

**United States Department of Labor
Employees' Compensation Appeals Board**

SHARON K. HUGHES, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VERTERANS ADMINISTRATION MEDICAL
CENTER, Dallas, TX, Employer**

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**Docket No. 04-3
Issued: January 23, 2004**

Appearances:
Office of Solicitor, for the Director
Sharon K. Hughes, pro se

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On September 25, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 10, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly denied appellant's claim for a schedule award.

FACTUAL HISTORY

On November 15, 1999 appellant, then a 39-year-old clerk, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome and neck pain as a result of typing and keyboarding at work. She became aware of her condition on October 18, 1999 and did not stop work. After additionally denying the claim, in decisions dated January 11 and May 19, 2000, in a decision dated July 24, 2000, the Office accepted bilateral carpal tunnel syndrome and authorized right and left carpal tunnel releases which were performed on

October 2, 2000 and May 21, 2001 respectively. Appellant stopped work on October 2, 2000 and returned on December 12, 2000 and stopped completely on May 21, 2001.¹

On July 8, 2002 appellant filed a claim for a schedule award. She submitted a report from Dr. Phillip Hansen, a Board-certified orthopedist, dated January 4, 2001 which noted upon physical examination of the right hand that she could make a full fist, extension was full, there was scar tenderness, weak grip, full range of motion of her fingers, wrist and hand bilaterally. He noted that based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² that appellant would receive a four percent impairment of the body on the basis of weakness of grip of the right hand and no award based on limitation of range of motion. Dr. Hansen advised that appellant's left hand was asymptomatic; therefore, it would not have an impairment rating.

In a letter dated August 7, 2002, the Office requested that Dr. Hansen, provide an impairment determination in accordance with the fifth edition of the A.M.A., *Guides*.³ The Office specifically requested that the doctor provide his calculation using the tables and charts in the A.M.A., *Guides*.

In a note dated July 29, 2002, Dr. Hansen indicated that appellant had over-use phenomenon at the base of the thumb.

In a decision dated October 4, 2002, the Office denied appellant's claim for a schedule award on the grounds that Dr. Hansen did not provide an adequate explanation for his impairment rating in accordance with the A.M.A., *Guides*.

In a letter dated October 18, 2002, appellant requested reconsideration and submitted a report from Dr. Hansen dated October 14, 2002. He advised that the fourth and fifth editions of the A.M.A., *Guides* provided no significant difference in impairment rating. Dr. Hansen also noted that appellant experienced bilateral hand fatigue and pain.

Dr. Hansen's reports of January 4, 2001 and October 14, 2002 and the case record were referred to the Office medical adviser. In a report dated July 8, 2003, the Office medical adviser determined that the date of maximum medical improvement was October 14, 2002. He further advised that the reports from Dr. Hansen were inadequate to determine a schedule award for the upper extremities and recommended that the Office obtain an impairment evaluation from a second opinion physician.

On July 22, 2003 the Office referred appellant for a second opinion evaluation to Dr. John A. Sklar, Board-certified in physical medicine and rehabilitation. The Office provided

¹ In a decision dated September 17, 2002, the Office determined that appellant had been recently reemployed as an office automation assistant and that this position fairly and reasonably represented her wage-earning capacity and, therefore, in accordance with 5 U.S.C. § 8115 her compensation was terminated as her actual wages met or exceeded the wages when she was injured. Appellant did not file an appeal with the Board regarding this decision.

² A.M.A., *Guides* (4th ed. 1993).

³ A.M.A., *Guides* (5th ed. 2001).

Dr. Sklar with appellant's medical records, a statement of accepted facts as well as a detailed description of her employment duties.

In a medical report dated August 8, 2003, Dr. Sklar indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted findings upon physical examination of minimally decreased range of motion in the right wrist, normal flexion and extension of the left wrist, normal radial deviation of both wrists, decreased strength in a generalized pattern throughout the bilateral upper extremities and generalized widespread tenderness to palpation in the upper extremities and shoulders, which was consistent with diagnoses of myofascial pain syndrome of the bilateral shoulders and upper extremities and tendinitis of the bilateral upper extremities. Dr. Sklar noted that appellant had undergone right and left carpal tunnel releases in October 2000 and May 2001 respectively and reached maximum medical improvement on August 21, 2001. He advised that appellant did not have any residual neuropathy with regard to the carpal tunnel syndrome, but rather tendinitis in both wrists which was limiting her range of motion. Dr. Sklar noted that appellant had minimally decreased range of motion in the right wrist with right wrist extension of 55 degrees for a 1 percent upper extremity impairment;⁴ ulnar deviation of 20 degrees yielded a 2 percent upper extremity impairment,⁵ for a total of 3 percent permanent impairment of the right upper extremity. With regard to the left upper extremity, ulnar deviation of 20 degrees yielded a 2 percent upper extremity impairment.⁶ However, Dr. Sklar noted that this impairment did not appear to be "directly attributable to the accepted condition of carpal tunnel syndrome, but does appear to be due to tendinitis" a nonaccepted condition.

