United States Department of Labor
Employees' Compensation Appeals Board

JOHN C. KNECHT, Appellant	)	
and	)	**Docket No. 05-1033**
	)	**Issued: March 6, 2006**
DEPARTMENT OF DEFENSE, DEFENSE FINANCE & ACCOUNTING SERVICE, Denver, CO, Employer	)	

Appearances:
John C. Knecht, pro se
Office of the 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 April 4, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award denial dated December 28, 2004. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has sustained any permanent impairment to a scheduled member of his body casually related to his accepted bilateral carpal tunnel condition, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

Appellant, a 53-year-old systems accountant, filed a Form CA-2 claim for benefits on November 14, 1995, alleging bilateral carpal tunnel syndrome causally related to factors of his federal employment. The Office accepted the claim for bilateral carpal tunnel syndrome and authorized carpal tunnel release for both wrists.

On February 5, 2000 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left and right upper extremity.

In a report dated January 26, 2000, Dr. Jerald J. Tantillo, Board-certified in internal medicine, found that appellant had a 48 percent impairment of the left upper extremity and a 54 percent impairment of the right upper extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) fourth edition. He also found evidence of a profound sensory loss in lumbar nerve roots based on electrical testing.

In a report dated May 9, 2000, Dr. Richard G. McCollum, an Office medical adviser and a Board-certified orthopedic surgeon, opined that appellant had no impairment of either the left or right upper extremity. He stated:

> "The report of January 26, 2000 by Dr. Tantillo, is totally unconvincing and inconsistent with the postoperative findings following both carpal tunnel releases....
>
> "Dr. Tantillo has findings that are not represented by the hand and orthopedic specialist who cared for this patient. For the following reasons I believe the report of Dr. Tantillo is invalid: (1) There was no mention of any motor or sensory, or decreased range-of-motion deficits by the hand and orthopedic specialist after or even before the operations; (2) It is incredulous to think that this patient has no two-point discrimination described by Dr. Tantillo; and (3) The impairment rating that he has provided is excessive and not consistent with what one would expect following a carpal tunnel condition.
>
> "I see no foundation for the findings based on the orthopedic and hand specialist's reports and would feel that most likely this patient, indeed, has no impairment. Pain itself does not represent impairment."

The Office found that there was a conflict in the medical evidence between Dr. McCollum and Dr. Tantillo and referred appellant to Dr. Stanley E. Donahoo, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated November 4, 2002, Dr. Donahoo noted the findings of a neurological examination and stated:

> "Deep tendon reflexes at biceps, triceps and periosteal radials were 2+ and symmetrical. Sensory examination was nonanatomic and of a functional, nonorganic quality. Specifically, [appellant] stated that he had total hypesthesia in both index fingers from the metacarpophalangeal joint distally. He specifically stated [that] he could perceive no touch of the examiner's finger, no point discrimination, no two-point discrimination, no temperature discrimination and no vibratory perception with vigorous tuning fork stimulation of the index finger. His sensory deficits were located exclusively in the index fingers of the right and left hands and did not involve the long, ring or little fingers or thumb on either hand and did not involve any type of ring finger split between the distribution of the median and ulnar nerves. The stated index finger perception was unchanged

with respect to the innervation provided by the superficial branch of the radial nerve over the dorsum and the median nerve over the volar aspect.

"Muscle testing was invalid due to inconsistency and lack of full effort.... Repeated attempted tests with a Jamar hand dynamometer with a sawtooth type pattern were nonanatomic, ranging between 16 to 30 pounds on the left and about 10 to 20 pounds on the right."

Dr. Donahoo concluded that appellant had normal nerve conduction velocities. With regard to pain, Dr. Donahoo stated:

"Page 572 states that three questions [with regard to rating pain] should be posed --

> The first is whether the individual symptoms and/or physical findings match any known medical condition. In this case, the answer is no. The second question is, Is the individual's presentation typical of the diagnosed condition? The answer is no in this case. The third question is, Is the diagnosed condition one that is widely accepted by physicians having a well-defined pathologic basis? The answer is no in this case; that is to say, his postoperative subjective response. The [A.M.A., *Guides*] conclude, 'If the answer to any of the above three questions is no, the examiner should consider the individual's pain-related impairment to be unratable on the basis of the concepts in this chapter.'"

Therefore, on the basis that appellant had no ratable impairment based on either sensory loss or pain, Dr. Donahoo concluded that appellant had no impairment of function to either the right or left upper extremity as a result of accepted bilateral carpal tunnel syndrome.

By decision dated December 28, 2004, the Office denied appellant's schedule award claim. The Office found that Dr. Donahoo's impartial medical opinion represented the weight of the medical evidence.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] sets 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 loss of use.[2] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the

[1] 5 U.S.C. §§ 8101-8193*; see* 5 U.S.C. § 8107(c).

[2] 5 U.S.C. § 8107(c)(19).

Office has adopted the A.M.A., *Guides* fifth edition as the standard to be used for evaluating schedule losses.[3]

ANALYSIS

Dr. Donahoo's findings and conclusions consistent with the appropriate method for evaluating impairment based on carpal tunnel syndrome, which is outlined at Chapter 16, page 495 of the A.M.A., *Guides*. This section states:

> "There are many presentations of carpal tunnel syndrome. Pain and paresthesias in the median nerve distribution of the hand are the usual symptoms. Pain may radiate proximally.... The symptoms, signs and findings may include sensory or autonomic disturbances of the radial 3 and 1/2 digits, weakness or atrophy of the thenar muscles, a positive percussion sign at the wrist, presence of Phalen's sign and motor and sensory electroneuromyographic abnormalities.
>
> "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: [Emphasis in the original.]
>
> > 1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier.
> >
> > 2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: a residual CTS is still present and an impairment rating not to exceed 5 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."

In the present case, Dr. Donahoo's November 4, 2002 report found that appellant had normal sensibility based on two point discrimination and nonanatomic sensory examination was nonanatomic and of a functional, nonorganic quality. He noted that appellant complained of total hypesthesia in both index fingers, no touch of the examiner's finger, no point discrimination, no two-point discrimination, no temperature discrimination and no vibratory perception with vigorous tuning fork stimulation of the index finger; however, Dr. Donahoo opined that this muscle testing was invalid due to inconsistency and lack of full effort on appellant's part. He further noted that repeated, attempted tests with a Jamar hand dynamometer were also nonanatomic. Based on these tests and on his examination, Dr. Donahoo found no ratable impairment due to sensory loss.

[3] 20 C.F.R. § 10.404.

In addition, Dr. Donahoo found no ratable impairment due to pain. Citing Page 572 of the A.M.A., *Guides*, he noted that the section posed three questions in regard whether an impairment rating due to pain could be derived by the examiner: (1) whether the individual symptoms and/or physical findings match any known medical condition; (2) whether the individual's presentation typical of the diagnosed condition; and (3) whether the diagnosed condition was one that was widely accepted by physicians having a well-defined pathologic basis. Dr. Donahoo properly found that, because the answer was no in each case, an impairment based on pain was not warranted in this case.

As there is no other medical evidence establishing that appellant sustained any permanent impairment based on his work-related carpal tunnel syndrome, the Office properly found that appellant was not entitled to a schedule award under 5 U.S.C. § 8107.

CONCLUSION

The Board finds that appellant has not sustained any permanent impairment to a scheduled member of his body casually related to his accepted bilateral carpal tunnel condition, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 6, 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