United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	**Docket No. 05-763**
	)	**Issued: September 1, 2006**
U.S. POSTAL SERVICE, POST OFFICE, El Paso, TX, Employer	)	

Appearances:
Antonio V. Silva, 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 February 15, 2005 appellant, through her attorney, filed a timely appeal from a May 7, 2004 merit decision of the Office of Workers' Compensation Programs granting her a schedule award and a January 24, 2005 hearing representative's decision affirming the schedule award determination. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decisions.

ISSUE

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

FACTUAL HISTORY

On December 9, 2002 appellant, then a 43-year-old mail processing clerk, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome due to factors of her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome. Appellant stopped work on December 2, 2002.

Dr. James W. Bean, a Board-certified orthopedic surgeon, performed a left carpal tunnel release on December 12, 2002 and a right carpal tunnel release on February 20, 2003. Appellant returned to part-time limited-duty employment on April 22, 2003 and to full-time limited-duty employment on October 25, 2003.

On January 7, 2004 Dr. Joseph F. Wilson, a chiropractor, performed an impairment evaluation at the request of Dr. Bean. He listed physical findings of intact sensation without tenderness and noted that she had a negative Tinel's sign and Phalen's sign. Dr. Wilson diagnosed bilateral carpal tunnel syndrome and found that appellant had a two percent impairment of the left wrist and a three percent impairment of the right wrist due to loss of range of motion, which he added to find a five percent impairment of each wrist. He then found that she had a five percent bilateral impairment resulting from lost grip strength for a total combined upper extremity impairment of ten percent.

Appellant submitted a claim for a schedule award on February 18, 2004. By letter dated March 2, 2004, the Office referred her to Dr. Angelo Romagosa, a physiatrist, for a second opinion evaluation to determine the degree of impairment of her upper extremities.

In a clinic note dated March 9, 2004, Dr. Bean noted that appellant continued to have intermittent pain and numbness of the hands. He recommended a repeat electromyogram (EMG) and nerve conduction velocity (NCV) study.

In a report dated March 18, 2004, Dr. Romagosa listed normal range of motion measurements. On physical examination, he related:

> "Sensation is decreased to pinprick and light touch over the volar aspect of the first and second digits of the hands bilaterally. Tinel's test is positive at the wrist on the left and negative on the right. Biceps, triceps and brachial radialis reflexes were +2 and symmetrical bilaterally. On manual muscle testing there is 5/5 strength throughout the major muscle groups, with the exception of bilateral abductor pollicis brevis muscle which is 4/5."

Dr. Romagosa diagnosed bilateral carpal tunnel syndrome. Referring to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (A.M.A., *Guides*), he found that appellant had no impairment due to loss of range of motion. Dr. Romagosa graded her loss of strength for the median nerve as 25 percent, which he multiplied by 10 percent, the maximum impairment of the median nerve below the midforearm for motor deficit, to find a 3 percent impairment of each upper extremity or a 6 percent combined upper extremity impairment.[1] He next determined that appellant a 23 percent impairment due to decreased sensation in the median nerve. Dr. Romagosa multiplied the 23 percent by a graded 10 percent impairment for sensory deficit to find a 2 percent impairment of each side, or a 4 percent combined impairment.[2] He combined the 4 percent impairment due to the sensory

[1] A.M.A., *Guides* at 492, 484, Tables 16-15, 16-11.

[2] *Id*. at 492, 482, Tables 16-15, 16-10.

deficit with the 6 percent impairment for motor deficit to find a total of a 10 percent combined upper extremity impairment.

An EMG obtained on April 18, 2004 revealed a "mildly chronic axon injury with reinnervation" but no "unstable axon pattern or axonal injury in either hand." The results of the NCV study were interpreted as normal.

An Office medical adviser reviewed Dr. Romagosa's report on April 27, 2004. He found that appellant reached maximum medical improvement on April 18, 2004. The Office medical adviser determined that she had a bilateral sensory impairment of the median nerve below the midforearms for which a maximum 39 percent is allowed according to Table 16-15 on page 492 of the A.M.A., *Guides*. He multiplied the 39 percent sensory impairment of the median nerve by 10 percent for graded sensory deficit according to Table 16-10 on page 482 to find a 4 percent upper extremity impairment on both sides. The Office medical adviser then found that appellant had a Grade 4, or 25 percent, motor deficit impairment according to Table 16-11 on page 484 which he multiplied by 10 percent, the maximum impairment of the median nerve due to motor deficit, to find a 3 percent upper extremity impairment. He combined the three percent motor deficit impairment with the four percent sensory deficit to find a seven percent impairment of both the right and left upper extremities.

By decision dated May 7, 2004, the Office granted appellant a seven percent impairment of the right arm and a seven percent impairment of the left arm. The period of the award ran for 43.68 weeks from March 18, 2004 to January 7, 2005.

On May 17, 2004 appellant requested an oral hearing before an Office hearing representative. At the hearing, held on October 26, 2004, she argued that the Office should have relied upon the impairment evaluation from Dr. Wilson as it was more comprehensive.

