United States Department of Labor
Employees' Compensation Appeals Board

B.J., Appellant	)	
and	)	**Docket No. 06-1071**
	)	**Issued: November 6, 2006**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA, Employer	)	

Appearances:
Appellant, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 6, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 27, 2006 which denied her claim for an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

ISSUE

The issue is whether appellant has more than a seven percent permanent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On November 26, 1995 appellant, then a 39-year-old computer clerk, filed an occupational disease claim alleging that the repetitive movements involved in handling tapes resulted in her carpal tunnel condition. The Office accepted her claim for bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. It paid appropriate benefits. Appellant

underwent a right surgical release in 1995 and a left surgical release in 1996. A right surgical release was repeated on April 24, 2000 and on March 16, 2005. Appellant returned to work after each surgical procedure.

By decision dated May 6, 2003, the Office granted appellant schedule awards for impairment of both upper extremities.

By decision dated January 15, 2004, the Office vacated the May 6, 2003 schedule award finding that appellant had established total impairment of seven percent to both upper extremities based on a December 18, 2003 report of Dr. James T. Galyon, a Board-certified orthopedic surgeon, selected as an impartial medical specialist. By decision dated January 22, 2004, the Office granted appellant an award for an additional two percent permanent impairment to both upper extremities.[1] By decision dated May 26, 2004, the Office denied reconsideration of its January 22, 2004 decision.

On October 17, 2005 appellant filed a claim for an additional schedule award. She submitted an October 21, 2005 attending physician's report from Dr. Andrew Crenshaw, a Board-certified orthopedic surgeon, who stated that appellant had permanent loss of grip strength.

In a December 1, 2005 letter, the Office requested that appellant have her attending physician complete an impairment rating. In an August 30, 2005 report, Dr. Crenshaw advised that appellant had a 37 percent permanent impairment of her right upper extremity for which she reached maximum medical improvement on August 30, 2005. On August 30, 2005 he also advised that appellant had reached maximum medical improvement and that her grip strength was severely limited with residual numbness. Based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Tables 16-34, 16-10 and 16-15, Dr. Crenshaw opined that appellant had a 37 percent permanent impairment to the right upper extremity based on the loss of grip strength and numbness.

In a January 18, 2006 report, an Office medical adviser advised that Dr. Crenshaw did not properly correlate his findings on examination to the A.M.A., *Guides*. In a January 31, 2006 letter, the Office requested that Dr. Crenshaw provide an impairment rating in accordance with the A.M.A., *Guides*.

In a February 7, 2006 letter, Dr. Crenshaw provided a copy of his August 30, 2005 examination findings. He opined that appellant had reached maximum medical improvement and reported that she had numbness with abnormal sensation that interfered with some activities. Appellant exhibited diminished light touch testing on the right side and severely limited grip strength of two kilograms of force on the right side. Based on Table 16-32 page 509 of the A.M.A., *Guides*, Dr. Crenshaw found that appellant's normal grip for her age and handedness was 22.3. Based on Table 16-10 on page 482, Dr. Crenshaw opined that appellant had a sensory loss of a Grade 3 or a 26 percent deficit. Under Table 16-15 page 492, he noted that the maximum sensory deficit of the median nerve below the mid forearm was 39 percent.

[1] The Office noted that it had already paid a 10 percent schedule award.

Dr. Crenshaw then multiplied the 39 percent maximum sensory deficit with the 26 percent sensory deficit to rate sensory loss of 10 percent. Under Table 16-34 page 509, he found that appellant had a strength index loss of 95 percent which equated to a 30 percent right upper extremity impairment. Utilizing the combined values table on page 604, he found that the 10 percent sensory loss combined with the 30 percent strength loss totaled 37 percent impairment.

In a March 17, 2006 report, an Office medical adviser noted that Dr. Crenshaw rated appellant with a right upper extremity impairment of 10 percent for sensory loss and 30 percent due to strength loss. He noted, however, that the A.M.A., *Guides* at page 508 prohibit rating decreased strength in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of force in the region being evaluated. Thus, the Office medical adviser opined that appellant had a 10 percent permanent impairment of the right upper extremity due to sensory loss.

By decision dated March 27, 2006, the Office denied appellant's claim for an increased schedule award. The Office noted that appellant was previously paid a schedule award for seven percent impairment of her upper extremities and the medical evidence did not support an increase in her right arm impairment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of schedule members or functions of the body. The Act, however, does not specify the manner in which the percentage loss of a member 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* (5th ed.) has been adopted by the Office for evaluating schedule losses.[4]

ANALYSIS

Appellant previously received schedule awards for a seven percent impairment to both upper extremities. She subsequently filed a claim for an increased schedule award following her March 16 2005 repeat right surgical release. The Office denied an additional schedule award on the basis that the medical evidence did not support an increase in her right arm impairment. Contrary to the Office's conclusion, the Board finds that the medical evidence supports an increase in appellant's right upper extremity impairment.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *See* 20 C.F.R. § 10.404; *see also David W. Ferrall*, 56 ECAB ___ (Docket No. 04-2142, issued February 23, 2005).

In an August 30, 2005 report, Dr. Crenshaw advised that under the A.M.A., *Guides* appellant had a right arm impairment of 10 percent due to sensory loss and 30 percent due to strength loss. In a March 17, 2006 report, an Office medical adviser reviewed Dr. Crenshaw's findings. He advised that Dr. Crenshaw's finding of a 10 percent right arm impairment due to sensory loss conformed to the A.M.A., *Guides.* However, the physician's impairment rating of 30 percent due to strength deficit did not conform to the A.M.A., *Guides*.

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.[5] The Office properly referred Dr. Crenshaw's report to its Office medical adviser. The Office medical adviser assessed appellant's impairments in accordance with the A.M.A., *Guides* and agreed with Dr. Crenshaw's rating of 10 percent right arm impairment due to sensory loss. Table 16-15 page 492 of the A.M.A., *Guides* provides that the maximum sensory deficit of the median nerve below the mid forearm is 39 percent. Dr. Crenshaw advised that appellant had a Grade 3 or 26 percent sensory deficit under Table 16-10 on page 482. This was multiplied by the 39 percent found under Table 16-15 yielding a right upper extremity impairment of 10 percent. The medical evidence of record therefore establishes that appellant has 10 percent right upper extremity impairment due to sensory deficit.

The Office medical adviser found that Dr. Crenshaw's impairment rating of 30 percent due to strength deficit did not conform to the A.M.A., *Guides*. The A.M.A., *Guides* at page 508, prohibit a rating for decreased strength in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of force in the region being evaluated.[6] Thus, the Office medical adviser properly excluded Dr. Crenshaw's 30 percent strength deficit impairment rating in light of the noted sensory loss.

Accordingly, the Board finds that appellant has a 10 percent right upper extremity impairment due to sensory loss. The record indicates that appellant previously received awards for seven percent impairment of both upper extremities. As the medical evidence of record establishes that she now has a 10 percent right upper extremity impairment due to sensory loss, she is entitled to an additional 3 percent for her right upper extremity impairment. On return of the record, the Office should issue an appropriate award.

CONCLUSION

The Board finds that appellant has 10 percent permanent impairment of the right upper extremity.

[5] *See Thomas J. Fragale,* 55 ECAB ___ (Docket No. 04-835, issued July 8, 2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards,* Chapter 2.808.6(d) (August 2002).

[6] Office procedures also state that grip or pinch strength should not be used to calculate upper extremity impairment caused by a compression neuropathy such as carpal tunnel syndrome. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 Exhibit 4 (June 2003).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2006 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: November 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