United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
	)	**Docket No. 06-1381**
and	)	**Issued: October 4, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Centralia, IL, Employer	)	

Appearances:
John S. Evangelisti, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 15, 2006 appellant, through her attorney, filed a timely appeal from a May 22, 2006 merit decision of the Office of Workers' Compensation Programs' hearing representative, affirming the denial of a schedule award for the right upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue is whether appellant has established that she is entitled to a schedule award for the right upper extremity as a result of her accepted employment injury.

FACTUAL HISTORY

On April 29, 2002 appellant, then a 41-year-old distribution clerk, filed a claim for an occupational disease alleging that her bilateral carpal tunnel syndrome and nerve entrapment in the left elbow were caused by factors of her federal employment. By letter dated August 16,

2002, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized carpal tunnel releases.[1]

By letter dated April 4, 2005, appellant, through her attorney, requested that the Office grant her a schedule award for a 20 percent impairment of the right upper extremity based on a March 17, 2005 medical report of Dr. Guy C. Heyl, Jr., a Board-certified orthopedic surgeon, who examined her right and left elbows, wrists and shoulders and found:

> "Examination of her upper extremities reveals deep tendon reflexes to be equal and active. She has decreased sensation over the C5 and C6 dermatomes on the right. She has a [G]rade 4 motor weakness in right elbow extension and a [G]rade 4 motor weakness in shoulder abduction. Range of motion in her left shoulder is normal. On the right shoulder, she has forward flexion of 180 degrees, extension 60 degrees, abduction 170 degrees, adduction 50 degrees, internal rotation 45 degrees and external rotation 90 degrees. Examination of her right elbow reveals a [four] centimeter medial incision, which is well-healed and non tender. Range of motion in the elbow is from full extension to 140 degrees of flexion with pronation and supination 90 degrees each. These are normal. The left elbow shows the same normal ranges of motion. Examination of the right wrist reveals flexion of 50 degrees, extension 50 degrees, radial deviation 15 degrees, ulnar deviation 45 degrees. The left wrist shows flexion of 65 degrees, extension 65 degrees, radial deviation 20 degrees and ulnar deviation 50 degrees. She has short incisions over the carpal tunnel in both wrists which are well-healed and non tender. Two[-]point discrimination in the hands reveals the thumb on the right to be [five] millimeters [(mm)] and the fifth finger to be [five] [mm] and the index, long and ring fingers to be [four] [mm]. On the left side, the thumb is [five] [mm] and the other digits are [four] [mm]. All of these two[-]point findings are normal. Grip strength, taken an average of three times, is 28 kilograms [(kg)] on the right and 33 [kg] on the left. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* [(A.M.A., *Guides*) 5th ed. 2001], gives the normals for a woman 44 years old to be 23.4 [kg] for the major hand and 21.5 [kg] for the minor hand. Examination of the right wrist reveals flexion of 50 degrees, extension 50 degrees, radial deviation 15 degrees, ulnar deviation 45 degrees. The left wrist shows flexion of 65 degrees, extension 65 degrees, radial deviation 20 degrees and ulnar deviation 50 degrees. She has short incisions over the carpal tunnel in both wrists, which are well-healed and non tender. Two[-]point discrimination in the hands reveals the thumb on the right to be [five] [mm] and the fifth finger to be [five] [mm] and the index, long and ring fingers to be [four] [mm]. On the left side, the thumb is [five] [mm] and the other digits are [four] [mm]. All of these two[-]point findings are normal. Grip strength, taken an average of three times, is 28 [kg] on the right and 33 [kg] on the left. The [(A.M.A., *Guides*) 5th ed. 2001], gives the normals for a woman 44 years old to be 23.4 [kg] for the major hand and 21.5 [kg] for the minor hand."

[1] The record reveals that appellant underwent carpal tunnel releases in 1999, 2000 and 2002.

