United States Department of Labor
Employees' Compensation Appeals Board

RUBEN J. AMPARANO, Appellant	)	
and	)	**Docket No. 04-2089**
	)	**Issued: May 3, 2005**
U.S. POSTAL SERVICE, CLOVIS POST OFFICE, Clovis, CA, Employer	)	

Appearances:
Ruben J. Amparano, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 23, 2004 appellant filed a timely appeal from the July 15, 2004 merit decision of the Office of Workers' Compensation Programs, finding that he did not have more than a 40 percent permanent impairment of the left upper extremity for which he received a schedule award. The Office also found that appellant was not entitled to a schedule award for his right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUES

The issues are: (1) whether appellant established that he has more than a 40 percent permanent impairment of the left upper extremity for which he received a schedule award; and (2) whether appellant has established entitlement to a schedule award for his right upper extremity.

FACTUAL HISTORY

Appellant, a 50-year-old letter carrier, filed an occupational disease claim on October 27, 1999 in which he alleged that on December 5, 1997 he realized that his carpal tunnel syndrome was caused by repetitive movements and holding objects in the same way for extended periods of time while working for the employing establishment. The Office accepted appellant's claim for bilateral wrist strain.[1] The Office noted that electrical studies were necessary to support a diagnosis of carpal tunnel syndrome. After further development of the medical evidence, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized left carpal tunnel release, which was performed on March 28, 2000.[2]

On December 20, 1999 appellant filed a traumatic injury claim alleging on that date he sprained his left shoulder while lifting trays onto a vehicle. The Office accepted appellant's claim for rotator cuff rupture and strain of the left shoulder and authorized surgery on his left shoulder, which was performed on January 26, 2001.[3] He returned to modified work on March 14, 2001 for eight hours a day.

On April 5, 2000 appellant filed a claim for a schedule award for his December 5, 1997 employment injury. On January 23, 2001 he filed a claim for a schedule award for his December 20, 1999 employment injury. In a February 1, 2001 letter, the Office explained the circumstances under which a schedule award is granted. The Office noted appellant's January 26, 2001 left shoulder surgery and advised him to submit his attending physician's final report which should provide, among other things, the extent of any permanent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

By letter dated May 29, 2001, the Office referred appellant together with a statement of accepted facts and a list of questions to be addressed, to Dr. Kenneth C. Lay, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine whether he sustained any permanent impairment due to his employment-related injuries. Dr. Lay submitted a June 25, 2001 report in which he provided a history of appellant's December 20, 1999 employment injury, medical treatment, prior accidents and injuries and social, family and employment background. He noted appellant's complaint of burning pain in his left shoulder, inability to lift heavy objects weighing more than 10 pounds, pain with repetitive movement, pain in his neck, upper back and left elbow and constant numbness in all five fingers. On orthopedic examination of appellant's left shoulder, Dr. Lay reported abduction of 90 degrees, forward flexion of 90 degrees, internal rotation of 60 degrees and external rotation of 25 degrees. He reported full range of motion of the elbows, wrists and hands. He stated that no medical records were provided for his review. Dr. Lay diagnosed a rotator cuff tear of the left shoulder by history,

[1] The Office assigned this claim No. 13-1201180.

[2] The record reveals that appellant filed another claim, assigned No. 13-1170426 which the Office accepted for a left hand fracture. The Office subsequently granted him a schedule award for a 15 percent permanent impairment of the left hand. The Board notes that this Office decision is not contained in the record.

[3] This claim was initially assigned 13-1205688 but was combined with the occupational disease claim and was assigned master claim No. 13-1201180.

lateral epicondylitis of the left elbow and bilateral carpal tunnel syndrome. Regarding appellant's bilateral carpal tunnel syndrome, Dr. Lay stated that it was atypical in the area of all five fingers and the absence of a Tinel's sign. He noted, however, that there was a Phalen's sign present regarding the left long finger. In response to the Office's questions, Dr. Lay stated, among other things, that appellant appeared to have continuing residuals of his employment-related injuries, which included restricted shoulder range of motion, epicondylar tenderness and positive Phalen's test in both hands suggestive of carpal tunnel syndrome. He opined that appellant's condition was permanent and stationary and concluded that appellant reached maximum medical improvement on June 25, 2001. In an accompanying work capacity evaluation form dated June 21, 2001, Dr. Lay indicated that appellant could work eight hours a day based on noted physical restrictions.

