

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

JANICE M. SPENCER-CHAMPION, Appellant)	
)	
and)	Docket No. 05-1427
)	Issued: November 2, 2005
U.S. POSTAL SERVICE, FEDERAL SQUARE)	
POST OFFICE, Newark, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 June 27, 2005 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated March 2, 2005 finding that she has no more than a 13 percent impairment of each upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has greater than a 13 percent permanent impairment of the right and left upper extremities due to her accepted bilateral carpal tunnel syndrome. On appeal, appellant, through her attorney, asserts that there is a conflict between Dr. Weiss, an attending osteopath, and an Office medical adviser, regarding the percentage of permanent impairment. Appellant contends that, as Dr. Weiss provided an appropriate schedule award assessment, the Office was incorrect in according the weight of the medical evidence to an Office medical adviser. Appellant also asserted that the Office medical adviser's March 9, 2004 report was insufficiently rationalized.

FACTUAL HISTORY

The Office accepted that, on or about June 3, 1999, appellant, then a 39-year-old mail clerk, sustained bilateral carpal tunnel syndrome in the performance of duty.¹

In July 2000 appellant sought treatment from Dr. George M. Gabuzda, an attending Board-certified orthopedic surgeon specializing in surgery of the hand. Dr. Gabuzda performed a right median nerve release on September 19, 2000 and a left median nerve release on December 19, 2000.² Appellant received appropriate wage-loss compensation beginning September 19, 2000 through her return to restricted duty in February 2001.³ Dr. Gabuzda released her to full duty effective May 16, 2001.

Appellant's symptoms returned in early 2002. In a November 13, 2002 report, Dr. Gabuzda noted a bilaterally positive Phalen's sign. He opined that appellant "appear[ed] to have some residual low level carpal tunnel symptoms most likely due to her work." Dr. Gabuzda advised resumption of conservative management and released appellant to continue full-duty work. On December 9, 2002 Dr. Gabuzda limited lifting to 15 pounds.⁴

On April 29, 2003 appellant claimed a schedule award.

In a March 4, 2003 report, Dr. David Weiss, an attending osteopath, provided a history of injury and treatment and reviewed various medical records. He related appellant's complaints of bilateral hand and wrist pain, with difficulty in activities of daily living requiring grasping or fine manipulation. Dr. Weiss opined that appellant had attained maximum medical improvement as of that day. On examination, he found a full range of dorsiflexion, palmar flexion, radial and ulnar deviation in both wrist, bilaterally positive Tinel's, Phalen's and carpal tunnel compression signs, and no atrophy or sensory abnormalities. Dr. Weiss found resistive thumb abduction of 4+/5 on the left and 5/5 on the right. He also noted diminished grip strength on the right. Dr. Weiss found a total 23 percent impairment of the right upper extremity according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), 20 percent for loss of grip strength according to

¹ The Office initially denied the claim by August 31, 1999 decision on the grounds that causal relationship was not established. Following appellant's request for reconsideration, the Office issued an August 2, 2000 decision vacating the August 31, 1999 decision, finding that appellant had established causal relationship.

² The Office authorized both procedures.

³ Dr. Gabuzda submitted progress notes through May 14, 2003 relating that appellant was doing well on light duty through 2002 but then required light-duty restrictions.

⁴ On December 15, 2002 appellant filed a recurrence of disability claim which she attributed to work duties beginning on December 5, 2002. She did not stop work but requested authorization for additional medical treatment. There is no decision of record directly adjudicating the claim for recurrence of disability.

Tables 16-32 and 16-34,⁵ and three percent for pain based on Figure 18-1.⁶ For the left upper extremity, Dr. Weiss found a 20 percent impairment due to loss of grip strength according Tables 16-32 and 16-34, a 9 percent impairment due to the “4/5 motor strength deficit left thumb abduction” according to Tables 16-11 and 16-15, and a 3 percent impairment due to pain, based on Figure 18-1. Dr. Weiss used the Combined Values Chart to find a total 30 percent impairment of the left upper extremity.

On May 6, 2003 the Office referred the medical evidence to an Office medical adviser for calculation of a schedule award. In a June 3, 2003 report, an Office medical adviser noted that according to pages 493 to 495 of the fifth edition of the A.M.A., *Guides*, the correct method of assessing impairment due to entrapment neuropathy excluded impairment values for decreased grip strength. The Office medical adviser explained that the appropriate tables were 16-10,⁷ 16-11⁸ and 16-15.⁹ Using Table 16-10, the Office medical adviser noted a Grade 3 sensory impairment of 39 percent, for abnormal sensation or slight pain interfering with some activities. He multiplied the 39 percent by the maximum sensory impairment of 25 percent for the median nerve at Table 16-15 to equal 10 percent. For motor impairments, the medical adviser used Table 16-11 to assess a Grade 4 impairment at 10 percent, for a complete range of motion against gravity with some resistance. He multiplied the 10 percent impairment by the maximum motor impairment of 25 percent value for the median nerve in Table 16-15, resulting in a 3 percent impairment. The medical adviser then used the Combined Values Chart to arrive at a 13 percent impairment to each upper extremity due to residuals of the accepted bilateral carpal tunnel syndrome.

