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

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| **S.C., Appellant** | ) | |
| **and** | ) | **Docket No. 06-1074** |
| | ) | **Issued: August 3, 2006** |
| **U.S. POSTAL SERVICE, POST OFFICE, Lenoir, NC, Employer** | ) | |

*Appearances:*
*S.C., 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

### ***JURISDICTION***

On April 8, 2006 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated April 12, 2005, granting a schedule award and March 31, 2006, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

### ***ISSUES***

The issues are: (1) whether appellant has more than a three percent permanent impairment of each upper extremity; and (2) whether the Office properly denied her request for reconsideration under 5 U.S.C. § 8128.

### ***FACTUAL HISTORY***

On December 30, 2002 appellant, then a 53-year-old letter carrier, filed an occupational disease claim for an injury to both hands caused by her job activities. The Office accepted her claim for bilateral carpal tunnel syndrome. Appellant underwent surgery on her upper extremities on May 12 and June 2, 2003. On January 29, 2004 she filed a schedule award claim.

On February 19 and May 13, 2004 the Office asked Dr. A. Gregory Rosenfeld, appellant's attending Board-certified neurosurgeon, for an evaluation as to whether she had any permanent impairment of her upper extremities causally related to her accepted bilateral carpal tunnel syndrome. Dr. Rosenfeld declined to provide an opinion regarding appellant's upper extremity impairment.

In a report dated March 31, 2004, Dr. Andrea A. Stutesman, a Board-certified physiatrist, provided a history of appellant's condition and findings on physical examination. She indicated that appellant had bilateral numbness, tingling and pain. Appellant experienced pain at night, which awakened her. Performing any task that required grasping caused swelling and numbness of both hands and her pain was aggravated by driving, lying in any position, reaching, pushing, pulling, gripping, pinching and writing by hand. In an impairment rating dated May 25, 2004, Dr. Stutesman found that appellant had a three percent permanent impairment of each upper extremity due to sensory deficit, pain or discomfort, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A, *Guides*) (5th ed. 2001)[1] Table 16-10 at page 482, Table 16-15 at page 492 and the second scenario for rating carpal tunnel syndrome impairment at page 495.

On May 12, 2004 the Office referred appellant to Dr. Kathryn A. Caulfield, a Board-certified orthopedic surgeon, for an impairment evaluation. In a June 16, 2004 report, Dr. Caulfield provided findings on physical examination and stated that appellant had a 21 percent impairment of her hands, which included 10 percent for decreased grip strength and 12 percent for sensory loss and pain. She indicated that a two-point discrimination test was between five and six millimeters in the fingers of both hands. In a July 3, 2004 memorandum, an Office medical adviser stated that Dr. Caulfield did not properly apply the A.M.A., *Guides*. He noted, for example, that the two-point discrimination test result of five to six millimeters in appellant's fingers was normal.[2]

In a September 23, 2004 memorandum, an Office medical adviser indicated that Dr. Stutesman correctly determined that appellant had a three percent impairment of each upper extremity, based on the second scenario for carpal tunnel syndrome described at page 495 of the A.M.A., *Guides*. He stated: "From permitted range of [zero to five percent], a [three percent] rating would be appropriate for each [upper extremity]."

By decision dated April 12, 2005, the Office granted appellant a schedule award for 18.72 weeks, from March 31 to August 9, 2004, for a three percent permanent impairment of each upper extremity.

Appellant requested reconsideration. She submitted a copy of her retirement approval letter, from the Office of Personnel and Management and another copy of Dr. Caulfield's June 16, 2004 report.

[1] A.M.A., *Guides* (5th ed. 2001).

[2] A.M.A., *Guides* 447, Table 16-5.

By decision dated March 31, 2006, the Office denied appellant's request for reconsideration.

## ***LEGAL PRECEDENT***

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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*[5] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[6]

The fifth edition of the A.M.A., *Guides,* regarding carpal tunnel syndrome, provides:

> "If, after an *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present --
>
> > 1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described [in Tables 16-10a and 16-11a].
> >
> > 2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present and an impairment rating not to exceed [five percent] of the upper extremity may be justified.
> >
> > 3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating."[7]

The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.[8]

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[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

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

[6] *Supra* note 4.

[7] A.M.A., *Guides* 495.

[8] *Kimberly M. Held,* 56 ECAB ___ (Docket No. 05-1050, issued August 16, 2005).

## ***ANALYSIS***

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required.

As noted, the A.M.A., *Guides* provides a specific method for determining permanent impairment due to carpal tunnel syndrome. Three scenarios are described at page 495. Dr. Stutesman found that appellant had a three percent permanent impairment of each upper extremity due to sensory deficit, pain or discomfort, according to Table 16-10 at page 482, Table 16-15 at page 492 and the second scenario for rating carpal tunnel syndrome at page 495 of the A.M.A., *Guides*. However, Tables 16-10 and 16-15 are used in the application of the first scenario at page 495, not the second scenario. Additionally, Dr. Stutesman did not provide a grade classification for Table 16-10 (this table provides for a range of impairment from Grade 5, which equals 0 impairment for sensory deficit or pain, to Grade 0 which equals a 100 percent deficit).[9] Consequently, the Board is unable to determine how she calculated a three percent impairment for appellant's upper extremities due to sensory loss or pain. Due to the deficiencies in Dr. Stutesman's impairment rating, the case will be remanded to the Office for further development of the medical evidence on appellant's impairment of her right and left upper extremities. After such further development as the Office deems necessary, it should issue an appropriate decision.[10]

## ***CONCLUSION***

The Board finds that this case is not in posture for a decision on the issue of appellant's schedule award claim. Further development of the medical evidence is required.

[9] The A.M.A., *Guides* procedures provide that the applicable grade in Table 16-10 is multiplied by the maximum impairment percentage provided in Table 16-15 for the major peripheral nerves. A.M.A., *Guides* 482, Table 16-10; 492, Table 16-15. Carpal tunnel syndrome involves the median nerve. A.M.A., *Guides* 495. The maximum upper extremity sensory deficit provided in Table 16-15 for the median nerve is 39 percent. A.M.A., *Guides* 492, Table 16-15.

[10] In light of the Board's resolution of the first issue, the second issue is moot.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 31, 2006 and April 12, 2005 are set aside and the case is remanded for further development consistent with this decision.

Issued: August 3, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board