On July 6, 2001 the Office requested that an Office medical adviser determine whether appellant had any permanent functional loss of his left upper extremity and the date he reached maximum medical improvement. On July 25, 2001 the Office medical adviser responded that appellant's prior schedule award for a 15 percent permanent impairment of the left upper hand must be reviewed before making an appropriate determination. On August 9, 2001 the Office medical adviser reviewed Dr. Lay's June 25, 2001 report. She noted appellant's accepted conditions and authorized surgeries. The Office medical adviser found that appellant's previous schedule award for a 15 percent permanent impairment of his left hand constituted a 14 percent impairment of the left upper extremity based on the A.M.A., *Guides* 439, Table 16-2 due to a finger fracture and loss of range of motion of the left fifth finger and grip strength loss. Regarding appellant's current left shoulder condition, the Office medical adviser found that range of motion for flexion was six percent and extension was zero percent based on the A.M.A., *Guides* 476, Figure 16-40. Loss of abduction was four percent and loss of adduction was zero percent according to the A.M.A., *Guides* 477, Figure 16-43. Loss of internal rotation was two percent and loss of external rotation was one percent based on the A.M.A., *Guide*s 479, Figure 16-46. The Office medical adviser determined that appellant had a 13 percent permanent impairment of the left shoulder. She further determined that appellant's impairment due to distal clavicle resection was 10 percent according to the A.M.A., *Guides* 506, Table 16-27. Impairment due to sensory deficit or pain was Grade 4 which constituted a 25 percent impairment based on the A.M.A., *Guides* 482, Table 16-10. The Office medical adviser found that maximum impairment based on the median nerve was 39 percent according to the A.M.A., *Guides* 492, Table 16-15. She multiplied 25 percent by 39 percent which equaled a 10 percent impairment. Using the Combined Values Chart on page 604 and the prior impairment, the Office medical adviser determined that appellant's total impairment of the left upper extremity was 40 percent. She concluded that appellant sustained an additional 26 percent impairment of the left upper extremity since the prior determination and that appellant reached maximum medical improvement on June 25, 2001. On August 26, 2001 the Office corrected the Office medical adviser's left upper extremity impairment rating to reflect an additional 25 percent impairment rather than a 26 percent impairment.

By decision dated August 24, 2001, the Office granted appellant a schedule award for a 25 percent permanent impairment of the left arm. The Office noted that appellant had received compensation for a previous schedule award and that he now had an impairment of his left arm totaling 40 percent.

Appellant underwent right carpal tunnel syndrome release surgery on August 11, 2003. On January 17, 2004 he filed a claim for an additional schedule award. By letter dated February 3, 2004, the Office advised appellant that his claim could not be processed due to insufficient medical evidence in his case file. The Office informed him that Dr. Donn R. Cobb, his treating physician, who specialized in occupational medicine, should submit a "Permanent & Stationary (P&S) Report" indicating that his right wrist condition had reached maximum medical improvement following carpal tunnel syndrome release surgery, which was performed last year, before his schedule award request could be processed. In addition, the Office requested that appellant submit Dr. Cobb's surgical report.

In response, the Office received Dr. Cobb's February 18, 2004 report, in which he stated that he saw appellant on January 13, 2004 for post status carpal tunnel syndrome release and tendinitis of his rotator cuff and left elbow. Dr. Cobb stated that he placed appellant on permanent restrictions, which included lifting no more than five pounds for one hour a day, four-hour daily use of his right hand and limited use of his left shoulder. He noted that appellant had limited use of his right hand due to the loss of strength and continuing pain.

In a March 11, 2004 letter, the Office requested that Dr. Cobb determine the extent of permanent impairment of appellant's right hand and wrist due to his December 5, 1997 employment-related injury based on the fifth edition of the A.M.A., *Guides*. The Office received Dr. Cobb's February 24, 2004 report, revealing that appellant had bilateral carpal tunnel syndrome, that he was status post left tunnel release and that he could return to full-duty work on November 20, 2004. His March 20, 2004 disability certificate indicated that appellant could return to limited-duty work on March 30, 2004. In his March 30, 2004 duty status report, Dr. Cobb stated that appellant suffered from carpal tunnel syndrome and noted his physical restrictions.

By letter dated May 4, 2004, the Office referred appellant, together with relevant medical records, a statement of accepted facts and a list of questions to be addressed, to Dr. Mahendra Nath, a Board-certified physiatrist, for a second opinion medical examination to determine whether he had any additional permanent impairment of his left wrist and any permanent impairment of his right wrist.

