United States Department of Labor
Employees' Compensation Appeals Board

ROSETTA D. BOLAND, Appellant	)	
and	)	**Docket No. 03-1629**
	)	**Issued: July 27, 2004**
U.S. POSTAL SERVICE, REMOTE ENCODING CENTER, West Des Moines, IA, Employer	)	

Appearances:
Ernest Kersten, Esq., for the appellant
Office of Solicitor, for the Director

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 June 16, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 17, 2003, wherein the Office reviewed appellant's case on the merits but denied modification of its previous decision finding that appellant was entitled to a schedule award for a five percent permanent impairment of her right and left upper extremities. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a five percent impairment to her right upper extremity and a five percent impairment to her left upper extremity, for which she received schedule awards.

FACTUAL HISTORY

This case has been before the Board on prior appeals and the facts and findings of those decisions are hereby incorporated into these decisions.[1] Briefly, appellant, a data conversion clerk, filed an occupational disease claim for carpal tunnel syndrome. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and later authorized bilateral carpal tunnel release surgeries. Appellant underwent a left carpal tunnel release on November 2, 1995 and a right carpal tunnel release on November 10, 1995.

In a note dated February 28, 1998, Dr. Samir R. Wahby, an orthopedic surgeon, indicated that appellant has significant hypersensitivity over the surgical incision on her right hand, with minimal hypersensitivity to the incision on her left hand. He further noted:

> "Neurologic examination of the upper extremity reveals a negative Spurling's test, negative Tinel's of the *supra* and infraclavicular brachial plexus on both the right and left. There is a negative Tinel's on the ulnar nerve at the elbow bilaterally and a negative elbow flexion test bilaterally. She has a significant Tinel's that is positive as well as a positive Phalen's of the median nerve on the right. Phalen's is positive at about 6-7 seconds and a positive Tinel's and Phalen's on the left, again with a Phalen's positive at about 10 seconds. Reflexes are 2+ in the biceps, 1+ in the triceps. They are symmetric. Negative Hoffman's signs bilaterally. Sensation is intact to light touch. Her proprioception reveals a two-point discrimination of 3-4 mm [millimeter] in all digits and is appropriate."
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> "Presently, with regard to functional impairment, according to the [American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (4th ed. 1999)] for both hands, she has moderate residual carpal tunnel symptomatology in her right hand and mild residual carpal tunnel syndrome in the left. This would translate into a 20 percent impairment of her right upper extremity and on the left a 10 percent impairment, according to the above resource. This impairment is irrespective as to causation and delineates merely functional deficit that she presently has."

In a report dated March 2, 1998, Dr. C. Mark Race, a Board-certified orthopedic surgeon, noted that he saw appellant with regard to a second opinion and that pursuant to the A.M.A., *Guides* (4th ed. 1999) appellant had moderate residual carpal tunnel symtomatology in her right hand and mild residual carpal tunnel syndrome in her left, which would translate into a 20 percent impairment of her right upper extremity and on the left a 10 percent impairment.

Dr. Dave Archer, a Board-certified family practitioner, noted in a report dated June 18, 1998, that he saw appellant on June 4, 1998 for an independent medical examination with regard to her carpal tunnel syndrome. Dr. Archer indicated that according to the A.M.A., *Guides*, appellant had a 10 percent upper extremity impairment bilaterally which converted to a 6 percent

[1] Docket No. 02-1197 (issued February 3, 2003); Docket No. 99-2408 (issued November 2, 2001).

whole person impairment bilaterally or 12 percent whole person impairment for both wrists. He further noted that appellant had reached maximum medical improvement.

On June 25, 1998 appellant filed a claim for a schedule award.

In a note dated May 7, 1999, Dr. Wahby stated that pursuant to the A.M.A., *Guides*, appellant had moderate residual carpal tunnel symptomatology in her hands and that this would translate into a 20 percent impairment of her right upper extremity and a 20 percent impairment of her left upper extremity.

In a February 6, 2002 report, Dr. Gary Knudson, a Board-certified orthopedic surgeon, indicated that he performed an independent medical evaluation on appellant and stated that appellant's bilateral carpal tunnel syndrome was still active, but that it was quite mild.

By letter dated June 28, 2002, the Office asked Dr. Wahby for an impairment rating on appellant. He responded on July 15, 2002 that appellant had a 20 percent impairment of the left hand and a 20 percent impairment of the right hand. The Office then asked the Office medical adviser to determine appellant's impairment rating. On July 31, 2002 he indicated that appellant was entitled to a five percent impairment to each upper extremity for carpal tunnel syndrome pursuant to page 495 of the A.M.A., *Guides*, (5th ed. 2001). He further noted that there was no basis for a 20 percent impairment to either upper extremity, as appellant has normal strength and sensation. He further noted that his schedule award was based on posivite-Tinel's sign and subjective symptoms and electromyogram/nerve conduction velocity (EMG/NCV) showing mild carpal tunnel syndrome. Based on the opinion of the Office medical adviser, the Office issued a schedule award for a five percent impairment of the right upper extremity and a five percent impairment of the left upper extremity on August 27, 2002.

On September 7, 2002 Dr. Wahby completed a schedule award worksheet wherein he indicated that using the example on page 35 of the A.M.A., *Guides* (5th ed. 2001), appellant was entitled to a 25 percent impairment of his hand. He indicated as follows:

> "Percent Impairment of Digits: 10 thumb 5 percent; 20 index 10 percent; 30 middle 10 percent;40 ring finger -----; 50 little finger--;Total hand impairment: 25 percent."

