United States Department of Labor
Employees' Compensation Appeals Board

ANGELIQUE ORR, Appellant	)	
and	)	**Docket No. 04-474**
	)	**Issued: July 13, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Ridgeland, SC, Employer	)	

Appearances:
Angelique Orr, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 15, 2003 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated August 14, 2003, wherein the Office found that appellant had a zero percent impairment of the right arm.

ISSUE

The issue is whether the Office properly determined that appellant had a zero percent impairment of her right arm in the decision dated August 14, 2003.

FACTUAL HISTORY

On June 5, 2001 appellant, then a 33-year-old rural carrier, filed a claim for occupational disease alleging that she sustained carpal tunnel syndrome as a result of her federal employment. Appellant's claim was accepted for right carpal tunnel syndrome, right de Quervain's tenosynovitis, right lateral epicondylitis, right extensor carpi ulnaris tendinitis and release of each of these conditions. On October 1, 2001 appellant underwent a right carpal tunnel release, release of right abductor pollicis longus tendon and extensor pollicis brevis tendon and injection

of trigger point right elbow. Appellant returned to light-duty work on October 17, 2001 and to regular work on May 6, 2002.

Appellant received treatment with Dr. Ralph E. Moore, III, a Board-certified orthopedic surgeon. In a medical report dated April 15, 2002, Dr. Moore noted:

> "Active range of motion is assessed. Finger active range of motion is within normal limits. Thumb palmar abduction is 43 degrees with radial abduction of 36 degrees. The patient complained of pain with radial abduction. Wrist extension is 66 and flexion 40. Radial deviation 10 and ulnar deviation 26. Forearm and elbow active range of motion are also within normal limits."

In an April 30, 2002 report, Dr. Moore stated:

> "[Appellant] comes in today [follow up] of some right [upper extremity] UE pain. She has had a formal UE evaluation by the [occupational therapist] and she has essentially normal motion throughout and normal sensation. The only significant objective finding is marked weakness of grip strength and pinched strength compared to the noninvolved side. Using *The American Medical Association Guide to the Evaluation of Permanent Impairment* [A.M.A., *Guide*] 5th ed. 2001, from page 509, [T]able [16-34], UE joint impairment due to loss of grip or pinch strength the patient's values would place her at approximately 50 [percent] strength loss index which would give her a 20 [percent] UE impairment. This would be equal to a 12 [percent] whole person impairment. Based on my evaluation of this patient I do not feel that further impairment is present with regard to the UE. Her maximum medical improvement date is April 30, 2002."

Dr. Moore further indicated that appellant could return to regular duty.

On May 9, 2002 appellant filed a claim for a schedule award.

In response to a query from the Office, on July 18, 2002 the Office medical adviser noted that the treating physician suggested 20 percent permanent impairment of the right upper extremity for carpal tunnel syndrome, noted that he used a strength rating which in his opinion was not acceptable for this condition. The Office medical adviser noted that Table 16-15 of the A.M.A., *Guides* allows 10 percent for weakness of the median nerve and 50 percent of 10 percent equals 5 percent. Accordingly, the Office medical adviser determined that appellant was entitled to a schedule award of 5 percent for the right upper extremity.

The Office medical adviser's report was forwarded to Dr. Moore by the Office. In a letter dated July 31, 2002, Dr. Moore responded:

> "With regard to the comments of your [d]istrict [m]edical [a]dvis[e]r it appears that he made his comments regarding the patient's complaint of carpal tunnel syndrome only. If she had in fact suffered from carpal tunnel syndrome only I do not feel that I would have significant disagreement with them. It appears, however, from my review of the patients' records dating back to July 11, 2001 that she in fact has had several processes including right carpal tunnel syndrome,

right lateral epicondylitis and right de Quervain's tenosynovitis, all of which she has been treated for and, all of which would impact on her grip strength. It was my medical opinion that the most appropriate way to estimate patient's impairment based on these numerous conditions would be to assess her overall upper extremity grip strength. If in fact her only workman's comp[ensation] association problem was her carpal tunnel then I feel that your reviewers' comments are appropriate. If however the patient has workman's compensation coverage for all of her injuries, I think the more global assessment of her grip strength would be appropriate in estimating her impairment.

