

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

SALLY K. LAWRENCE, Appellant)	
and)	Docket No. 04-2216
U.S. POSTAL SERVICE, TEMPLEHOFF DRIVE)	Issued: March 18, 2005
POST OFFICE, Indianapolis, IN, Employer)	
)	

Appearances:
Sally K. Lawrence, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 9, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated May 18 and August 23, 2004, denying modification of a May 14, 2003 decision, finding that she did not have any impairment of either upper extremity. 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 sustained a ratable impairment of the left and right upper extremities. On appeal, she contends that Dr. Otto Wickstrom, a Board-certified orthopedic surgeon and the impartial medical examiner, did not perform a thorough evaluation of her upper extremities as he did not take any measurements.

FACTUAL HISTORY

The Office accepted that on or before July 22, 2000 appellant, then a 45-year-old mail handler, sustained lateral epicondylitis of the left elbow.¹ She submitted periodic reports and physical therapy notes dated October 2000 to July 2001, describing the treatment prescribed by Dr. Thomas A. Ambrose, II, an attending Board-certified orthopedic surgeon. Under a separate claim not before the Board on the present appeal, the Office accepted that appellant sustained bilateral carpal tunnel syndrome,² necessitating a left median nerve release on July 2, 2001 and a right median nerve release on approximately April 30, 2002.

On October 28, 2002 appellant filed a schedule award claim pursuant to the accepted left lateral epicondylitis.

In a November 7, 2002 letter, the Office requested that Dr. William B. Kleinman, an attending Board-certified orthopedic surgeon, provide an impairment rating according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* for the left upper extremity, including both the accepted wrist and elbow conditions. He responded by December 16, 2002 letter, noting that she related mild wrist pain secondary to ligamentous inflammation. Dr. Kleinman recommended that appellant wear a wrist splint at work and continue anti-inflammatory medication. He released her from his care “with no permanent partial impairment” of the left upper extremity. The Office forwarded Dr. Kleinman’s December 16, 2002 report to an Office medical adviser for review. In a February 13, 2003 report, the Office medical adviser noted that, although he generally agreed with Dr. Kleinman’s assessment, there were no objective findings listed to support finding a zero percent permanent impairment.

The Office referred appellant, the medical record and a statement of accepted facts to Dr. Richard Hutson, a Board-certified orthopedic surgeon, for a second opinion examination to evaluate the extent of any permanent impairment of the upper extremities. He submitted a March 12, 2003 report, finding that she had no objective residuals of the accepted carpal tunnel syndrome or lateral epicondylitis and no permanent impairment of either upper extremity. On May 1, 2003 an Office medical adviser reviewed Dr. Huston’s report and concurred with his determination of a zero percent permanent impairment of both upper extremities.

By decision dated May 14, 2003, the Office denied appellant’s schedule award claim on the grounds that the medical evidence demonstrated no ratable permanent impairment of either upper extremity.

Appellant requested a hearing before a representative of the Office’s Branch of Hearings and Review, held February 23, 2004. At the hearing she asserted that she sustained a ratable permanent impairment of the upper extremities as she was given work restrictions due to both

¹ File No. 09-2002282. Following a period of light duty, appellant was released to full duty as of June 4, 2002.

² File No.09-2010992. This claim is not before the Board on the present appeal. The record indicates that the Office conducted parallel development of the two upper extremity claims and at times placed identical documents into both case records. However, the Office did not double the case records.

the accepted lateral epicondylitis and carpal tunnel syndrome. The Office hearing representative explained the medical evidence needed to establish her claim and held the record open for 30 days to allow her to submit such evidence. Following the hearing, appellant submitted a March 3, 2004 report from Dr. Richard S. Troiano, an attending Board-certified plastic surgeon specializing in hand surgery. He found a six percent impairment of the right upper extremity below the elbow and a two percent impairment of the left upper extremity below the elbow according to unspecified portions of the A.M.A., *Guides*.³

By decision dated and finalized May 18, 2004, the Office hearing representative affirmed the Office's May 14, 2003 decision, finding that the weight of the medical evidence was represented by Dr. Hutson's report. The hearing representative found that Dr. Troiano did not provide the objective impairment findings on which he based his schedule award rating.