Dr. Heyl reported essentially normal findings on examination of the lumbar spine and the right and left lower extremities. Utilizing the A.M.A., *Guides*, he determined that appellant had a 20 percent impairment of the right upper extremity. Dr. Heyl stated that reduced sensation in the C5-6 dermatomes and reduced motion in the right shoulder each constituted a three percent impairment and that reduced motion in the right wrist constituted a five percent impairment. Based on the A.M.A., *Guides* 509, Tables 16-32 and 16-34 and using appellant's left grip measurements as the norm, he determined that her right grip strength yielded a 10 percent impairment of the right upper extremity. Dr. Heyl found that these numbers combined, not arithmetically added, resulted in a 20 percent impairment of the right upper extremity. He further found that appellant had a three percent whole person impairment as contributed by reduced motion in the cervical spine region. In addition, she had a 13 percent whole person impairment as contributed by the lumbar spine due to a soft tissue injury, which constituted a 5 percent impairment according to the A.M.A., *Guides* 404, Table 15-7 and an 8 percent impairment for reduced motion. Dr. Heyl stated that the upper extremity represented 60 percent of the whole person thus, a 20 percent impairment of the right upper extremity converted to a 12 percent whole person impairment and all of these combined yielded a 26 percent impairment of the whole person. He opined that the stresses of appellant's job caused soft tissues injuries to her neck, shoulder, elbow and wrists, which led to her present abnormal physical findings. Dr. Heyl concluded that when she was off work or shifted to a much lighter job all of her symptoms got better, which was proof that her work stresses were responsible for her troubles.

On July 25, 2005 an Office medical adviser reviewed appellant's medical records including, Dr. Heyl's March 17, 2005 report. He indicated that her claim had been accepted for bilateral carpal tunnel syndrome and cubital syndrome and that she underwent carpal tunnel releases on the right and left wrists on or about December 30, 1999. The Office medical adviser noted appellant's complaints of occasional episodes of numbness and tingling in the right wrist and that she had similar symptoms of a much lesser degree in the left hand. He opined that Dr. Heyl's grip strength findings of 28 kg on the right and 33 kg on the left were above the threshold for granting a schedule award for permanent impairment according to the A.M.A., *Guides* 509, Tables 16-31 and 16-32. The Office medical adviser stated that there were no additional pertinent positive physical examination findings. He concluded that there was no objective evidence to support permanent impairment for either upper extremity as a result of sequela for carpal tunnel syndrome according to the medical data submitted. The Office medical adviser further concluded that appellant had a zero percent impairment each of the right and left upper extremity and that she reached maximum medical improvement six months ago on June 30, 2000 following surgery.

By decision dated October 19, 2005, the Office denied appellant's claim for a schedule award based on the Office medical adviser's opinion that the evidence did not demonstrate a permanent impairment of the right upper extremity.

In a February 24, 2006 letter, appellant, through her attorney, requested reconsideration. In a February 15, 2006 letter, Dr. Heyl disagreed with the Office medical adviser's opinion. He reiterated his opinion that the stresses of appellant's job caused soft tissue injuries to her neck, shoulder, elbow and wrists which led to her current abnormal physical findings. Dr. Heyl stated that his impairment rating included impairment from sensory loss in the right upper extremity due to pressure on the nerve roots in her neck, stiffness in her right wrist and reduced motion in

her cervical and lumbar spines. He noted that the lumbar spine problems related to a separate October 2000 work injury. Dr. Heyl argued that the Office medical adviser failed to take into account any of the findings from other anatomical regions except appellant's carpal tunnel surgeries which caused a five percent impairment of the right upper extremity due to stiffness in the right wrist. The Office medical adviser ignored this anatomic finding in his evaluation and used the normal strengths on page 508 of the A.M.A., *Guides* to conclude that appellant had no grip strength weakness while he used the average of three readings each for grip and pinch strength and compared them to the opposite extremity in calculating an impairment rating.

On March 27, 2006 the prior Office medical adviser reviewed appellant's medical records including, Dr. Heyl's February 15, 2006 letter. He referred to the first paragraph on page 494 of the A.M.A. *Guides* and stated that, when discussing impairment for compression neuropathics which was present in the instant case, no additional impairment values were given for decreased motion in the absence of complex regional pain syndromes (CRPS). Citing the last paragraph on page 508 of the A.M.A., *Guides*, he stated that he compared the grip strength measurements for both extremities to the average normal strengths listed in Tables 16-31 through 16-33 of the A.M.A., *Guides* to determine that no impairment was awarded due to residual grip weakness. The Office medical adviser further stated that, contrary to Dr. Heyl's contention that other injuries to appellant's body should also have been accepted as work related, he did not decide which injuries were work related. He concluded that there was no new objective evidence to support any additional upper extremity permanent impairment at that time.