On August 29, 2002 the Office medical adviser responded:

"The problem is the A.M.A., *Guides* have a very low opinion of using strength as a rating technique and the conditions that were accepted were not associated with loss of strength *i.e.* permanently."

By letter dated September 24, 2002, the Office referred appellant to Dr. Scott A. Stegbauer, a Board-certified orthopedic surgeon, to resolve the conflict between appellant's treating physician, Dr. Moore and the Office medical adviser. In a medical report dated October 10, 2002, Dr. Stegbauer opined:

"[Appellant] has had multiple procedures but, clinically, the objective findings are very limited. Again, when doing an impairment rating, the most measurable thing that cannot be subjectively influenced would be [range of motion] but all of these are completely normal. She seems to have decreased strength but that is something that can be very subjective and it is difficult to really examine it and get a good feeling for it. Patients' reflexes are measurable but they are all normal, thus, just about everything objective is within normal limits. This makes it very difficult to do a rating. We did an x-ray. She has no arthritis of the elbow or at the wrist or in the fingers up to the [metacarpophalangeal] joints. I find no significant boney abnormality. I think putting a rating on this is extremely difficult given the ulna side of the wrist is a problem but given normal motion. Although it is popping and has pain, she certainly is at [maximum medical improvement]. Coming up with the number, again, I have the [f]ourth [e]dition to Permanent Impairment. I do not have a [f]ifth [e]dition, but even if I did, I would say that for carpal tunnel release with mild residual symptoms as stated is 10 [percent] on page 56 of the fourth [edition of the A.M.A.,] *Guide*, 6 [percent] whole person, but I am not really impressed with carpal tunnel even being in that category and I would say that I would give her a 6 [percent] of the upper extremity for the carpal tunnel release, 3 [percent] for the de Quervain's tenosynovitis in the same vein. The elbow problem would qualify 3 [percent], thus, we are up to 12 [percent] and the shoulder, I would say again, qualifies her for a 3 [percent]. I would go as high, then, as 15 [percent] impairment of the upper extremity but, again, it is more for the weakness which is partially subjective since motion is normal. I really do not know that there is any way to do an impairment rating that has not got a large component of subjective. If we went clearly on objective findings, which is mainly [range of motion] and deals

with ankylosis, sensory does not have anything to do with the rating. According to the [f]ourth [e]dition to the [A.M.A.,] *Guide*[*s*]to [p]ermanent [i]mpairment, she is at 10 [percent] secondary to the mild loss of function with her carpal tunnel release on [p]age 56 of the [f]ourth [e]dition. I have given her the 15 [percent], though and I think it is very fair and I think she can do regular normal work activity. I would not restrict her. If she needs help with lifting or pulling or pushing something or twisting I am sure she could ask someone to help her and they would but I would not put a restriction on her job and I think she is at full duty at this point."

The Office medical adviser was asked to advise if Dr. Stegbauer's calculations were in accordance with the appropriate A.M.A., *Guides*. The Office medical adviser responded on November 14, 2001 that Dr. Stegbauer used the fourth edition of the A.M.A., *Guides* which would allow 10 percent for carpal tunnel syndrome, but noted that the fifth edition does not. He also noted that Dr. Stegbauer allowed three percent for de Quervain's tenosynovitis but did not note how this is effected by the shoulder which has not been accepted. The Office medical adviser concluded that he would allow three percent additional based on his documentation of weakness, for a total of eight percent permanent impairment.

By letter dated December 12, 2002, Dr. Stegbauer noted:

"Carpal tunnel syndrome carries a rating in the [f]ifth [e]dition that is little different than in the [f]ourth [e]dition. On [p]age 495 they allow a 6 [percent] impairment for carpal tunnel syndrome. I think her syndrome probably given that would qualify for a 3 [percent] impairment instead of the 6 given the fact she certainly is impaired with some residual numbness and tingling.

"Regarding some pain and loss of motion with attempts of passive and active [range of motion] at the elbow and shoulder, that is how I arrive at those percentages. It is a loss of motion in these areas.