Appellant requested reconsideration by letter dated June 2, 2004. She submitted a March 3, 2004 schedule award calculation report from Dr. Troiano describing his evaluation of her upper extremities. Dr. Troiano noted limitation of right wrist flexion to 36 degrees and radial deviation to 20 degrees, pain and hypersensitivity in both upper extremities and a normal sensory examination. He indicated that 53 degrees wrist extension equaled a 2 percent impairment, with an additional 2 percent impairment due to abnormal motion. Dr. Troiano added a one percent rating for impairment of the whole person, for a total impairment of five percent.

The Office found a conflict of medical opinion between Dr. Troiano, for appellant, and Dr. Hutson, for the government, regarding the issue of permanent impairment of the upper extremities. To resolve this conflict, the Office referred her, the medical record and a statement of accepted facts, to Dr. Wickstrom.

Dr. Wickstrom submitted a July 19, 2004 report, reviewing the medical record and the statement of accepted facts. On examination of appellant's upper extremities, Dr. Wickstrom noted "slight tenderness in the left lateral elbow condyle area" with full flexion and extension, no enlargement swelling, redness or heat, no loss of strength and no atrophy. He found a full range of motion of all joints of the upper extremities with no atrophy, ankylosis, weakness or sensory changes. Dr. Wickstrom diagnosed status post-bilateral carpal tunnel surgical release with no loss of strength or function and mild subjective epicondylitis of the left elbow without objective findings. He explained that there were no residuals or other "objective findings to support the claim for left lateral epicondylitis and bilateral carpal tunnel syndrome." Dr. Wickstrom found that appellant had reached maximum medical improvement. He concluded that she had "no permanent partial impairment (zero percent) based on the allowed conditions." Dr. Wickstrom noted that pages 433 and 495 of the A.M.A., *Guides* discussing the upper extremity and carpal tunnel syndrome allowed a "maximum of five percent loss of hand when clear cut objective

³ Appellant also submitted a June 11, 2003 report from Dr. Rasheed Ahmad, an associate of Dr. Kleinman, October 20, 2003 and February 16, 2004 reports from Dr. Kleinman noting continued numbness and tingling of both hands and symptoms of left lateral epicondylitis. He recommended continued work restrictions. These reports do not contain an impairment rating. As Dr. Kleinman recommended work restrictions after appellant had been released to full duty, the employing establishment advised her in an April 13, 2004 letter to file a claim for a recurrence of disability related to her newly diagnosed left lateral epicondylitis. She filed a notice of recurrence of disability (Form CA-2a) on April 19, 2004.

findings [were] present (usually EMG [electromyography study] deficit of thenar muscle function” which was not present in appellant’s case. He noted that July 28 2003 EMG study “reflected an extremely mild (2.2 versus 2.5 msec [millisecond]) change in the motor median” without evidence of thenar muscle involvement. Dr. Wickstrom also found that appellant did not exhibit any impairment in her activities of daily living as her “hands and elbows functioned in the office environment in a completely normal manner as in grasping, lifting, tactile discernments.” He noted that, as her scars remained subjectively sensitive, he would recommend limiting pushing to 40 pounds and limiting reaching above the shoulder, pulling, pushing, lifting, squatting, kneeling and climbing to 4 hours a day.

The Office forwarded Dr. Wickstrom’s report to an Office medical adviser for review. In an August 16, 2004 report, an Office medical adviser concurred with Dr. Wickstrom’s finding of a zero percent impairment of the upper extremities as there were no objective residuals of either the accepted bilateral carpal tunnel syndrome or left lateral epicondylitis. “The EMG is very mildly suggestive, but in the absence of clinical symptoms.”

