

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

CATHERINE A. FINLEY, Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
OFFICE OF INSPECTOR GENERAL,)
Fort Lauderdale, FL, Employer)

**Docket No. 05-1569
Issued: December 8, 2005**

Appearances:
Catherine A. Finley, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 21, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated June 10, 2005, which granted a schedule award for a nine percent impairment of the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has more than nine percent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On November 2, 1999 appellant, then a 48-year-old special agent, filed a Form CA-1, traumatic injury claim, alleging that on October 26, 1999 a technician at the employing establishment health unit injured a tendon in her right arm while attempting to gather a blood sample. She was undergoing an annual physical examination and did not stop work.

Appellant came under the care of Dr. Harold C. Friend, Board-certified in neurology, who diagnosed traumatic median neuropathy. By letter dated June 6, 2000, the Office accepted that she sustained employment-related median neuropathy. In a January 16, 2001 report, Dr. Friend advised that appellant had trauma to the median nerve above the midforearm, advised that maximum medical improvement had been reached that day and concluded that she had a 12 percent right upper extremity impairment.

On May 20, 2004 she filed a schedule award claim. In an Office form report dated July 13, 2004 Dr. Friend advised that maximum medical improvement was reached on July 13, 2004. He found her range of motion to be normal and assessed her right upper extremity impairment for weakness, pain and loss of sensation at 20 percent. In a treatment note also dated July 13, 2004, Dr. Friend noted appellant's complaints of numbness and tingling involving the thumb, index and middle fingers of her right hand extending into the palm with slight weakness in handgrip noticed when firing a weapon and occasional aching in the right antecubital fossa over the distal biceps muscle. He reported examination findings of slight atrophy in the thenar eminence, weakly positive Tinel's sign at the right wrist and elbow over the median nerve and decreased sensation to pinprick in the palmar aspect of the thumb, index, middle and ring fingers of the right hand. Dr. Friend diagnosed traumatic median neuropathy and reported that maximum medical improvement had been reached on January 16, 2001 when she was given an impairment rating of 12 percent. He stated that pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),¹ her sensory loss was Class 4 under Table 13-23 or 26 to 60 percent, and her motor loss was Class 2 under Table 13-21 or 1 to 25 percent. He then stated: "Table 16-15 Combined" and concluded that she had a 20 percent disability for weakness, pain and loss of sensation.

In a February 17, 2005 report, an Office medical adviser stated that Dr. Friend did not correctly apply the A.M.A., *Guides* in assessing appellant's right upper extremity impairment. He noted that Tables 16-10 and 16-11 should have been used to assess motor and sensory deficits. He found that maximum medical improvement had been reached on January 16, 2001 and concluded that, under the appropriate tables, appellant had a nine percent right upper extremity impairment.

By decision dated June 10, 2005, appellant was granted a schedule award for a 9 percent impairment of the right upper extremity, for a total of 28.08 weeks of compensation, to run from January 16 to July 31, 2001.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act² and section 10.404 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in

¹ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

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

Chapter 16 provides the framework for assessing upper extremity impairments⁶ and section 16.5b of the A.M.A., *Guides* describes the methods for evaluating upper extremity impairments due to peripheral nerve disorders. It provides that the severity of the sensory or pain deficit and motor deficit should be classified according to Tables 16-10a and 16-11a respectively. The values for maximum impairment are then to be discerned, utilizing the appropriate table for the nerve structure involved. The grade of severity for each deficit is then to be multiplied by the maximum upper extremity impairment value for the nerve involved to reach the proper upper extremity impairment for each function. Mixed motor and sensory or pain deficits for each nerve structure are then to be combined.⁷

Office procedures further provide that after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment.⁸

ANALYSIS

The Board finds that this case is not in posture for decision regarding the degree of appellant's right upper extremity impairment. Office procedures⁹ contemplate that upper extremity impairment secondary to entrapment or compression neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15 of the A.M.A., *Guides*. As Dr. Friend provided an assessment under Chapter 13 of the A.M.A., *Guides* and utilized Tables 13-23 and 13-24 to assess appellant's right upper extremity impairment, the Board finds his impairment rating to be of diminished probative value. While he assigned a Class 4 sensory deficit and a Class 2 motor deficit, he did not further explain his conclusion that appellant had a 20 percent right upper extremity impairment and his reports provided two dates for when maximum medical improvement was reached.

The Office medical adviser's report of February 17, 2005 is also deficient. While the physician advised that he used Tables 16-10, 16-11 and 16-15 in assessing appellant's

⁴ A.M.A., *Guides*, *supra* note 1.

⁵ See *Joseph Lawrence, Jr.*, *supra* note 1; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ A.M.A., *Guides*, *supra* note 1 at 433-521.

⁷ *Id.* at 481.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

⁹ *Id.*

impairment, he merely stated a conclusion that appellant had a nine percent right upper extremity impairment. He did not include an explanation as to how he determined that appellant sustained a nine percent right upper extremity impairment or provide any calculations under the cited tables or any narrative to explain his impairment rating.¹⁰

The Board finds that this case is not in posture for decision and must be remanded for further development. On remand, the Office should refer appellant to a Board-certified physician to determine the date of maximum medical improvement, the ratable impairment of her right upper extremity and a full description of her impairment under the appropriate section of the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue a *de novo* decision on her entitlement to a schedule award.

CONCLUSION

The Board finds that this case is not in posture for decision and will be remanded for further medical development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 10, 2005 is vacated and the case is remanded to the Office for further proceedings consistent with this opinion of the Board.

Issued: December 8, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁰ The Board notes that Table 16-15 provides that the maximum upper extremity impairment due to a median nerve injury above the midforearm is 39 percent for a sensory deficit and a 44 percent for a motor deficit or a combined deficit of 66 percent. A.M.A., *Guides, supra* note 1 at 492.