"I, therefore, would have to say that for carpal tunnel syndrome it would be 3 [percent], for the de Quervain's 3 [percent], for the elbow 3 [percent] and 3 [percent] for the shoulder, thus a total of 12 [percent] impairment of the upper extremity. This, again, is very hard to do because in testing [range of motion] it is hard to move a joint when somebody is splinting it and does not allow you to get your regular motion. But the ratings are done mainly on [range of motion] and sensation really does not have a whole lot to do with it."

On January 3, 2003 the Office medical adviser recommended accepting Dr. Stegbauer's finding of 12 percent impairment of the right upper extremity as he found it within the limits of the A.M.A., *Guides*, (5th ed. 2001).

On January 27, 2003 the Office issued a schedule award for a 12 percent impairment of the right arm.

By letter dated February 28, 2003, appellant requested reconsideration.

On March 31, 2003 the Office medical adviser noted that Dr. Stegbauer's ratings cannot be verified per the A.M.A., *Guides* (5th ed. 2001). Pursuant to his advice, the Office referred appellant to Dr. Frederick M. Laun, a Board-certified orthopedic surgeon, for an impartial medical examination. In a medical report dated July 16, 2003, Dr. Laun opined:

> "According to page 495 of the referenced book utilizing for this rating which is the [fifth] [e]dition of the A.M.A., *Guides to the Evaluation of Permanent Impairment*, the patient could be rated for a carpal tunnel syndrome following surgical decompression under three different possible headings. These are as noted on the bottom of the left column on that page.
>
> "1. [Appellant] does not have positive clinical findings of median nerve dysfunction and electrical conduction delay, in fact, there are no positive findings and no positive electrical findings.
>
> "2. [Appellant] appears to have normal sensibility and I cannot note any loss of strength as noted earlier. It is also noted that she has got a good thenar eminence to palpitation and she once again has negative electrical findings. Therefore, this way of rating [appellant] in [number] 2 would not apply to her anymore than [number] 1 did.
>
> "3. Normal sensibility with good strength and normal nerve conduction studies, which is how I would diagnosis this patient affords her a 0 [percent] impairment rating according to the book."

Dr. Laun explained the difference between his opinion and the earlier opinions:

> "1. Dr. Moore's evaluation of April 30, 2002 gave the patient a 20 [percent] upper extremity impairment which equals a 12 [percent] whole person impairment and felt that this was due to the upper extremity weakness which he estimated at 50 [percent] which would actually give the patient a 20 [percent] upper extremity impairment accordingly to [T]able 16-34. My problem with his evaluation is that there is nothing objective to show that the patient has any strength loss. Our Cybex today showed that the patient refused to give a true trial even though she was repeatedly cautioned by the therapist to do so. I also find that, if the patient had so much weakness, that I would expect to find some atrophy clinically including by palpitation or by measurement, none of which I find today.
>
> "2. Dr. Stegbauer comments concerning the [fourth e]dition of the A.M.A., *Guide for the Evaluation of Permanent Impairment* rather than the [fifth] edition of the A.M.A., *Guides to the Evaluation of Permanent Impairment*. I note that he has given the patient on his letter to Mr. Siciliano, some impairment for carpal tunnel syndrome, which I find not to be present. He also gave pain and loss of motion for the shoulder which has not been accepted and I find the patient has normal range of motion at the elbow.

"3. Dr. Charles, D.M.A., I see that Dr. Charles's rating is seen on paperwork dated July 18, 2002 and appears in the memorandum which apparently was sent to him by Tisha Winkleman, [c]laims [e]xaminer. I have a little trouble with trying to read his writing, but apparently he also questioned the use of weakness and came up with taking 50 [percent] of 10 [percent] and came up with 5 [percent]. As noted earlier, I personally see no reason to come up with a positive rating on this patient."

On August 11, 2003 the Office medical adviser reviewed the case by quoting from Dr. Lawn's opinion.

