United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 06-1535**
	)	**Issued: November 7, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Princeton, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 28, 2006 appellant filed a timely appeal of a February 14, 2006 decision of the Office of Workers' Compensation Programs regarding a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment to his right and left upper extremities, for which he received a schedule award on February 1, 2005.

FACTUAL HISTORY

On March 14, 2003 appellant, then a 40-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral carpal tunnel syndrome as a result of his federal employment. The Office accepted the claim for bilateral carpal tunnel syndrome. Appellant underwent a left carpal tunnel release on December 2, 2003 and a right carpal tunnel release on January 9, 2004.

In a report dated May 27, 2004, Dr. Nicholas Diamond, an osteopath, provided a history and results on examination. He noted grip strength and manual muscle strength testing results, and reported sensory examination was decreased to pinprick and light touch over the median nerve bilaterally. Dr. Diamond opined that for the right arm appellant had a 31 percent impairment for sensory deficit of the median nerve, citing Tables 16-15 and 16-10 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He also added a 3 percent impairment under Table 18-1 for pain, resulting in a 34 percent right arm impairment. For the left arm, Dr. Diamond also found a 31 percent impairment for median nerve sensory deficit, 30 percent for pinch strength deficit under Table 16-34, and 3 percent under Table 18-1 for pain, resulting in a combined impairment of 55 percent for the left arm.

The case was reviewed by an Office medical adviser, who opined that the impairment for the arms was 25 percent of the maximum 39 percent for the median nerve for sensory deficit, or 10 percent. The Office medical adviser stated that Dr. Diamond did not use the grading table, and that pain was included in the sensory impairment.

By decision dated February 1, 2005, the Office issued a schedule award for a 10 percent impairment to each upper extremity. The award ran for 62.4 weeks from May 27, 2004.

Appellant requested a hearing, which was held on November 30, 2005. By decision dated February 14, 2006, the hearing representative affirmed the February 1, 2005 decision.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[1] and section 10.404 of the implementing federal regulation,[2] 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* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[3]

ANALYSIS

The impairment ratings provided by Dr. Diamond consisted of three methods: (1) sensory deficit or pain based on Table 16-15 and 16-10; (2) a pain impairment under Chapter 18; and (3) loss of grip or pinch strength under Table 16-34. It is evident that the use of Chapter 18 would not be applicable in this case, as this chapter is only used when the condition cannot be adequately rated by other methods, and Dr. Diamond has applied Tables 16-15 and 16-10, which

[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.404.

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

include sensory deficit or pain.[4] In addition, the pinch strength impairment is used only in rare cases, and Dr. Diamond did not explain why it would be appropriate in this case.[5]

Both Dr. Diamond and the Office medical adviser provide an impairment rating based on sensory deficit or pain. Under Table 16-15, the maximum impairment for the median nerve is 39 percent.[6] The impairment is then graded based on Table 16-10, based on the severity of the impairment.[7] Although the medical adviser indicated that Dr. Diamond did not grade the impairment as provided in Table 16-10, Dr. Diamond did cite to Table 16-10 and he provided an impairment at 80 percent of the maximum impairment of 39 percent for the median nerve. This is a Grade 2 impairment under Table 16-10.[8] On the other hand, the medical adviser graded the impairment at 25 percent of the maximum 39 percent, which is a Grade 4 impairment.[9]

The medical evidence therefore contains conflicting opinions regarding the degree of permanent impairment under the A.M.A., *Guides*. The Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.[10] In view of the conflicting opinions between Dr. Diamond and the Office medical adviser, the case will be remanded to the Office for resolution of the conflict. The referee examiner should provide a reasoned opinion with respect to a permanent impairment under the A.M.A., *Guides*. If Table 16-10 is used, there should be a clear explanation of how the impairment was graded. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

There is a conflict in the medical evidence and the case will be remanded to the Office to secure a reasoned medical opinion on the schedule award issues presented.

[4] A.M.A., *Guides* 571.

[5] *Id.* at 508.

[6] *Id.* at 492, Table 16-15.

[7] *Id.* at 482, Table 16-10.

[8] A Grade 2 impairment is "decreased superficial cutaneous pain and tactile sensibility (decreased protective sensibility), with abnormal sensations or moderate pain, that may prevent some activities." The impairment is 61 to 80 percent of the maximum impairment for the identified nerve.

[9] A Grade 4 impairment is "distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity." The impairment is 1 to 25 percent of the maximum.

[10] 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 14, 2006 is set aside and the case remanded for further actions consistent with this decision of the Board.

Issued: November 7, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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