United States Department of Labor
Employees' Compensation Appeals Board

G.S., Appellant	)	
and	)	**Docket No. 06-1049**
	)	**Issued: December 4, 2006**
U.S. POSTAL SERVICE, PHILADELPHIA TERMINAL STATION, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2006 appellant filed a timely appeal of a November 7, 2005 merit decision of the Office of Workers' Compensation Programs affirming prior schedule awards. 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 more than a 17 percent impairment of the left upper extremity and a 3 percent impairment of the right upper extremity, for which she received schedule awards.

FACTUAL HISTORY

The Office accepted that appellant sustained bilateral de Quervain's tenosynovitis requiring right wrist release in August 1991 and a left wrist release in September 1991. The claim was assigned File No. A03-152936. The Office also accepted that on January 15, 1995 appellant sustained an aggravation of an impingement syndrome of the left shoulder

necessitating a partial acromionectomy and resection of the subacromial bursa on September 19, 1995. It assigned the left shoulder claim File No. 03-209168.

On May 20, 1997 appellant claimed a schedule award under File No. 03-209168. By decision dated October 6, 1997, the Office denied the claim on the grounds that the medical evidence did not establish any impairment.

On April 20, 2002 appellant again claimed a schedule award under File No. 03-209168. She submitted a January 8, 2002 report from Dr. David Weiss, an attending osteopath Board-certified in orthopedic surgery, who provided a history of injury and surgeries. Dr. Weiss opined that appellant reached maximum medical improvement as of November 20, 2001. He related her complaints of severe pain and stiffness in both wrists, hands and shoulders, causing difficulties with activities of daily living. On examination of the left shoulder, Dr. Weiss found forward elevation limited to 150 degrees and adduction limited to 65 degrees. On examination of both wrists, he found a full range of motion, no atrophy, positive Finkelstein's and carpal compression tests and positive Phalen's and Tinel's signs. On the left resisted thumb abduction was 4/5. Dr. Weiss listed a "perceived sensory deficit over the median nerve distribution of the left hand with supraspinatus strength limited to 3+/5 and deltoid strength limited to 4/5." He observed "markedly abnormal" grip strength at 28 kilograms on the right and 12 kilograms on the left. Dr. Weiss opined that, according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a 60 percent impairment of the left upper extremity as follows: 2 percent for limited shoulder flexion; and 2 percent for limited shoulder abduction according to Figure 16-40, page 476;[1] 10 percent for the left shoulder acromionectomy, according to Figure 16-27, page 506;[2] 31 percent for sensory deficit in the left median nerve according to Table 16-10, page 482[3] and Table 16-15, page 492;[4] 9 percent for the 4/5 motor strength deficit in left thumb abduction, according to Table 16-11, page 484[5] and Table 16-15, page 492; 20 percent for the grip strength deficit according to Table 16-34, page 509.[6] Dr. Weiss combined these impairments to equal 57 percent. He added an

[1] Figure 16-40, page 476 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack of Flexion and Extension of Shoulder."

[2] Figure 16-27, page 506 of the fifth edition of the A.M.A., *Guides* is entitled "Impairment of the Upper Extremity After Arthroplasty of Specific Bones or Joints."

[3] 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."

[4] 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."

[5] 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."

[6] 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."

additional 3 percent impairment for pain according to Figure 18-1, page 574,[7] for a total 60 percent impairment of the left upper extremity. On the right Dr. Weiss opined that appellant had a three percent impairment of the right upper extremity due to pain, according to Figure 18-1, page 574.

In a November 17, 2002 report, an Office medical adviser reviewed Dr. Weiss' report and found a 10 percent impairment of the left upper extremity due to the resection acromioplasty and a 4 percent impairment due to limited motion of the shoulder, for a total of 14 percent. The medical adviser commented that pain was already considered in the overall impairment rating and did not need to be considered separately.

On November 18, 2002 the Office granted appellant a schedule award for a 14 percent impairment of the left upper extremity.

On November 25, 2002 appellant requested an oral hearing, later changed to a request for a review of the written record. She asserted that the wrist and hand impairments due to the accepted de Quervain's tendinitis should have been included in the Office's November 18, 2002 schedule award.

By decision dated and finalized December 16, 2003, the Office hearing representative affirmed the November 14, 2002 schedule award. The Office found that Dr. Weiss' impairment ratings regarding sensory, motor and grip strength deficits were redundant as appellant already received a schedule award for upper extremity impairments due to de Quervain's tenosynovitis.

Appellant appealed to the Board, asserting that she had not yet received a schedule award for hand or wrist impairments. She contended that the Office should have included Dr. Weiss' impairment ratings in the schedule award. By order issued October 1, 2004,[8] the Board remanded the case to the Office for reconstruction of the record, including doubling the case record from File No. A03-152936 with the record for File No. 03-0209168.

On January 31, 2005 the Office doubled the claims and referred the medical records to an Office medical adviser for review. It requested that the Office medical adviser review Dr. Weiss' January 8, 2002 report and provide a schedule award rating for both hands and the left shoulder. The Office noted that appellant had received a 14 percent schedule award for the left upper extremity but that no award was yet issued for impairment of the hands.

In a February 24, 2005 report, an Office medical adviser reviewed the medical records and determined that appellant had reached maximum medical improvement as of January 18, 2002. Appellant was "on disability [with] bilateral wrist pain and left shoulder complaints. She previously underwent left shoulder acromionectomy in 1995 and right and left] de Quervain's release for tendinitis 1991." The Office medical adviser found that the 14 percent impairment of the left upper extremity due to a shoulder condition "would not change."