By decision dated August 14, 2003, the Office modified the January 27, 2003 decision to indicate that appellant had a zero permanent impairment to the right arm. However, the Office noted that an overpayment would not be declared.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[1] set forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Act's implementing regulation has adopted the A.M.A., *Guides*, as the appropriate standard for evaluating schedule losses.[2]

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[3] However, where the opinion of the impartial medical examiner is speculative or lacks rationale, the Office must refer the claim to another impartial medical specialist to resolve the issue in question.[4]

ANALYSIS

In evaluating appellant's entitlement to a schedule award in its January 27, 2003 decision, the Office noted that there was a conflict between the opinion of appellant's treating physician, Dr. Moore, who opined that appellant had a 20 percent upper extremity impairment pursuant to the A.M.A., *Guides* (5th ed. 2001) and the opinion of the Office medical adviser, who initially opined that appellant should be issued a schedule award for 5 percent of his upper right extremity pursuant to the fifth edition of the A.M.A., *Guides*. Accordingly, the Office referred appellant to

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (2003).

[3] *Harry T. Mosier*, 49 ECAB 688, 692 (1998).

[4] *Id.* at 693.

Dr. Stegbauer to resolve the conflict. Dr. Stegbauer initially applied the A.M.A., *Guides*, (4th ed. 2001) and rated appellant's impairment of the right upper extremity at 15 percent. However, Dr. Stegbauer, in a supplemental opinion, evaluated appellant's claim under the proper fifth edition of the A.M.A., *Guides* and determined that appellant had a 12 percent impairment of the right upper extremity. The Office medical adviser recommended that the Office accept Dr. Stegbauer's finding. By decision dated January 3, 2003, the Office issued a schedule award for a 12 percent impairment of the right arm. However, the Board finds that this decision was in error. After reviewing the A.M.A., *Guides*, the Board is unable to determine how Dr. Stegbauer arrived at his conclusion. Dr. Stegbauer's notes that the A.M.A., *Guides* on page 495 allow for six percent impairment for carpal tunnel syndrome, yet the Board is unable to determine where on this page the A.M.A., *Guides* make such a statement. It is further unclear how Dr. Stegbauer determined that appellant would qualify for a three percent impairment. No reference to the A.M.A., *Guides* is made when he determined that appellant would qualify for three percent impairment. No reference to the A.M.A., *Guides* is made when Dr. Stegbauer notes that appellant is entitled to an addition three percent each for de Quervain's, elbow impairment and shoulder impairment. Although the Office medical adviser, in his note of January 3, 2003, notes that Dr. Stegbauer's findings are within the limits of the A.M.A., *Guides* (5th ed. 2001), he fails to provide any explanation for his conclusion.

After appellant requested reconsideration, the Office medical adviser properly indicated that Dr. Stegbauer's ratings could not be verified pursuant to the A.M.A., *Guides*, fifth edition. Due to the deficiencies in Dr. Stegbauer's report, his report cannot be used to determine percentage of impairment of appellant's right arm. Accordingly, the Office referred appellant to Dr. Laun for a second impartial medical examination. Dr. Laun referred to page 495 of the A.M.A., *Guides* and discussed each of the scenarios listed. He indicated that appellant did not have positive clinical findings of median nerve dysfunction and electrical conduction delay and accordingly could not be awarded any impairment pursuant to this criteria. He noted that appellant had normal sensibility and no loss of strength and therefore appellant could not be rated under this criteria. Finally, he evaluated appellant's claim under the third criteria listed on page 495 and determined that appellant had normal sensibility with good strength and normal nerve conduction studies and would therefore not qualify under this criterion for a schedule award impairment. Dr. Laun's opinion properly applied the fifth edition of the A.M.A., *Guides*. He further expressed his concerns with the opinion of the other physicians. As the opinion of Dr. Laun, the second impartial medical examiner, is well rationalized and properly applied to the A.M.A., *Guides* (5th ed. 2001), it represents the weight of the evidence. Accordingly, in its opinion dated August 14, 2003, the Office properly modified the January 27, 2003 decision and found that appellant had a zero percent permanent impairment of his right arm.[5]

CONCLUSION

The Office properly found that appellant had a zero percent impairment of the right upper extremity.

[5] In view of our affirmance of the August 14, 2003 Office decision, the January 27, 2003 decision is vacated.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2003 is affirmed.

Issued: July 13, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member