Dr. Hansen's report and the case record were referred to the Office medical adviser, who in a report dated September 3, 2003, determined that, in accordance with the A.M.A., *Guides*, appellant did not sustain a permanent impairment of the upper extremities causally related to the accepted condition of carpal tunnel syndrome. The medical adviser indicated that Dr. Sklar specifically noted that there was no evidence of impairment from the accepted conditions of bilateral carpal tunnel syndrome, rather that appellant's impairment was due to tendinitis, a condition not accepted by the Office.

In a decision dated September 10, 2003, the Office denied modification of the prior decision on the grounds that the evidence was insufficient to establish that appellant sustained a permanent impairment of the upper extremities due to an accepted work-related injury.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act⁷ and its implementing regulation⁸ set forth the number of weeks of compensation payable to employees

⁴ Figure 16-28, page 467 (A.M.A., *Guides*).

⁵ Figure 16-31, page 469 (A.M.A., *Guides*).

⁶ *Id.*

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404 (1999).

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 to ensure equal justice under the law to 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

ANALYSIS

In July 2003, the Office referred appellant for a second opinion evaluation to Dr. Sklar. In his report dated August 8, 2003, Dr. Sklar noted that appellant's physical examination revealed decreased strength in a generalized pattern throughout the bilateral upper extremities and generalized widespread tenderness to palpation in the upper extremities and shoulders, which was consistent with a diagnoses of myofascial pain syndrome of the bilateral shoulders and upper extremities and tendinitis of the bilateral upper extremities. He advised that appellant did not have any residual neuropathy with regard to the carpal tunnel syndrome, rather she had tendinitis which was limiting her range of motion. Dr. Sklar noted that this impairment did not appear to be "directly attributable to the accepted condition of carpal tunnel syndrome, but does appear to be due to tendinitis...."

The Board finds that, under the circumstances of this case, the opinion of Dr. Sklar is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that appellant did not sustain a work-related permanent impairment of the upper extremities. He indicated that appellant's impairment did not appear to be directly attributable to the accepted condition of carpal tunnel syndrome, but did appear to be due to tendinitis.

The Board has carefully reviewed Dr. Hansen's reports dated April 1, 2001 and October 14, 2002, which determined appellant's upper extremity impairment and notes that Dr. Hansen did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.⁹ In a report dated April 1, 2001, Dr. Hansen noted upon physical examination of the right hand that appellant could make a full fist, extension was full, there was scar tenderness, weak grip and full range of motion of her fingers, wrist and hand bilaterally. He noted that based on the fourth edition of the A.M.A., *Guides*, appellant would receive a four percent impairment of the body on the basis of weakness of grip of the right hand and that she would receive no award based on limitation of range of motion. Dr. Hansen advised that the left hand was asymptomatic, therefore, it would not have an impairment rating. However, he utilized the fourth edition of the A.M.A., *Guides*, rather than the fifth edition which had been adopted by the Office effective February 1, 2001.¹⁰ Furthermore, while appellant sustained a four percent permanent impairment of the right upper extremity, he failed to provide his calculations in support of this determination. Additionally, Dr. Hansen did not cite to tables or charts for an impairment rating determination. His October 14, 2002 report noted that the

⁹ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

¹⁰ FECA Bulletin No. 01-05 (issued January 29, 2001); *Joseph Lawrence, Jr.*, 53 ECAB __ (Docket 01-1361, issued February 4, 2002).

fourth and fifth editions of the A.M.A., *Guides* provided no significant difference in impairment rating. However, Dr. Hansen neither cited tables or charts in support of his impairment rating determination, nor did he correlate his findings to either edition of the A.M.A. *Guides*. Moreover, contrary to his assertion, analysis of carpal tunnel syndrome under the fourth and fifth editions is dissimilar.¹¹

The Board finds that Dr. Sklar's opinion constitutes the weight of the medical evidence and establishes that appellant did not sustain a permanent impairment of the upper extremities causally related to her accepted work-related injury of bilateral carpal tunnel syndrome. The Office medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Sklar's August 8, 2003 report and determined that appellant had no impairment rating causally related to her accepted condition of carpal tunnel syndrome. This evaluation conforms to the A.M.A., *Guides* and establishes that she has no permanent impairment of the upper extremities causally related to her accepted condition.¹²

CONCLUSION

The Board, therefore, finds that the weight of the evidence rests with the determination of the second opinion physician. Appellant is, therefore, not entitled to a schedule award for the upper extremities.

¹¹ Compare analysis of entrapment neuropathy in Chapter 3, page 56 of the fourth edition with section 16.5d, page 495 of the fifth edition.

¹² The Board notes that when appellant filed her occupational disease claim on November 15, 1999 she further alleged that her neck pain was employment related. In that regard, on January 15, 2001 the Office referred her to Dr. Charles Graham, a Board-certified orthopedic surgeon, who submitted a report dated February 15, 2001. In her appeal to the Board, appellant raised the issue of her neck condition. The Office, however, has not rendered a final decision determining whether her neck condition is employment related and the Board's jurisdiction is limited to a review of final decisions of the Office. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member