[7] 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."

[8] Docket No. 04-1239.

Regarding wrist impairment, the medical adviser noted that appellant had normal range of motion bilaterally. Electromyography (EMG) "testing was positive for right carpal tunnel syndrome but that a schedule award was "not granted according to pa[ge] 508, 16.8a principles -- strength calculation should not be used." The Office medical adviser opined that, according to Figure 18-1, page 574 of the A.M.A., *Guides*, appellant had a three percent impairment of each upper extremity due to pain in the right and left hands. He added this 3 percent impairment due to pain to the 14 percent impairment previously awarded for the left upper extremity to total 17 percent. The Office medical adviser opined that appellant had a three percent impairment of the right upper extremity due to pain, according to Figure 18-1.

By decision dated March 8, 2005, the Office awarded appellant a schedule award for a three percent impairment of the left upper extremity and a three percent impairment of the right upper extremity. The period of the award ran from September 22, 2002 to January 31, 2003.

In a March 17, 2005 letter, appellant requested an oral hearing, later modified to a request for a review of the written record.[9]

By decision dated and finalized November 7, 2005, an Office hearing representative affirmed the March 8, 2005 decision, finding that appellant had not established that she sustained greater than a 17 percent impairment of the left upper extremity and a 3 percent impairment of the right upper extremity. The hearing representative noted that the Office medical adviser found normal range of motion of both wrists with positive EMG findings for right carpal tunnel syndrome. The Office medical adviser properly discounted the use of grip strength as a basis for impairment, in accordance with the A.M.A., *Guides* and Board precedent. The hearing representative also found that Dr. Weiss' calculation of a 31 percent impairment of the left upper extremity due to sensory deficit was of diminished probative value as the only objective findings of sensory deficit showed right carpal tunnel syndrome. The hearing representative concluded that the Office medical adviser's opinion was entitled to the weight of the medical evidence.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[10] 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 mater 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.[11] As of February 1,

[9] The record contains an April 11, 2005 decision approving an attorney's fee previously approved by appellant. This decision is not before the Board on the present appeal.

[10] 5 U.S.C. §§ 8101-8193.

[11] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

2001, schedule awards are calculated according to the fifth edition of the A.M.A., *Guides*, published in 2000.[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 accepted that appellant sustained bilateral de Quervain's tenosynovitis requiring bilateral wrist releases in 1991 and aggravation of a left shoulder impingement syndrome requiring a partial acromionectomy and resection of the subacromial bursa in 1995. Appellant contended that she has impairment of her hands and wrists due to the accepted de Quervain's tenosynovitis and subsequent surgeries, as well as impairment to the left shoulder. In a November 18, 2002 decision, the Office granted appellant a schedule award for a 14 percent impairment of the left upper extremity due to impairment of the shoulder only.

Appellant submitted a January 8, 2002 report from Dr. Weiss, an attending osteopath Board-certified in orthopedic surgery. An Office medical adviser reviewed Dr. Weiss' report on February 24, 2005. Both physicians agreed on the 14 percent impairment of the left shoulder as previously awarded. They differed significantly, however, in assessing the impairment to appellant's hands and wrists.

On examination of both wrists and hands, Dr. Weiss found a normal range of motion, positive Finkelstein's and carpal compression tests, positive Phalen's and Tinel's signs and markedly diminished grip strength. He observed resisted thumb abduction at 4/5 on the left, a perceived sensory deficits in the left median nerve distribution and diminished supraspinatus and deltoid strength. Dr. Weiss opined that in the left upper extremity, appellant had a 31 percent impairment due to sensory deficit in the left median nerve, a 9 percent impairment for the 4/5 motor strength deficit in left thumb abduction and a 20 percent for grip strength deficit. He also found a three percent impairment of each upper extremity due to pain according to Figure 18-1, page 574.

The Office medical adviser disagreed with Dr. Weiss' assessment of a left median nerve deficit as there were no electromyographic findings documenting this abnormality. The medical

[12] *See* FECA Bulletin 01-05 (issued January 29, 2001) (schedule awards calculated as of February 21, 2001 should be evaluated according to the fifth edition of the A.M.A., *Guides*. Any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001).

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

[14] A.M.A., *Guides*, Chapter 16, "The Upper Extremities," pp. 433-521 (5th ed. 2001).

adviser also noted that compression neuropathies should not be evaluated using grip strength. He concurred with Dr. Weiss' assessment of a three percent impairment of each upper extremity due to pain according to Figure 18-1.

The Board notes that, while both physicians relied on Figure 18-1, page 574 of the A.M.A., *Guides*, its use is generally precluded by the Office's procedures if other methods to measure impairment due to sensory pain are used.[15] Neither physician explained his application of this portion of the A.M.A., *Guides*. Also, schedule award cases involving compression neuropathies of the wrist are generally rated using motor and sensory impairments only, not loss of motion or grip strength.[16] Dr. Weiss used grip strength in calculating the percentage of impairment for the left upper extremity. Thus, both physicians misapplied the A.M.A., *Guides*.

The Board will set aside the November 7, 2005 decision and remand the case to the Office for appropriate further development on the issue of the extent of impairment to appellant upper extremities.

CONCLUSION

The Board finds that the case is not in posture for a decision.

[15] FECA Bulletin No. 01-05 (issued January 29, 2001).

[16] *Robert V. Disalvatore*, 54 ECAB 351 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2005 is set aside and the case remanded to the Office for further action consistent with this decision.

Issued: December 4, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board