United States Department of Labor
Employees' Compensation Appeals Board

PHYLLIS L. FLEMING, Appellant	)	
and	)	**Docket No. 06-218**
	)	**Issued: April 7, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Buffalo, NY, Employer	)	

Appearances:
Phyllis L. Fleming, 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 November 7, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated October 26, 2005, which found no more than an 11 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 met her burden of proof to establish that she has more than an 11 percent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On August 22, 2001 appellant, then a 52-year-old mail handler, filed a Form CA-2, occupational disease claim, alleging that factors of her federal employment caused right carpal tunnel syndrome and an ulcerated ganglia. She stopped work that day. On November 2, 2001

the Office accepted that she sustained an employment-related right ganglion cyst. Appellant was placed on the periodic rolls in receipt of compensation.

Appellant came under the care of Dr. Dale R. Wheeler, a Board-certified orthopedic surgeon, who performed a right carpal tunnel release and right palmar mass excision on June 4, 2002. On January 11, 2003 appellant returned to limited duty and sustained accepted short-term recurrences of disability on July 17 and October 4, 2003.

On April 22 and May 17, 2004 appellant filed schedule award claims. She submitted a May 26, 2004 report from Dr. Wheeler, who advised that he was rating appellant pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[1] He advised that appellant had reached maximum medical improvement and had decreased strength of approximately 40 percent. He found that she had a 4 percent impairment for median nerve motor loss and a 4.5 percent impairment for sensory changes. On September 29, 2004 Dr. Wheeler again noted decreased grip strength.

In a July 27, 2004 report, an Office medical adviser stated that maximum medical improvement had been reached based on Dr. Wheeler's May 26, 2004 report. The medical evidence supported a Grade 4 sensory and motor deficit of the right upper extremity which, pursuant to Tables 16-10 and 16-11, represented a 25 percent deficit. Under Table 16-15 of the A.M.A., *Guides*, the maximum impairment due to a combined motor and sensory deficit of the median nerve below the forearm is 45 percent. The medical adviser multiplied the 45 percent maximum impairment by the 25 percent deficit grade to total 11 percent right upper extremity impairment. He further advised that the A.M.A., *Guides* provide that an increased impairment rating is not given for decreased grip strength.

By decision dated October 7, 2004, appellant was granted a schedule award for an 11 percent impairment of the right upper extremity, for a total of 34.32 weeks of compensation, to run from May 26, 2004 to January 21, 2005. On July 8, 2005 she requested reconsideration, alleging that she was entitled to an increased schedule award based on increased pain and loss of grip strength. By decision dated October 26, 2005, the Office denied modification of the October 7, 2004 decision.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[2] and section 10.404 of the implementing federal regulation,[3] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in 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

[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.

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 impairments.[6] Section 16.5b of the A.M.A., *Guides* describes the methods for evaluating upper extremity impairments due to peripheral nerve disorders and 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 appellant has an 11 percent right upper extremity impairment. Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.[9] The Office therefore properly referred Dr. Wheeler's report to an Office medical adviser for review. The Office medical adviser assessed appellant's right upper extremity impairment and explained the impairment rating in accordance with the A.M.A., *Guides*. While Dr. Wheeler advised that appellant had decreased strength of approximately 40 percent and concluded that she had a 4 percent impairment for median nerve motor loss and a 4.5 percent impairment for sensory changes, he did not refer to any specific tables in the A.M.A., *Guides* or explain how he reached this rating in conformance with the A.M.A., *Guides*. In a July 27, 2004 report, the Office medical adviser advised that maximum medical improvement had been reached. He opined that Dr. Wheeler's report supported Grade 4 sensory and motor deficit of the right upper extremity, which under Tables 16-10 and 16-11, represents a 25 percent deficit. He then applied Table 16-15 to find the maximum impairment due to a combined motor and sensory deficit of the median nerve below the forearm is 45 percent. He multiplied the maximum impairment of 45 percent by

[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 to 521.

[7] *Id.* at 481.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

[9] *See Thomas J. Fragale*, 55 ECAB ____ (Docket No. 04-835, issued July 8, 2004). Federal (FECA) Procedure Manual, *id.*

the 25 percent Grade 4 deficit to total an 11 percent right upper extremity impairment. As further noted by the Office medical adviser, the A.M.A., *Guides* do not encourage the use of grip strength loss in an impairment rating because strength measurements are functional tests influenced by subjective factors that are difficult to control and the A.M.A., *Guides*, for the most part, is based on anatomic impairment. The A.M.A., *Guides* do not assign a large role to such measurements. Only in rare cases should grip strength be used and only when it represents an impairing factor that has not been otherwise considered adequately.[10] Section 16.5d of the fifth edition of the A.M.A., *Guides*, provides that, in compression neuropathies, additional impairment values are not given for decreased grip strength.[11] Thus, appellant is not entitled to an increased impairment rating based on any decreased grip strength. Section 18.3b of the fifth edition of the A.M.A., *Guides* provides that pain-related impairment should not be used if the condition can be adequately rated under other sections of the A.M.A., *Guides*. Office procedures provide that, if the conventional impairment adequately encompasses the burden produced by pain, the formal impairment rating is determined by the appropriate section of the A.M.A., *Guides*.[12] Table 16-10 and its associated tables are designed to calculate ratings for pain or sensory loss associated with peripheral nerve disorders. The Board finds that in this case, the Office medical adviser properly rated appellant's right upper extremity impairment in accordance with section 16.5 of the A.M.A., *Guides*.

As Dr. Wheeler did not provide a proper impairment rating under the A.M.A., *Guides*, his estimate is not probative. There is no medical evidence of record which provides an accurate impairment rating of appellant's right upper extremity under the A.M.A., *Guides* to demonstrate a greater impairment rating. The Board finds that the Office medical adviser's analysis of Dr. Wheeler's May 26, 2004 report establishes that appellant has an 11 percent impairment of her right upper extremity. The Office medical adviser provided a basis for his impairment rating and referenced the specific figures and tables in the A.M.A., *Guides* on which he relied. His report establishes that appellant is not entitled a schedule award for her right upper extremity of greater than 11 percent.[13]

CONCLUSION

The Board finds that appellant has failed to establish that she is entitled to a schedule award greater than the 11 percent right upper extremity impairment previously awarded.

[10] *Mary L. Henninger*, 52 ECAB 408 (2001).

[11] A.M.A., *Guides*, *supra* note 1 at 494; *see Silvester DeLuca*, 53 ECAB 500 (2002).

[12] *See Philip A. Norulak*, 55 ECAB ____ (Docket No. 04-817, issued September 3, 2004).

[13] *See Mary L. Henninger*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 26, 2005 be affirmed.

Issued: April 7, 2006
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