Dr. Nath submitted a May 20, 2004 report. He provided a history of appellant's employment-related bilateral carpal tunnel syndrome and medical treatment. On physical examination of appellant's right and left wrists, Dr. Nath found that appellant experienced mild pain. He stated that appellant's bilateral wrist range of motion revealed dorsiflexion of 60 degrees, palmar flexion of 70 degrees, radial deviation of 20 degrees and ulnar deviation of 30 degrees. Dr. Nath advised that the wrist pathology did not cause atrophy or weakness and it did not affect grip strength. Regarding appellant's bilateral hands and fingers, Dr. Nath reported that he had mild finger pain or discomfort that was not localized to one area and did not interfere with daily activity. In addition, there was no sensory loss or alteration of sensation. He related that appellant's bilateral thumb range of motion revealed interphalangeal flexion (IP) joint of 80 degrees, metacarpophalangeal (MP) joint of 60 degrees, radial abduction of 50 degrees and adduction of 8 to 0 centimeters and opposite of 8 to 0 centimeters. Regarding the range of motion of appellant's other bilateral fingers, Dr. Nath found distal interphalangeal (DIP) joint of 70 degrees each for the index, middle, ring and little fingers, proximal interphalangeal (PIP) joint

of 100 degrees each for the index, middle, ring and little fingers and MP joint of 90 degrees for the index, middle, ring and little fingers. He stated that the finger pathology did not cause atrophy or weakness of the upper extremities. Dr. Nath opined, among other things, that appellant's extremities did not reveal any gross contractures or deformities. He reported full range of motion of the shoulders, elbows and wrists. The Tinel's sign was positive at both the elbows and in the right wrist. Grip strength on Jamar was 65, 58 and 66 pounds on the right and 60, 59 and 64 pounds on the left. Dr. Nath reported an adequate pinch and no localized atrophy. In the lower extremities, he reported no contractures or deformities and full range of motion. He diagnosed bilateral carpal tunnel compression and post status decompression. Dr. Nath stated that appellant was status post bilateral carpal tunnel decompression, he remained symptomatic and he had complaints of continued discomfort and numbness. Dr. Nath indicated that appellant maintained good grip strength bilaterally and was functional. He noted appellant's complaints of constant pain, which increased to slight degrees with prolonged activities and his complaint of numbness particularly in the right hand. He concluded that appellant's complaints of discomfort precluded him from prolonged bimanual activities. Dr. Nath further concluded that appellant reached maximum medical improvement on May 20, 2004.

An Office medical adviser reviewed appellant's case record including Dr. Nath's report and found that he had no impairment due to loss of range of motion or loss of strength. The Office medical adviser found that his impairment due to sensory deficit or pain was Grade 4 which constituted a 25 percent impairment according to the A.M.A., *Guides* 482, Table 16-10 and that maximum impairment based on the median nerve was 39 percent according to the A.M.A., *Guides* 492, Table 16-15. The Office medical adviser multiplied 25 percent by 39 percent which totaled 10 percent. She concluded:

> "The total impairment for the right upper extremity equals 10 percent and for the left upper extremity equals 10 percent. There is no additional impairment since the previous determination. The date of maximal improvement is May 20, 2004."

By decision dated July 15, 2004, the Office found that appellant was not entitled to an additional schedule award. The Office informed appellant that "[y]ou were previously paid a schedule award for your left and right upper extremities. The medical evidence does not support an increase in the impairment already compensated."

LEGAL PRECEDENT -- ISSUES 1 AND 2

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[6] However, neither the Act nor the regulations specify the manner in

[4] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[5] 20 C.F.R. § 10.404.

[6] 5 U.S.C. § 8107(c)(19).

which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[7]

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[8]