In a decision dated May 22, 2006, the Office denied modification of the October 19, 2005 decision. The Office found that its medical adviser's opinion constituted the weight of the medical opinion evidence in finding that appellant was not entitled to a schedule award for permanent impairment of the right upper extremity.

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 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 of loss of use.[4] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[5]

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.404.

[4] 5 U.S.C. § 8107(c)(19).

[5] 20 C.F.R. § 10.404; *see also Tommy R. Martin*, 56 ECAB ___ (Docket No. 03-1491, issued January 21, 2005); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

Office procedures[6] provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[7]

ANALYSIS

In this case, the Office accepted appellant's claim for bilateral carpal tunnel syndrome. In support of her claim for a schedule award, she submitted Dr. Heyl's March 17, 2005 medical report. The Board has carefully reviewed Dr. Heyl's report and finds that, while he determined that appellant sustained a 20 percent impairment of the right upper extremity impairment, he improperly applied the A.M.A., *Guides*.

Dr. Heyl's finding that appellant had a 20 percent impairment of the right upper extremity relied, in part, on grip strength deficits. He noted that she had grip strength on the right of 28 kg as opposed to 33 kg on the left. Dr. Heyl determined that appellant's right grip strength constituted a 10 percent impairment of the right upper extremity.[8] In a February 15, 2006 letter, he reiterated his use of grip strength deficits in calculating a 20 percent impairment rating for the right upper extremity. However, as noted above, the A.M.A., *Guides* provides that in carpal tunnel syndrome, additional impairment values are not given for decreased grip strength.[9] The Board finds that Dr. Heyl's report is insufficient to establish appellant's entitlement to a schedule award.

The Office medical adviser utilized the A.M.A., *Guides* and the findings provided by Dr. Heyl. He determined that his grip strength findings were above the threshold for granting a schedule award for permanent impairment according to the A.M.A., *Guides* 509, Tables 16-31 and 16-32 and that there were no additional pertinent positive physical examination findings. In addition, there was no objective evidence to support permanent impairment for either upper extremity as a result of sequela for carpal tunnel syndrome according to the medical data submitted. The Office medical adviser determined that appellant had a zero percent impairment each of the right and left upper extremity. He explained that, when discussing impairment for compression neuropathies, which was present in the instant case, no additional impairment values were given for decreased motion in the absence of CRPS based on page 494 of the A.M.A. *Guides*. The Office medical adviser referred to the last paragraph on page 508 of the A.M.A., *Guides* and explained that he compared the grip strength measurements for the right and left upper extremities to the average normal strengths listed in Tables 16-31 through 16-33 of the A.M.A., *Guides* in determining that no impairment was warranted due to residual grip weakness. He concluded that there was no new objective evidence to support any additional upper extremity permanent impairment at that time.

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[6] *See* FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- *Medical, Schedule Awards*, Chapter 3.700, exhibit 4 (June 2003). *See also Cristeen Falls*, 55 ECAB ___ (Docket No. 03-1665, issued March 29, 2004).

[7] A.M.A., *Guides* 491, 482, 484, 492, respectively; *Joseph Lawrence, Jr.*, 53 ECAB 331(2002).

[8] *Id.* at 509, Table 16-34.

[9] *See supra* note 7; *see also Mary L. Henninger*, 52 ECAB 408 (2001).

The Office medical adviser provided a well-rationalized impairment rating according to the appropriate tables of the A.M.A., *Guides*. The Board finds that his medical opinion is sufficient to establish that appellant is not entitled to a schedule award for the right upper extremity.

CONCLUSION

The Board finds that appellant has failed to establish that she is entitled to a schedule award for the right upper extremity as a result of her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2006 and October 19, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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