

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

CYNTHIA JONES, Appellant)
and) Docket No. 06-193
U.S. POSTAL SERVICE, POST OFFICE,) Issued: March 1, 2006
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 November 1, 2005 appellant filed a timely appeal from the June 16, 2005 merit decision of the Office of Workers' Compensation Programs, which affirmed a schedule award for a five percent permanent impairment of each upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the schedule award issue.

ISSUE

The issue is whether appellant has more than a five percent permanent impairment of the left and right upper extremity.

FACTUAL HISTORY

On October 26, 1993 appellant, then a 37-year-old casual mail handler, filed a claim alleging that on October 22, 1993 she had sharp pains "from shoulder down arm through hands and fingers" from pushing containers and lifting heavy flats and heavy bags at work. The Office accepted her claim for bilateral carpal tunnel syndrome. Appellant did not pursue surgical intervention.

On January 17, 2002 appellant filed a claim for a schedule award. She submitted the July 9, 2001 report of Dr. David Weiss, an osteopath, who related appellant's history and complaints and his findings on physical examination. He reviewed medical records, including a November 30, 1993 electromyogram (EMG) and nerve conduction study. His diagnoses included bilateral carpal tunnel syndrome, post-traumatic impingement syndrome to the right shoulder, post-traumatic acromioclavicular arthropathy and status post arthroscopic surgery (March 23, 1999) with subacromial decompression and acromioplasty.

Dr. Weiss stated that appellant reached maximum medical improvement that day. He calculated that she had a 17 percent impairment of the right upper extremity based on loss of shoulder motion and a right shoulder acromioplasty. He calculated that appellant had a three percent pain-related impairment of the left upper extremity based on left hand pain.

On April 24, 2002 an Office medical adviser reported that Dr. Weiss did not address the accepted condition of bilateral carpal tunnel syndrome. The medical adviser noted that Dr. Weiss reported normal sensory and motor function in the median innervation structures of both hands. He explained that this placed appellant in the second scenario of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) meaning a residual carpal tunnel syndrome was still present and an impairment rating not to exceed five percent of the upper extremity may be justified.¹

In a decision dated May 18, 2004, the Office issued a schedule award for a five percent permanent impairment of each extremity.

In a decision dated June 16, 2005, following an oral hearing on March 1, 2005, an Office hearing representative affirmed the Office's schedule award decision. He found that the weight of the medical evidence rested with the opinion of the Office medical adviser, whose rating was based solely on the accepted bilateral carpal tunnel condition.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.² Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified fifth edition of the A.M.A., *Guides*.³

ANALYSIS

Appellant's evaluating physician, Dr. Weiss, diagnosed bilateral carpal tunnel syndrome but gave no indication in his July 9, 2001 report that he obtained an EMG or nerve conduction

¹ A.M.A., *Guides* 495 (5th ed. 2001).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the fifth edition of the A.M.A., *Guides*. FECA Bulletin No. 01-05 (issued January 29, 2001).

study to document this diagnosis, nor did he identify any recent testing. He indicated that he had reviewed a November 30, 1993 report, but he did not explain how this was relevant to the documentation of appellant's current condition. This creates an impediment to evaluating appellant's impairment because no permanent impairment rating for residuals of carpal tunnel syndrome is possible without such diagnostic testing.⁴

Under the scheme set forth in the A.M.A., *Guides*, a claimant's impairment rating for residual carpal tunnel syndrome depends on the presence or absence of positive clinical findings and the presence or absence of positive diagnostic testing:

"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 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 testing of the thenar muscles: a residual CTS [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."⁵

Dr. Weiss made no attempt to rate impairment according to sensory and motor deficits under the first scenario.⁶ He instead confined his rating of the right upper extremity to loss of shoulder motion and a diagnosis-based estimate for resection acromioplasty, a procedure the Office did not authorize. The Board finds that Dr. Weiss' rating of 17 percent for the right upper extremity is of diminished probative value in determining appellant's entitlement to a schedule award for her accepted employment injury.

⁴ The diagnosis of entrapment or compression neuropathy is based on: (1) the history and symptoms; (2) objective clinical signs and findings on detailed examination; and (3) documentation by electroneuromyographic studies. Standard roentgenograms and more involved imaging studies are also useful. A.M.A., *Guides* 492 (Diagnosis of Entrapment/Compression Neuropathy). Only individuals with an objectively verifiable diagnosis of entrapment or compression neuropathy should qualify for a permanent impairment rating. The diagnosis is made not only on believable symptoms but, more important, on the presence of positive clinical findings and loss of function. The diagnosis should be documented by electromyography as well as sensory and motor nerve conduction studies. A.M.A., *Guides* at 493 (Impairment Rating of Entrapment/Compression Neuropathies) (Emphases deleted).

⁵ *Id.* at 495 (Emphasis deleted).

⁶ *Id.* at 482 (Table 16-10); *id.* at 484 (Table 16-11).

Dr. Weiss confined his rating of the left upper extremity to a pain-related impairment of the left hand, using Chapter 18 of the A.M.A., *Guides*. But he made no attempt to justify the use of this chapter or to explain only appellant's carpal tunnel condition could not be adequately rated on the basis of the body and organ impairment systems given in other chapters.⁷ The Board finds that Dr. Weiss' rating of three percent for the left upper extremity is also of little probative value.

The Office medical adviser correctly referred to the procedure set forth in the A.M.A., *Guides* for determining impairment due to carpal tunnel syndrome. He found that the circumstances of appellant's case fit within the second scenario: normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles. Again, this is not supported by any reasonably current electrodiagnostics. But the medical adviser gave appellant the presumption of abnormal testing and found that a rating not to exceed five percent was justified.

The evidence in this case fails to establish that appellant has more than a five percent permanent impairment of the left or right upper extremity due to her accepted bilateral carpal tunnel syndrome. On this basis, the Board will affirm the Office's June 16, 2005 decision.

CONCLUSION

The Board finds that appellant has no more than a five percent impairment of the left or right upper extremity, for which she has received a schedule award.

⁷ *Id.* at 570-71.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 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