By decision dated August 23, 2004, the Office denied modification of the May 18, 2004 decision on the grounds that the medical evidence did not demonstrate a ratable impairment of either upper extremity. The Office found that Dr. Wickstrom’s opinion was entitled to the weight of the medical evidence as he was an impartial medical examiner and provided extensive, detailed rationale explaining how and why appellant no longer demonstrated objective findings of the accepted upper extremity conditions.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees’ Compensation Act⁴ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁵

Utilization of the A.M.A., *Guides* requires that a detailed description of appellant’s impairment be obtained from appellant’s attending physician,⁶ in sufficient detail so that the claims examiner and others reviewing the file, such as a physician examining the claimant or the case file on behalf of the government, will be able to clearly visualize the impairment with its restrictions and limitations.⁷ Should there be a disagreement between the claimant’s physician

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁶ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

⁷ *Noe L. Flores*, 49 ECAB 344 (1998).

and an examiner for the United States, section 8123 of the Act⁸ provides that the Secretary shall appoint a third physician who shall make an examination. Where the case is referred to an impartial medical 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.⁹

ANALYSIS

The Office accepted that appellant sustained left lateral epicondylitis and bilateral carpal tunnel syndrome. She claimed a schedule award and submitted reports from Dr. Kleinman, an attending Board-certified orthopedic surgeon, finding no permanent impairment. Dr. Hutson, a Board-certified orthopedic surgeon and second opinion physician, submitted a March 12, 2003 report finding no permanent impairment of either upper extremities. The Office denied appellant's schedule award claim by decision dated May 14, 2003.

Following an oral hearing, appellant submitted a March 3, 2004 report from Dr. Troiano, an attending Board-certified plastic surgeon specializing in hand surgery, finding a six percent permanent impairment of the right upper extremity and a two percent impairment of the left upper extremity, both below the elbow. The Office found a conflict of medical opinion between Dr. Troiano, for appellant and Dr. Hutson, for the government, regarding whether appellant had any permanent impairment of the upper extremities. To resolve this conflict, the Office appointed Dr. Wickstrom, a Board-certified orthopedic surgeon, as an impartial medical examiner under section 8123(a) of the Act¹⁰ to determine the appropriate percentage of permanent impairment attributable to the accepted bilateral carpal tunnel syndrome and left lateral epicondylitis.

In a July 19, 2004 report, Dr. Wickstrom noted findings based on a thorough review of the medical record and a detailed examination of appellant's upper extremities. He found full range of motion of all joints of the upper extremities, with no atrophy, weakness or sensory changes. Dr. Wickstrom observed that appellant's "hands and elbows functioned in the office environment in a completely normal manner," with normal sensory discernments and no impairment of grasping or lifting. He noted slight subjective tenderness in the left lateral condyle as well as over the carpal tunnel surgical scars. Dr. Wickstrom stated that there were no objective findings indicative of carpal tunnel syndrome or left lateral epicondylitis. He explained that there was no impairment of thenar muscle function in either hand or EMG evidence of changes in the median nerve that would constitute a ratable impairment under the A.M.A., *Guides*. The Board notes that an Office medical adviser submitted an August 16, 2004 report concurring with Dr. Wickstrom's findings. Based on his opinion as the weight of the medical evidence, the Office found that appellant had not demonstrated that she sustained a ratable impairment of either upper extremity.

⁸ 5 U.S.C. § 8123(a).

⁹ *Leanne E. Maynard*, 43 ECAB 482 (1992).

¹⁰ 5 U.S.C. § 8123(a).

Dr. Wickstrom provided detailed findings on examination and explained that there were no objective residuals of the accepted left lateral epicondylitis or carpal tunnel syndrome. He found no objective abnormalities of the left elbow. Dr. Wickstrom referred to the A.M.A., *Guides* in explaining that appellant did not evince thenar atrophy or median nerve impairment that would constitute a ratable impairment due to carpal tunnel syndrome. Also, his report was based on a thorough review of the medical record and statement of accepted facts. Thus, the Board finds that Dr. Wickstrom's opinion is sufficient to represent the weight of the medical evidence in this case.¹¹ Therefore, the Office properly found in its August 23, 2004 decision that appellant had not demonstrated that she sustained a ratable permanent impairment of either upper extremity.

CONCLUSION

The Board finds that appellant has not established that she sustained a ratable permanent impairment of the upper extremities.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 23 and May 18, 2004 are affirmed.

Issued: March 18, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Leanne E. Maynard, supra* note 9.