In a decision dated January 24, 2005, the hearing representative affirmed the May 7, 2004 decision.

In a February 24, 2006 response to the Board's request for a pleading, the Director of the Office submitted a memorandum in justification of the Office's decision as consistent with the law and the facts.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,[3] and its implementing federal regulation,[4] sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

claimants.[5] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[6]

Office procedures specifically provide that an 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

The Office accepted appellant's claim for bilateral carpal tunnel syndrome due to her employment. She underwent a left carpal tunnel release on December 12, 2002 and a right carpal tunnel release on February 20, 2003. On February 18, 2004 appellant requested a schedule award. In support of her request, she submitted a January 7, 2004 impairment evaluation from Dr. Wilson, a chiropractor, who found that she had a 10 percent bilateral upper extremity impairment. The report of Dr. Wilson, however, does not constitute a basis for a schedule award determination. Chiropractors are defined as physicians under the Act only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[8] An opinion from a chiropractor with respect to permanent impairment of a scheduled extremity or other member of the body is beyond the scope of the statutory limitation of a chiropractor's services.[9] Dr. Wilson's report is of no probative value on the issue of appellant's entitlement to a schedule award for the upper extremities. The Office, consequently, properly referred her for a second opinion examination.

In a report dated March 18, 2004, Dr. Romagosa found that appellant had a positive Tinel's test on the left side and decreased sensation "over the volar aspect of the first and second digits of the hands bilaterally." He measured full range of motion of the wrists but noted an impairment due to loss of strength and sensation in the median nerve below the midforearm. Dr. Romagosa graded appellant's loss of strength for the median nerve as 25 percent, which he multiplied by 10 percent, the maximum impairment of the median nerve below the midforearm for motor deficit, to find a 3 percent impairment of each upper extremity or 6 percent combined upper extremity impairment.[10] He next determined that appellant had a 23 percent impairment due to decreased sensation in the median nerve.[11] Dr. Romagosa multiplied the 23 percent by a graded 10 percent impairment for sensory deficit to find a 2 percent impairment of each side, or a

[5] 20 C.F.R. § 10.404(a).

[6] *See* FECA Bulletin No. 01-5 (issued January 29, 2001).

[7] *Id.*

[8] 5 U.S.C. § 8101(2); *see also Isabelle Mitchell*, 55 ECAB ___ (Docket No. 04-830, issued July 8, 2004).

[9] *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

[10] A.M.A., *Guides* at 492, 484, Tables 16-15, 16-11.

[11] It appears from Table 16-15 on page 492 of the A.M.A., *Guides* that the maximum impairment due to sensory deficit or pain in the median nerve below the midforearm is 39 percent rather than 23 percent.

4 percent combined impairment.[12] He combined the 4 percent impairment due to the sensory deficit with the 6 percent impairment for motor deficit to find a total of a 10 percent combined upper extremity impairment, or a 5 percent impairment of each upper extremity.

An Office medical adviser reviewed Dr. Romagosa's findings and determined that, according to the A.M.A., *Guides*, appellant had a bilateral 39 percent sensory impairment of the median nerve below the midforearm according to Table 16-15 on page 492 of the A.M.A., *Guides*. He multiplied the 39 percent sensory impairment of the median nerve by 10 percent for graded sensory deficit according to Table 16-10 on page 482 to find a 4 percent upper extremity impairment on both sides.[13] The Office medical adviser then found that appellant had a Grade 4, or 25 percent, motor deficit according to Table 16-11 on page 484 which he multiplied by 10 percent, the maximum impairment of the median nerve due to motor deficit, to find a 3 percent upper extremity impairment. Combining the three percent motor deficit impairment with the four percent sensory deficit yields a seven percent impairment of both the right and left upper extremities.[14] The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the objective findings; thus, his report constitutes the weight of the evidence and establishes that appellant has no more than a seven percent impairment of each upper extremity. The record contains no probative medical evidence showing that she is entitled to a greater schedule award.

On appeal appellant, through counsel, argues that she received an award for loss of sensation but not for pain. The Office medical adviser, however, found that she had a four percent impairment for loss of sensation, which includes pain, pursuant to Table 16-15 and Table 16-10 on pages 492 and 482 of the A.M.A., *Guides*. Counsel further argues that she is entitled to a greater schedule award as she has a decreased earning capacity. The Boards notes, however, that the amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.[15]

CONCLUSION

The Board finds that appellant has no more than a seven percent permanent impairment of the right arm and a seven percent permanent impairment of the left arm for which she received a schedule award.

[12] A.M.A., *Guides* at 492, 482, Tables 16-15, 16-10.

[13] The Office medical adviser properly rounded the impairment percentages to the nearest whole point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (June 2003).

[14] When sensory and motor functions are involved the impairment values derived for each are combined. *Id*. at 494, 481.

[15] *Ruben Franco*, 54 ECAB 496 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 24, 2005 and May 7, 2004 are affirmed.

Issued: September 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