United States Department of Labor
Employees' Compensation Appeals Board

MICHAEL J. SCANLON, Appellant	)	
and	)	**Docket No. 06-595**
	)	**Issued: May 4, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Chester Heights, 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:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 20, 2006 appellant filed a timely appeal from a merit decision of an Office of Workers' Compensation Programs' hearing representative dated September 27, 2005, which found a 10 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 more than a 10 percent impairment of the right upper extremity, for which he received a schedule award. On appeal, counsel contends that the medical opinion establishes a 23 percent impairment.

FACTUAL HISTORY

On August 11, 1999 the Office accepted that appellant, then a 57-year-old part-time flexible window clerk, sustained an employment-related right carpal tunnel syndrome and authorized surgical release.[1] Surgery was performed on September 3, 1999 and he returned to

[1] Appellant, who is left hand dominant, also underwent a left carpal tunnel release in 1987.

full duty in October 1999. On December 30, 2002 he submitted a schedule award claim and attached an October 21, 2002 report in which Dr. David Weiss, an osteopath, addressed appellant's medical history. He reported appellant's complaint of daily right wrist pain that waxed and waned with numbness and tingling and decreased grip strength. Physical findings of the right hand and wrist included thenar atrophy, negative Tinel's, Phalen's and carpal compression testing and normal range of motion. Grip strength testing with a Jamar Hand Dynomometer demonstrated 16 kilograms on the right and 32 on the left or a 50 percent right hand deficit. Sensory examination of the ulnar and median nerve distributions was normal. Dr. Weiss diagnosed cumulative and repetitive trauma disorder and right carpal tunnel syndrome, status post release. He advised that, in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[2] under Table 16-34 appellant had a 20 percent impairment for decreased grip strength and under Table 18-1, a 3 percent impairment for pain, to total a 23 percent right upper extremity impairment.

In a report dated January 7, 2003, an Office medical adviser noted that Dr. Weiss' report did not conform with the A.M.A., *Guides* and advised referral for a second opinion evaluation.

On January 13, 2003 the Office referred appellant, together with the medical record, a statement of accepted facts and a set of questions, to Dr. Evelyn D. Witkin, Board-certified in orthopedic surgery, for a second opinion evaluation, to include an impairment assessment. In a February 18, 2003 report, Dr. Witkin noted her review of the medical record, including Dr. Weiss' report and appellant's complaints including right wrist pain and decreased grip strength. Physical examination revealed pain with resistive dorsiflexion of the wrist, tenderness in the thenar eminence and right hand swelling. Testing and range of motion were normal with no obvious atrophy. She opined that appellant had reached maximum medical improvement and appeared to have some decreased grip strength but no motor or sensory impairment with pain, particularly in the median nerve distribution and thenar eminence. Dr. Witkin agreed with Dr. Weiss' impairment rating of 23 percent.

In a report dated March 4, 2003, an Office medical adviser advised that Dr. Witkin's report did not conform with the A.M.A., *Guides* and that clarification was needed. By letter dated March 5, 2003, the Office requested that Dr. Witkin submit a supplementary report as she did not review appellant's impairment rating under the section of the A.M.A., *Guides* for compression neuropathies. On April 3, 2003 Dr. Witkin submitted a supplement to her February 18, 2003 report. She concluded:

> "I do not believe that Dr. [Weiss'] calculated rating of the claimant's impairment is valid and I would not agree with 23 percent impairment of the right upper extremity. After optimal recovery time following surgical decompression, he now has normal sensibility and optimal strength. According to the [A.M.A., *Guides*] (5th edition,) page 494, a 5 percent impairment for decreased grip strength is justified."

On May 19, 2003 an Office medical adviser concurred with this finding.

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

By decision dated June 9, 2003, appellant was granted a schedule award for a five percent permanent impairment of the right arm, for a total of 15.60 weeks, to run from February 18 to June 7, 2003. Appellant, through his attorney, timely requested a hearing, that was held on March 2, 2004. In a decision dated May 24, 2004, an Office hearing representative noted appellant's argument that Dr. Weiss' grip strength rating should be used in place of, not in addition to, a neurological rating. The case was to secure a supplementary report from an Office medical adviser for an opinion on whether a rating for grip strength was allowed in compression neuropathy cases under the A.M.A., *Guides*.

In a report dated August 21, 2004, an Office medical adviser reviewed that A.M.A., *Guides* and Dr. Witkin's revised report. He noted page 494 of the A.M.A., *Guides*, which states that, in compression neuropathies, additional impairment values are not given for decreased grip strength and found that appellant fit the second criteria for carpal tunnel syndrome listed on page 495 of the A.M.A., *Guides*, which provides for an impairment rating not to exceed five percent. The Office medical adviser also referred to sections 16.2 and 16.8a, pages 507-08, of the A.M.A., *Guides*, which note that only in rare instances was loss of strength to be considered, opining that the instant case was "typical and not a rare instance." He concluded that, while Dr. Weiss' report was not in conformance with the A.M.A., *Guides*, Dr. Witkin and the previous Office medical adviser appropriately followed the A.M.A., *Guides* in determining that appellant had a five percent permanent impairment of the right upper extremity.