Dr. Wahby also noted that appellant "has an inability to use above noted fingers to feel small objects or to do fine tasks with noted fingers."

On February 26, 2003 the Office asked the Office medical adviser to review the medical evidence of file, including the September 7, 2002 report by Dr. Wahby and determine the percentage of permanent partial impairment to the upper extremities according to the A.M.A., *Guides* (5th ed. 2001). In a March 4, 2003 report, a different Office medical adviser reviewed Dr. Wahby's report and noted that Dr. Wahby did not indicate which edition of the A.M.A., *Guides* he used to estimate impairment and that although he refers to page 35, neither the fourth or fifth editions of the A.M.A. *Guides* on page 35 refer to permanent partial impairment determinations based on the diagnosis of carpal tunnel syndrome. He also noted that he was unable to appreciate the objective medical rationale used by Dr. Wahby in warranting 20 percent

permanent impairment to either upper extremity. He reviewed Dr. Knudson's February 6, 2002 report and Dr. Archer's June 18, 1998 examination. He then concluded:

> "Based on objective medical findings, including reports of physical evaluations and EMG/NCV studies, the claimant has mild residual bilateral carpal tunnel syndrome. The most applicable criteria for the claimant is described on page 495 (example 2) of the A.M.A., *Guide*[*s*] awarding the claimant 5 percent [permanent impairment] to the left and the right upper extremity. Use of tables on pages 294 ([T]able 16-15), 482 ([T]able 16-10) and 484 ([T]able 16-11) are not applicable, as multiple medical reports did not disclose objective evidence of sensory or motor losses not covered by example on page 495.
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> "The date of maximum medical improvement (June 18, 1998) given by Dr. Archer can be accepted.
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> "As noted previously, I was unable to find objective medical basis for the permanent partial impairment to either upper extremity greater than 5 percent."

By decision dated March 17, 2003, the Office reviewed appellant's case on the merits, but determined that the evidence submitted in support of appellant's request for reconsideration was insufficient to establish that appellant was entitled to a greater percentage of permanent impairment than previously awarded based on the A.M.A., *Guides*.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[2] and section 10.404 of the implementing federal regulation,[3] schedule awards are payable for permanent impairment of specified body members, functions or organs. However, the Act does not 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 A.M.A., *Guides*[4] has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[5] The fifth edition of the A.M.A., *Guides* was required on all medical opinions dated after February 1, 2001.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (2002).

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

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

ANALYSIS

Numerous physicians have offered various opinions regarding the extent of appellant's impairment to his upper extremities. Although Dr. Wahby refers to the A.M.A., *Guides* in his reports, he is generally unclear as to which edition of the A.M.A., *Guides* he utilizes. He furthermore is not clear as to how he applies the A.M.A., *Guides*; he generally does not note what page or table supports his conclusion. For example, in his February 28, 1998 report, Dr. Wahby states that appellant had a 20 percent impairment to her right upper extremity and a 10 percent impairment to her left. Although he indicates in this report that he applied the fourth edition of the A.M.A., *Guides*, he neglects to indicate what pages or tables support his conclusion. His May 7, 1999 note, indicating that appellant had a 20 percent impairment in each upper extremity does not refer to the edition of the A.M.A., *Guides*, refer to page numbers or, for that matter, provide any rationale at all as to how he reached his conclusion. As stated above, all medical reports dated after February 1, 2001 must utilize the fifth edition of the A.M.A., *Guides.* On July 15, 2002 Dr. Wahby merely responded to questions propounded by the Office, he did not explain his conclusion that appellant had a 20 percent impairment in each hand or make any attempt to update his opinion to reflect the new criteria of the fifth edition of the A.M.A., *Guides.* In his September 7, 2002 worksheet, the form indicates that the fifth edition of the A.M.A., *Guides* was to be applied. Dr. Wahby indicated that he applied "page 35," however page 35 of the fifth edition of the A.M.A., *Guides*, refers to coronary heart disease; it is apparent that Dr. Wahby's calculations are based on the outdated fourth edition of the A.M.A., *Guides.*

Dr. Race stated that he applied the A.M.A., *Guides* (4th ed. 1999) in reaching his March 2, 1998 conclusion that appellant had a 20 percent impairment to her right upper extremity and a 10 percent impairment to her left. However, he neglects to note what tables or pages he relies upon to reach this conclusion. Dr. Archer's June 18, 1998 opinion is deficient for the same reason.

The only physicians to properly apply the fifth edition of the A.M.A., *Guides* are the two Office medical advisers. In the July 31, 2002 report, the first Office medical adviser refers to scenario 2 on page 495 when concluding that appellant sustained a five percent impairment of each upper extremity. He based his opinion on the fact that appellant had normal strength and sensation but had post Tinel's signs and subjective symptoms and an EMG/NCV showing mild carpal bilateral syndrome. This represents a proper application of the A.M.A., *Guides*.[6] The second Office medical adviser concurred that page 495, example 2 was the proper way to rate appellant. He also properly noted that use of tables on pages 294 (Table 16-15), 482 (Table 16-10) and 484 (Table 16-11) were not applicable as multiple medical reports did not disclose objective evidence of sensory or motor losses not covered by the example on page 495. Accordingly, the opinion of the Office medical advisers are entitled to greater weight.

[6] Pursuant to scenario 2 on page 495 of the A.M.A., *Guides* (5th ed. 2001):

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

CONCLUSION

The Office properly determined that appellant was not entitled to a schedule award greater than the five percent he was already awarded for impairment to each upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 17, 2003 is affirmed.

Issued: July 27, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member