ANALYSIS -- ISSUE 1

Dr. Nath found that appellant reached maximum medical improvement on May 20, 2004. He reported 60 degrees of dorsiflexion, 70 degrees of palmar flexion, 20 degrees of radial deviation and 30 degrees of ulnar deviation regarding appellant's bilateral wrist range of motion. He advised that the wrist pathology did not cause atrophy or weakness and it did not affect grip strength. Regarding appellant's bilateral hands and fingers, Dr. Nath reported mild finger pain or discomfort that was not localized to one area and did not interfere with daily activity and no sensory loss or alteration of sensation. He related that appellant's bilateral thumb range of motion revealed IP joint of 80 degrees, MP joint of 60 degrees, radial abduction of 50 degrees and adduction of 8 to 0 centimeters and opposite of 8 to 0 centimeters. Regarding the range of motion of appellant's other bilateral fingers, Dr. Nath found DIP joint of 70 degrees each for the index, middle, ring and little fingers, PIP joint of 100 degrees each for the index, middle, ring and little fingers and MP joint of 90 degrees each for the index, middle, ring and little fingers. He stated that the finger pathology did not cause atrophy or weakness of the upper extremities. Dr. Nath opined, among other things, that appellant's extremities did not reveal any gross contractures or deformities. He reported full range of motion of the shoulders, elbows and wrists. The Tinel's sign was positive at both the elbows and in the right wrist. Grip strength on Jamar was 65, 58 and 66 pounds on the right and 60, 59 and 64 pounds on the left. Dr. Nath reported an adequate pinch and no localized atrophy. He diagnosed bilateral carpal tunnel compression and post status decompression. Dr. Nath stated that appellant was status post bilateral carpal tunnel decompression, he remained symptomatic and he had complaints of continued discomfort and numbness. Dr. Nath indicated, however, that appellant maintained good grip strength bilaterally and was functional.

Applying the appropriate edition of the A.M.A., *Guides* to Dr. Nath's range of motion and grip strength figures, the Office medical adviser found that appellant did not have any impairment due to range of motion or loss of strength. She, however, determined that appellant's impairment due to sensory deficit or pain was Grade 4 which constituted a 25 percent impairment based on the A.M.A., *Guides* 482, Table 16-10 and that maximum impairment based

[7] 20 C.F.R. § 10.404.

[8] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

on the median nerve was 39 percent according to the A.M.A., *Guides* 492, Table 16-15. The Office medical adviser multiplied 25 percent by 39 percent which totaled a 10 percent impairment. She concluded that appellant had a 10 impairment of the left upper extremity.

As the Office medical adviser properly applied the tables in the A.M.A., *Guides*, her opinion represents the weight of the medical evidence.[9] Further, appellant has not provided any relevant medical evidence to establish that he has more than a 40 percent impairment of the left upper extremity. The Board, therefore, finds that appellant has not established that he is entitled to more than the schedule award granted by the Office.

ANALYSIS -- ISSUE 2

The Office medical adviser reviewed Dr. Nath's May 20, 2004 findings regarding appellant's right upper extremity and determined that he did not have any impairment due to range of motion or loss of strength. She, however, determined that appellant's impairment due to sensory deficit or pain was Grade 4 which constituted a 25 percent impairment based on the A.M.A., *Guides* 482, Table 16-10. The Office medical adviser further determined that the maximum impairment based on the median nerve was 39 percent according to the A.M.A., *Guides* 492, Table 16-15. She multiplied 25 percent by 39 percent and determined that a "total impairment for the right upper extremity equals 10 percent." The Office medical adviser properly utilized the tables of the A.M.A., *Guides* in determining appellant's impairment of the right upper extremity.

In its July 15, 2004 decision, the Office advised appellant that he was "previously paid a schedule award for your left and right upper extremities." The record, however, does not contain a decision granting appellant a schedule award for his right upper extremity. Rather, the record reveals that the Office only granted him two schedule awards totaling a 40 percent permanent impairment of his left upper extremity. Thus, the Board finds that these reports support that appellant is entitled to a schedule award for a 10 percent permanent impairment of the right upper extremity based on the Office medical adviser's opinion.

While the Office received medical reports and a disability certificate from Dr. Cobb which provided a diagnosis of bilateral carpal tunnel syndrome and addressed appellant's ability to work in response to its March 11, 2004 request, the Board finds that they do not address the relevant issue of whether appellant has any permanent impairment of his right upper extremity due to his accepted employment injuries utilizing the appropriate edition of the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has failed to establish that he has more than a 40 percent permanent impairment of the left upper extremity, for which he received a schedule award. The Board further finds, however, that appellant has established that he may be entitled to a schedule award for impairment of his right upper extremity. Accordingly, the decision of the Office must

[9] *See Robert V. Disalvatore*, 54 ECAB __ (Docket No. 02-2256, issued January 17, 2003) (where the Board found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory impairments only).

be set aside in part and the case returned to the Office for further consideration of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed in part regarding the finding that appellant failed to establish that he has more than a 40 percent permanent impairment of his left upper extremity and set aside in part for the Office to determine whether appellant has established entitlement to a schedule award for an impairment of his right upper extremity. The case will be returned to the Office for further action consistent with this decision.

Issued: May 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member