By decision dated June 10, 2003, the Office awarded appellant a schedule award for “26 percent permanent partial loss of use of bilateral hands,” equivalent to 63.44 weeks of compensation, to be paid from March 4, 2003 to May 21, 2004.

On June 12, 2003 appellant requested an oral hearing before a representative of the Office’s Branch of Hearings and Review. She submitted a November 19, 2003 form report from Dr. Gabuzda permanently limiting lifting to 15 pounds and restricting the duration of repetitive upper extremity movements.

⁵ Table 16-34, page 509 of the fifth edition of the A.M.A., *Guides* is entitled “Upper Extremity Joint Impairment Due to Loss of Grip or Pinch Strength.”

⁶ Figure 18-1, page 574 of the fifth edition of the A.M.A., *Guides* is entitled, “Algorithm for Rating Pain-Related Impairment in Conditions Associated With Conventionally Ratable Impairment.”

⁷ Table 16-10, page 482 of the fifth edition of the A.M.A., *Guides* is entitled “Determining Impairment of the Upper Extremity Due to Sensory Deficits of Pain Resulting From Peripheral Nerve Disorders.”

⁸ Table 16-11, page 484 of the fifth edition of the A.M.A., *Guides* is entitled “Determining Impairment of the Upper Extremity Due to Motor and Loss-of-Power Deficits Resulting From Peripheral Nerve Disorders Based on Individual Muscle Rating.”

⁹ Table 16-15, page 492 of the fifth edition of the A.M.A., *Guides* is entitled “Maximum Upper Extremity Impairment Due to Unilateral Sensory or Motor Deficits or to *Combined* 100 Percent Deficits of the Major Peripheral Nerves.”

By decision dated December 15, 2003, a hearing representative set aside the June 10, 2003 decision and remanded the case to the Office for clarification of the appropriate percentage of permanent impairment. The Office found that the Office medical adviser did not fully explain how he calculated the impairment ratings for pain and loss of strength.

In a March 9, 2004 report, the Office medical adviser opined that recalculation was not necessary. "Table 16-10 pertains to both sensory loss and pain," whereas Dr. Weiss used Figure 18-1. Also, Dr. Weiss observed no sensory deficit. "For Grade 3 or lower, objective sensory loss [was] required. In this case there [was] pain but no sensory loss so Grade 4 fits. Table 16-11 lists Grade 4 impairment as strength against resistance," such as the 4+/5 rating for thumb abduction noted by Dr. Weiss. "For Grade 3 there is motion against gravity only without resistance." He emphasized that the A.M.A., *Guides* did not permit using Figure 18-1 at page 574 in evaluating entrapment neuropathy. Dr. Weiss used Figure 18-1 in assessing the bilateral 3 percent impairments due to pain.

By decision dated April 2, 2004, the Office awarded appellant a schedule award for a 13 percent permanent impairment to the right upper extremity and a 13 percent permanent impairment to the left upper extremity, equivalent to 81.12 weeks of compensation, to be paid from March 4, 2003 to September 21, 2004. The Office found that appellant was entitled to 17.68 additional weeks of compensation more than the 63.66 weeks already paid, for a total of 81.12 weeks.¹⁰

Appellant requested a hearing, held December 14, 2004. At the hearing, appellant testified that her duties as a letter sorting machine operator caused upper extremity pain and paresthesias of her fingers. She also described difficulty with fine motor control. Appellant's attorney contended that there was a conflict of medical opinion between Dr. Weiss and the Office medical adviser requiring appointment of an impartial medical specialist.

By decision dated and finalized March 2, 2005, the Office affirmed the April 2, 2004 decision. The Office hearing representative noted that Office's procedures provide that upper extremity impairment secondary to carpal tunnel syndrome or other entrapment neuropathies should be calculated using section 16.5d of the [A.M.A.,] *Guides* (Entrapment/Compression Neuropathy) and Tables 16-10, 16-11 and 16-15. The A.M.A., *Guides* further provided on page 494 that "In compression neuropathies, additional impairment values are not given for decreased grip strength." The hearing representative found that the Office medical adviser properly applied the appropriate tables and grading schemes of the A.M.A., *Guides*, setting forth the basis for assigning impairments due to pain and motor deficits. The hearing representative found that Dr. Weiss did not properly apply the A.M.A., *Guides*. The Office hearing representative found that the opinion of the Office medical adviser outweighed that of Dr. Weiss and established that

¹⁰ The Office noted that in "reviewing the appropriate charts, it was noted that the number of weeks of compensation for the arm is greater than the number of weeks of compensation for the hand." The Office found that appellant was due additional weeks of compensation, as a 13 percent permanent loss of use of the hand was equivalent to 31.72 weeks. "For both hands, this is doubled ... to 63.44 weeks." The Office further found that a 13 percent permanent loss of use of the arm was equivalent to 40.56 weeks of compensation. "For both arms, this is doubled ... [to] 81.12 weeks. The Office then subtracted the 63.66 weeks of compensation paid from the 81.12 weeks owed, for 17.68 additional weeks of compensation.

appellant did not have more than a 13 percent impairment of each upper extremity due to her accepted bilateral carpal tunnel syndrome.”

