United States Department of Labor
Employees' Compensation Appeals Board

BENITA A. ELDER, Appellant	)	
and	)	**Docket No. 05-775**
	)	**Issued: August 1, 2005**
U.S. POSTAL SERVICE, MAIL PROCESSING CENTER, Raleigh, NC, Employer	)	

Appearances:
Benita A. Elder, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 14, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated January 19, 2005, adjudicating her claim for an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant has more than a 15 percent permanent impairment of the left upper extremity.

FACTUAL HISTORY

On March 6, 1997 appellant, then a 43-year-old flat sorter operator, sustained a left wrist injury when a coworker backed a mail tram into her, striking her wrist and bending it backward. The Office accepted her claim for a sprain and strain of the left wrist with tendinitis, a post-traumatic ganglion cyst and aggravation of degenerative changes of the carpal-metacarpal joint

of the left wrist. She sustained a recurrence of disability on March 29, 2004 and the Office updated her claim at that time to include left carpal tunnel syndrome as an accepted condition.

On September 21, 1997 appellant filed a claim for a schedule award.

By decision dated September 4, 1998, the Office granted appellant a schedule award for 31.20 weeks for the period March 20 to October 24, 1998, for a 10 percent impairment of the left upper extremity.

There are no medical reports of record dated between February 1999 and May 2004.

On May 13, 2004 appellant underwent a left carpal tunnel release with left palmar cutaneous neuroplasty performed by Dr. Joel D. Krakauer, an attending Board-certified orthopedic surgeon.

In a report dated May 26, 2004, Dr. Krakauer noted that an electromyogram (EMG) was essentially normal but did show that appellant had a mild abnormality of the median nerve at the left wrist.

On June 3, 2004 appellant filed a claim for a schedule award based on additional impairment of her left upper extremity.

On September 2, 2004 appellant underwent an excision of a left wrist volar ganglion cyst performed by Dr. Krakauer.

In a report dated October 12, 2004, Dr. Krakauer determined that appellant had reached maximum medical improvement (MMI) and had a 12 percent impairment of the left upper extremity based on persistent wrist pain and intermittent swelling and numbness. He stated that she had difficulty performing routine activities. Dr. Krakauer indicated that finger and wrist ranges of motion were normal. He stated that appellant had a permanent work restriction of no lifting of more than five pounds with her left hand.

In a November 30, 2004 memorandum, an Office medical adviser stated that appellant had a five percent impairment of the left upper extremity based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*) (5th ed. 2001).[1] He stated that the second scenario described at page 495 of the A.M.A., *Guides*, fifth edition, was applicable to appellant's situation and provided for no more than a five percent impairment rating. The Office medical adviser stated that Dr. Krakauer's October 12, 2004 report did not provide a basis for more than a five percent impairment according to the A.M.A., *Guides* and did not reference the A.M.A., *Guides* in support of the 12 percent impairment rating.

[1] The Board notes that the Office medical adviser properly relied upon the fifth edition of the A.M.A., *Guides* as Office procedures direct the use of the fifth edition for schedule awards determined on and after February 1, 2001. A claimant who has received a schedule award under a previous edition, as in this case, may later make a claim for an increased award, which should be calculated according to the fifth edition. *See* FECA Bulletin No. 01-05 (issued January 29, 2001).

By decision dated January 19, 2005, the Office granted a schedule award for 15.6 weeks for the period October 15, 2004 to February 1, 2005, for a five percent additional impairment of the left upper extremity.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[2] 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 A.M.A., *Guides.*[3]

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

> "If, after an *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias [abnormal sensation] 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 is rated according to the sensory and/or deficits as described earlier.[4]
> >
> > 2. 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.
> >
> > 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."[5] (Emphasis in the original.)

ANALYSIS

In a report dated May 26, 2004, Dr. Krakauer noted that an EMG was essentially normal but did show a mild abnormality of the median nerve at the left wrist. In his October 12, 2004 report, he determined that appellant had reached MMI and had a 12 percent impairment of the

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] Table 16-10 at page 482 of the A.M.A., *Guides* is used for pain due to nerve injury or disease that has been documented with objective physical findings or electrodiagnostic abnormalities.

[5] A.M.A., *Guides*, 495. *See also Silvester DeLuca*, 53 ECAB 500 (2002).

left upper extremity based on persistent wrist pain and intermittent swelling and numbness. Dr. Krakauer stated that appellant had difficulty performing routine activities. He indicated that finger and wrist ranges of motion were normal. However, Dr. Krakauer did not explain his 12 percent impairment rating with specific reference to the A.M.A., *Guides*, as required by the Office for determinations of impairment for schedule award purposes.

Because Dr. Krakauer did not provide a rating based on the A.M.A., *Guides*, the Office medical adviser considered Dr. Krakauer's description of appellant's impairment.[6] He determined that she had a five percent impairment of the left upper extremity based on the procedures at page 495 for evaluating impairment due to carpal tunnel syndrome when an individual continues to have pain, paresthesias or difficulties in performing certain activities. The Office medical adviser determined that appellant had a five percent impairment of the left upper extremity according to scenario 2 described in the A.M.A., *Guides* at page 495, "Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles." However, it appears from Dr. Krakauer's description of appellant's impairment that scenario 1 at page 495 of the A.M.A., *Guides* pertaining to median nerve dysfunction may be applicable and it might provide for a higher percentage of impairment. The criteria for scenario 1 at page 495 includes "[p]ositive clinical findings of nerve dysfunction." Dr. Krakauer stated that appellant had intermittent numbness, which suggests median nerve dysfunction. He also noted that an EMG revealed a mild abnormality of the median nerve. In light of Dr. Krakauer's findings regarding appellant's median nerve dysfunction, the Office medical adviser provided insufficient medical rationale as to why he selected scenario 2 at page 495 of the A.M.A., *Guides* for determining appellant's left upper extremity impairment, rather than scenario 1.

The Board finds that this case requires further medical development to properly establish appellant's impairment of her left upper extremity.

CONCLUSION

The Board finds that this case is not in posture for a decision as it requires further medical development. On remand, the Office should request a supplemental report from Dr. Krakauer to include a rating of appellant's left upper extremity based on reference to the specific sections or tables of the fifth edition of the A.M.A., *Guides* which he finds applicable to appellant's impairment, together with an explanation in support of his rating determination. He should also obtain a nerve conduction study of appellant's left upper extremity as both scenario 1 and 2 at page 495 of the A.M.A., *Guides* indicate that such a study is necessary in order for an impairment determination to be based on either of these two scenarios.[7] After such further development as it deems necessary, the Office should issue an appropriate decision.

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

[7] Scenario 1 refers to "electrical conduction delay(s)" and scenario 2 refers to "abnormal sensory and/or motor latencies." A.M.A., *Guides* at 495.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 19, 2005 is set aside and the case is remanded for further development consistent with this decision.

Issued: August 1, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board