United States Department of Labor
Employees' Compensation Appeals Board

DOROTHY L. FORRESTER, Appellant	)	
and	)	**Docket No. 04-0648**
	)	**Issued: May 11, 2004**
U.S. POSTAL SERVICE, POST OFFICE, San Bernardino, CA, Employer	)	

Appearances:
Dorothy L. Forrester, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On January 12, 2004 appellant filed a timely appeal from the October 8, 2003 decision of the Office of Workers' Compensation Programs, which denied her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's October 8, 2003 decision.

ISSUE

The issue is whether appellant has a ratable permanent impairment of the upper extremities, resulting from her accepted bilateral carpal tunnel syndrome, thereby entitling her to a schedule award.

FACTUAL HISTORY

On February 20, 2002 appellant, then a 58-year-old retail clerk, filed a claim alleging that her right carpal tunnel syndrome was a result of her federal employment. The Office accepted her claim for right carpal tunnel syndrome with release surgery on July 15, 2002. On September 19, 2002 appellant filed a similar claim for her left wrist. The Office expanded its

acceptance to include left carpal tunnel syndrome. On April 7, 2003 appellant filed a claim for a schedule award.

On December 12, 2002 Dr. Lauri B. Hemsley, a specialist in occupational medicine, declared that appellant was permanent and stationary that date. She noted the following complaints:

> "[Appellant] states that with any forceful or repetitive gripping she has pain on an intermittent basis that she would rate a 6/10. So she ends up rotating tasks in order to avoid the pain. The pain will reduce over several hours to days with rubbing the hand and avoiding heavy activities. [Appellant] also occasionally will notice tingling with repetitive motion and occasionally some mild swelling."

On physical examination of the wrists, Dr. Hemsley reported normal ranges of motion bilaterally, with flexion of 80 degrees, extension of 70 degrees, radial deviation of 20 degrees and ulnar deviation of 30 degrees. She reported that appellant had normal upper extremity motor strength, with each function rated as five out of five. Appellant also reported normal grip strength, with 40, 60 and 45 kilograms on the right and 40, 45 and 40 kilograms on the left. Upper extremity reflexes were judged to be full. There was no measurable atrophy. Appellant had a negative Phalen's sign in both hands and a negative Tinel's sign in both wrists, but a nerve conduction study was positive for right carpal tunnel syndrome. Dr. Hemsley reported no other true objective findings on examination and diagnosed right carpal tunnel syndrome, status post release. She noted the following subjective factors of disability:

> "At rest [appellant] has no pain in her right hand. With forceful or repetitive gripping she will have slight to moderate pain in the right hand that will take several hours to a day to resolve with rest. Occasionally, she will also notice tingling in the right hand with repetitive motion."

Dr. Hemsley reported that appellant was precluded from prolonged forceful gripping and from prolonged fine finger motions "which become difficult due to the tingling that she gets." She estimated that appellant had lost 25 percent of her preinjury capacity for forceful gripping and fine finger motions.

On October 3, 2003 an Office medical consultant reviewed appellant's file, a statement of accepted facts and the December 12, 2002 report of Dr. Hemsley. Noting no impairment due to loss of motion, loss of strength or sensory deficit or pain, the medical consultant reported that appellant had no impairment of the right or left upper extremity.

In a decision dated October 8, 2003, the Office denied appellant's claim for a schedule award. The Office found that the medical evidence failed to demonstrate a measurable impairment.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[1] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[2]

ANALYSIS

When the Office medical consultant reviewed the findings of Dr. Hemsley, the specialist in occupational medicine, she found no impairment due to loss of motion, loss of strength or sensory deficit or pain. She made no reference, however, to any tables or pages in the A.M.A., *Guides* and she gave no indication that she followed the instructions on page 495:

> "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 [carpal tunnel syndrome] 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."[3]

Assuming a sufficient amount of time postoperatively for optimal physiologic recovery and rehabilitation,[4] appellant continued to complain of pain, paresthesias or difficulties in performing certain activities. She reported slight to moderate pain in the right hand with forceful or repetitive gripping, pain that would take several hours to a day to resolve with rest. Appellant also reported occasional tingling in the right hand with repetitive motion. To avoid the pain appellant rotated tasks and avoided heavy activities. Dr. Hemsley reported that appellant had

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the fifth edition of the A.M.A., *Guides*. FECA Bulletin No. 01-05 (issued January 29, 2001).

[3] A.M.A., *Guides* 495 (5th ed. 2001). (Emphasis in the original.)

[4] *See id.* at 493.

lost 25 percent of her preinjury capacity for forceful gripping and fine finger motions and was precluded from such activities on a prolonged basis.[5] Because Dr. Hemsley also reported a nerve conduction study that was positive for right carpal tunnel syndrome, it would appear, consistent with her diagnosis, that residual carpal tunnel syndrome is still present on the right and should be rated under the second scenario described above. On the left Dr. Hemsley did not indicate whether she conducted the sensibility tests mentioned under the third scenario above. Further development of the evidence is therefore warranted.

CONCLUSION

The Board finds that this case is not in posture for a decision on whether appellant has a ratable permanent impairment of the upper extremities resulting from her accepted bilateral carpal tunnel syndrome, thereby entitling her to a schedule award. The Board will set aside the Office's October 8, 2003 decision denying appellant's request for a schedule award and remand the case for a proper application of the A.M.A., *Guides*. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: May 11, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[5] In compression neuropathies, additional impairment values are not given for decreased grip strength. *Id*. at 494.