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act¹¹ provides 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.¹²

The standards for evaluation the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.¹³ Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation, or loss of strength.¹⁴

ANALYSIS

The Office awarded appellant a schedule award for a 13 percent permanent impairment of each upper extremity due to accepted bilateral carpal tunnel syndrome, based on the Office medical adviser assessment of the medical evidence. On appeal, appellant contends that the Office improperly accorded the weight of the medical evidence to the Office medical adviser and not Dr. Weiss. She also contended that the Office medical adviser’s March 9, 2004 report was insufficiently rationalized. The Board finds, however, that Dr. Weiss did not properly utilize the correct tables and grading schemes of the A.M.A., *Guides* in assessing the percentage of permanent impairment due to appellant’s accepted carpal tunnel syndrome.

Dr. Weiss observed bilaterally positive Tinel’s, Phalen’s and carpal tunnel compression signs, thumb adduction limited to 4+/5 on the left and diminished grip strength on the right. Based on these findings, Dr. Weiss opined that appellant had a 23 percent impairment of the right upper extremity according to the fifth edition of the A.M.A., *Guides*, 20 percent due to loss of grip strength and 3 percent due to pain. He assessed a combined 30 percent impairment of the left upper extremity, 20 percent due to loss of grip strength, 3 percent due to pain and 9 percent due to the motor strength deficit in thumb abduction. However, the fifth edition of the A.M.A.,

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

¹³ *See Paul A. Toms*, 28 ECAB 403 (1987).

¹⁴ A.M.A., *Guides*, Ch. 16, “The Upper Extremities,” pp. 433-521 (5th ed. 2001).

Guides at section 16.5d, page 494, provides that impairment for carpal tunnel syndrome is to be rated on motor and sensory impairments only. Additional impairment values are not given for decreased grip strength.¹⁵ Therefore, appellant's contention on appeal that she deserved the "benefit of the doubt" by being accorded an additional impairment for loss of grip strength is without merit. The Board finds that Dr. Weiss improperly included grip strength as an element of impairment. This error diminishes the probative value of his impairment rating.

Dr. Weiss used Figure 18-1 in determining that appellant had a 3 percent impairment of each upper extremity due to pain. However, there is nothing in his report to indicate that he performed a formal pain-related analysis under section 18.3d of the A.M.A., *Guides*. This section of the A.M.A., *Guides* specifically notes that examiners should not use Chapter 18 to rate pain-related impairment for any condition that can be adequately rated on the basis of the body impairment rating systems found in the other chapters, including Chapter 16. Dr. Weiss did not address why appellant's pain could not be adequately addressed under the protocols of Chapter 16. An Office medical adviser noted Dr. Weiss' error in a March 9, 2004 report, explaining that the A.M.A., *Guides* did not permit using Figure 18-1 in evaluating entrapment neuropathy. The Board finds that Dr. Weiss' use of Figure 18-1 was improper and diminishes the probative value of his opinion.

The Office based its determination of a 13 percent schedule award of each upper extremity on the reports of an Office medical adviser. On June 3, 2003 the Office medical adviser applied Table 16-10 to assess a Grade 3 sensory impairment of 39 percent, multiplied by the maximum 25 percent value for the median nerve in Table 16-15 to equal 10 percent. For motor impairments he used Table 16-11 to assess a Grade 4 impairment, multiplied by the maximum 25 percent value given for the median nerve in Table 16-15, resulting in a 3 percent impairment. The medical adviser then used the Combined Values Chart to total a 13 percent impairment to each upper extremity due to the accepted bilateral carpal tunnel syndrome. In a March 9, 2004 report, the Office medical adviser reiterated this impairment rating. The Board finds that the Office medical adviser properly applied the grading schemes of the A.M.A., *Guides* in assessing the percentage of permanent impairment of the upper extremities. Therefore, the Office properly accorded the weight of the medical evidence to the reports of the Office medical adviser.

On appeal, appellant contends that there is a conflict of medical opinion between the Office medical adviser, for the government and Dr. Weiss, for appellant. The Board finds that there is no conflict of opinion as the Office medical adviser provided a well-rationalized impairment rating according to the appropriate tables of the A.M.A., *Guides*. As noted, Dr. Weiss misapplied the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has not established that she sustained greater than a 13 percent impairment of each upper extremity, for which she received a schedule award.

¹⁵ See also *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, without additional impairment values for decreased grip strength).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 2, 2005 is affirmed.

Issued: November 2, 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