

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DUANE BUTSON and U.S. POSTAL SERVICE,
POST OFFICE, Cedar Rapids, IA

*Docket No. 03-1378; Submitted on the Record;
Issued November 19, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant is entitled to a schedule award.

On February 22, 1999 appellant, then a 45-year-old distribution clerk, filed an occupational disease claim, alleging that his wrist condition was caused by the performance of his job duties. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome, and he received compensation for appropriate periods of wage loss. The Office also authorized surgery for right carpal tunnel release on June 14, 1999 and left carpal tunnel release on June 29, 2000.

On August 11, 2000 appellant filed a claim for a schedule award. By letter dated August 22, 2000, the Office requested that Dr. Charles E. Miley, a Board-certified neurologist who was appellant's treating physician, examine appellant to determine the extent of permanent partial impairment of the bilateral carpal tunnel syndrome, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In an August 14, 2000 report, Dr. Miley reported that appellant's date of maximum medical improvement was August 14, 1999, that he had no limitation of motion, and zero percent impairment of function of either arm due to weakness, atrophy, pain or discomfort and recommended an impairment rating of zero percent of both extremities.

On October 13, 2000 the case file was referred to the Office medical adviser for review. He opined that, based on the evidence of record, including Dr. Miley's July 27, 2000 report, appellant had a zero percent impairment as a result of the accepted work injury. In a November 20, 2000 report, the Office medical adviser indicated that the carpal tunnel release did not qualify for an award unless appellant reported continued pain, paresthesias or decreased strength. By decision dated April 17, 2001, the Office denied the schedule award claim for the reason that the evidence of record failed to establish that appellant had any impairment as a result of the accepted work injury.

In a letter dated May 10, 2001, appellant requested a hearing, which was held on September 19, 2001. He subsequently submitted a September 25, 2001 report, in which Ann Morley, an occupational therapist, advised that appellant had a 50 percent impairment of the right upper extremity. In a decision dated December 19, 2001, an Office hearing representative reviewed the evidence of record and remanded the case for further development.¹ The Office was directed to prepare a statement of accepted facts and refer appellant and the entire case record for a second opinion examination for an impairment rating of both upper extremities.

The Office prepared a statement of accepted facts and a set of questions and referred appellant to Dr. Patrick Sterrett, a Board-certified neurologist, for a second opinion examination. In a March 5, 2002 report, Dr. Sterrett noted appellant's history of injury and treatment and reported his findings on physical examination. He concluded that appellant had a zero percent permanent impairment of either upper extremity.

By decision dated March 26, 2002, the Office denied appellant's claim for a schedule award. In a letter dated April 20, 2002, appellant requested a hearing which was held on October 21, 2002. In support of his claim, he submitted additional evidence which included copies of the occupational therapy reports from Ms. Morley and an October 1, 2002 report from Dr. Raymond Sloan, a Board-certified family practitioner, who provided range of motion measurements and advised that appellant had a 10 percent impairment of left upper extremity.² In a January 17, 2003 decision, the hearing representative affirmed the Office's prior decision.

The Board finds that this case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and 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 A.M.A., *Guides*⁵ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and paid for compensation and treatment which included right and left carpal tunnel releases on June 14, 1999 and June 29, 2000 respectively. The Office determined that appellant had a zero

¹ The Office hearing representative found that the Office medical adviser did not use the proper edition of the A.M.A., *Guides* and that appellant's left arm needed to be evaluated.

² There was a circle with an "R" representing the right upper extremity which was crossed out, changed to "Lt" and initialed by a licensed practical nurse.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ A.M.A., *Guides* (5th ed. 2001).

percent permanent impairment of both upper extremities by crediting the findings of the second opinion physician, Dr. Sterrett.

