuropathies at the wrists, motor and sensory components, with mild to moderate slowing noted that in the right recurrent thenar motor branch, basically normal bilateral ulnar motor and sensory conduction studies except for mild sensory axonopathy on the right at the wrist and normal needle EMG of bilateral opponens pollicis median innervations. In a November 2, 1999 report, Dr. Cash noted that appellant's complaints of ongoing discomfort in both hands with occasional numbness and pain around the basilar regions of both thumbs. He found that range of motion of the fingers to be full except for the right fourth which was stiff from an unrelated injury. Grip strength was 30 pounds on the right and 45 pounds on the left with maximum pinch of 10 pounds bilaterally. In a treatment note dated March 10, 2000, Dr. Ger advised that appellant had residual carpal tunnel problems "somewhere between a mild and a moderate." In a June 21, 2000 treatment note, he advised that appellant was complaining of pain in both elbows, forearms and hands and numbness in his fingers when he drove. On examination Dr. Ger noted that limitation of motion in both shoulders and elbows. He diagnosed osteoarthritis of the elbows and advised that he would "not suggest any further treatment" for appellant's carpal tunnel syndrome.

Dr. Mauriello, who provided a report dated February 20, 2001, evaluated appellant under the fourth edition of the A.M.A., *Guides* and determined that maximum medical improvement had been reached in March 1998. He advised that appellant had a 10 percent impairment of each upper extremity due to his carpal tunnel syndrome. Dr. Ger also evaluated appellant's condition utilizing the fourth edition of the A.M.A., *Guides* and, in a March 26, 2001 report, advised that appellant had a 15 percent impairment in each arm. In a July 2, 2001 report, an Office medical adviser utilized the fifth edition of the A.M.A., *Guides* and found that, following surgical decompression, residual symptoms rated no more than a five percent impairment.

As stated above, the fifth edition of the A.M.A., *Guides* provides three guidelines for interpreting carpal tunnel syndrome.[13] The findings in the instant case fall into the second scenario, which states that the impairment rating is not to exceed five percent.[14] While Dr. Ger advised that appellant's impairment should be evaluated under the fourth edition of the A.M.A., *Guides*, Office procedures require that after February 1, 2001, the fifth edition of the A.M.A., *Guides* is to be utilized.[15] The Board finds that, appellant has not established that he is entitled to more than the 10 percent impairment of each upper extremity previously awarded.

[12] *Id.* at 508.

[13] *Supra* note 5.

[14] A.M.A., *Guides*, *supra* note 3 at 495.

[15] *Joseph Lawrence, Jr.*, *supra* note 3.

Accordingly, the September 24, July 2 and March 6, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 24, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member