In a decision dated August 24, 2004, the Office found that appellant was not entitled to an additional schedule award for his right upper extremity. On August 30, 2004 appellant, through his attorney, requested a hearing, that was held on June 28, 2005. He also submitted a July 15, 2005 report in which Dr. Weiss noted his disagreement with the Office's interpretation of the A.M.A., *Guides*, arguing that his impairment rating for grip strength was the only rating that properly assessed appellant's condition and again concluded that he had a 23 percent impairment. By decision dated September 27, 2005, an Office hearing representative affirmed the August 24, 2004 decision.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[3] and section 10.404 of the implementing federal regulations,[4] 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 A.M.A., *Guides*[5] has been adopted by the Office and the Board has concurred in such adoption,

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] A.M.A., *Guides*, *supra* note 2

as an appropriate standard for evaluating schedule losses.[6] Chapter 16 provides the framework for assessing upper extremity impairments.[7]

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

> "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 earlier.
> >
> > (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."[8]

ANALYSIS

The Board finds that appellant has a five percent right upper extremity impairment. As Dr. Witkin did not initially provide a rating in accordance with A.M.A., *Guides* instructions regarding carpal tunnel syndrome, the Office properly asked that she submit a supplementary report.[9] She clarified that appellant had reached maximum medical improvement and, as he had reached optimal recovery following surgical decompression and had some residuals but normal sensibility and optimal strength, a five percent impairment was warranted as provided by the A.M.A., *Guides*. In an August 21, 2004 report, an Office medical adviser noted that the A.M.A., *Guides* do not encourage the use of grip strength loss in an impairment rating in cases involving compression neuropathies.

As stated in section 16.8 of the A.M.A., *Guides*, strength measurements are functional tests influenced by subjective factors that are difficult to control. The A.M.A., *Guides* is based

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[6] *See Joseph Lawrence, Jr., supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[7] A.M.A., *Guides* 433-521.

[8] *Id.* at 495.

[9] The Office's procedure manual provides that in evaluating schedule awards, a supplementary report may be obtained. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

on anatomic impairment and does not assign a large role to strength measurements.[10] Section 16.8a states that only in a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*, can the loss of strength be rated separately. "*Otherwise, the impairment ratings based on objective anatomic findings take precedence*."[11] [Emphasis in the original.] The Board finds that the medical evidence in this case does not support that this is an unusual case. While Dr. Weiss opined that using Table 16-34 for grip strength was the only rating that properly assessed appellant's condition, he did not provide an explanation as to what factors would make this claim a rare case that would qualify as a section 16.8a exception.[12] As noted by the Office medical adviser, this is not an unusual case and the guidelines found for assessing compression neuropathies found in section 16.5d of the A.M.A., *Guides* provide that additional impairment values are not given for decreased grip strength.[13] The Board finds that appellant is not entitled to an increased impairment rating under Table 16-34 as his condition should be assessed in accordance with the A.M.A., *Guides* section on compression neuropathy.

Section 18.3b 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*.[14] Section 16.5d of the A.M.A., *Guides* addresses entrapment/compression neuropathy, including carpal tunnel syndrome and is designed to calculate ratings for pain associated with this disorder. As stated above, both Dr. Witkin and the Office medical adviser properly rated appellant's right upper extremity impairment in accordance with the section on carpal tunnel syndrome, found at page 495 of the A.M.A., *Guides*. Dr. Weiss did not provide impairment rating under the proper section of A.M.A., *Guides*. His estimate is therefore of probative diminished value. The Board finds that reports of Dr. Witkin and the Office medical adviser establishes that appellant has a five percent impairment of the right upper extremity. These physicians provided a basis for their impairment rating and referenced the specific figures and tables in the A.M.A., *Guides* on which they relied. Appellant is not entitled to a schedule award for his right upper extremity of greater than five percent.[15]

CONCLUSION

The Board finds that appellant has failed to establish that he is entitled to more than a five percent schedule award for the right upper extremity.

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[10] A.M.A., *Guides* 508; *see Mary L. Henninger*, 52 ECAB 408 (2001).

[11] *Id.*

[12] *See Phillip H. Conte*, 56 ECAB ____ (Docket No. 04-1524, issued December 22, 2004).

[13] A.M.A., *Guides* 494; *see Silvester DeLuca*, 53 ECAB 500 (2002).

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

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 27, 2005 be affirmed.

Issued: May 4, 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