In a report dated March 5, 2002, Dr. Sterrett noted appellant's history of injury, treatment and complaints of bilateral wrist pain. Physical examination, electromyography (EMG) and nerve conduction studies were conducted. Dr. Sterrett explained that maximal medical improvement was reached immediately following each carpal tunnel release as each hand had improved immediately. Neurological examination was normal with normal strength in both hands and normal thumb/finger apposition and intact abduction/adduction. Finger flexion was normal in terms of strength with no atrophy of the thenar muscles and sensation to pinprick and light touch was intact to all fingers of both hands. He found no deformities of the wrists but noted slight tenderness over the surgical incisions bilaterally but no tenderness in the proximal forearms. The EMG examination was normal bilaterally. Nerve conduction studies of the right and left ulnar motor and sensory nerves were normal. The studies for the right and left median motor and sensory nerves were abnormal; however, Dr. Sterrett explained that, while this demonstrated some residual of appellant's carpal tunnel symptoms that started in 1994, he had no symptoms to suggest that his median nerve was symptomatic at the time of his examination, specifically noting that appellant did not have paresthesias over the distribution of the median nerve in either hand, which included the thumb, index and middle fingers, as it had disappeared since the surgery. He also noted that appellant complained of pain in the volar aspect of the wrist after carpal tunnel surgery and slight decrease in strength in terms of inability to open jar lids, *etc.*, although his neurological examination was normal. Dr. Sterrett diagnosed chronic tendinitis of the flexor wrist, more on the left than the right, and advised that appellant had no carpal tunnel findings, "objectively or subjectively." He stated that appellant had no residual from carpal tunnel symptoms but did have tendinitis in the wrist although he needed no further attention to carpal tunnel symptoms. Dr. Sterrett concluded that appellant had a zero percent permanent impairment of the bilateral upper extremities according to the A.M.A., *Guides*.

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

"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. (Emphasis in the original.)

"Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS [carpal tunnel syndrome] 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 testing of the thenar muscles: a residual CTS is still present and an impairment rating not to exceed five 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.”⁶

In the instant case, Dr. Sterrett indicated that appellant had abnormal nerve studies of the left and right median nerves which demonstrated some residual of the carpal tunnel syndrome. Although he indicated that appellant demonstrated no symptoms to suggest that he was symptomatic at the time of his examination, he noted that appellant had continued pain of the wrists and was unable to perform activities such as opening cans due to his wrist weakness. Pursuant to the A.M.A., *Guides*, an impairment rating not to exceed five percent of the upper extremity may be justified when there are abnormal sensory and/or motor latencies or abnormal EMG testing such that a residual of the carpal tunnel syndrome is still present. Furthermore, the A.M.A., *Guides* suggest that, if the two-point discrimination and Semmes-Weinstein monofilament testing showed normal sensibility, there was no objective basis for an impairment rating; however, it is unclear as to whether this testing was conducted. As Dr. Sterrett did not explain why he was ruling out the five percent rating despite appellant showing residuals of his carpal tunnel syndrome, his report is incomplete and insufficient to establish that appellant was not entitled to this rating.

Proceedings under the Act are not adversarial in nature; nor is the Office a disinterested arbiter. The Office shares responsibility in the development of the evidence to see that justice is done.⁷

In this case, as the evidentiary basis for Dr. Sterrett’s determination of appellant’s impairment rating is not fully completed, the Board will set aside the Office’s January 17, 2003 decision and remand this case for the Office to request additional information in the form of a supplemental opinion on the extent of impairment of his upper extremities.⁸

While appellant submitted an October 1, 2002 form report from Dr. Sloan, which provided range of motion measurements and provided an impairment rating of 10 percent for an upper extremity,⁹ the Board finds this report insufficient to establish that appellant is entitled to a schedule award for his accepted carpal tunnel syndrome as Dr. Sloan did not indicate which

⁶ A.M.A., *Guides*, *supra* note 5 at 495.

⁷ *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

⁸ *Marco A. Padilla*, 51 ECAB 202 (1999) (stating that, although a claimant has the burden of establishing his entitlement to compensation, the Office should assist in this process in particular circumstances).

⁹ *Supra* note 2.

edition of the A.M.A., *Guides* he applied and his analysis does not comport with the analysis required under the fifth edition of the A.M.A., *Guides* for determining impairment due to carpal tunnel syndrome.¹⁰

The January 17, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
November 19, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ Appellant also submitted reports from Ann Morley, his occupational therapist, wherein she opined that appellant had a 50 percent impairment. The Board finds that the report from the occupational therapist is not probative as a therapist is not a physician as defined under the Act; *see* 5 U.S.C. § 8101(2). *See generally* *Thomas R. Horsfall*, 48 ECAB 180 (1996).