United States Department of Labor
Employees' Compensation Appeals Board

M.G., Administratrix for the Estate of J.G., Appellant	)	
and	)	**Docket No. 05-1994** **Issued: September 5, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Lancaster, 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 September 27, 2005 the employee filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 13, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the employee had more than a 10 percent impairment of both the left and right upper extremities for which he received a schedule award.

FACTUAL HISTORY

This is the second appeal in the present case. In a December 3, 2001 decision, the Board set aside the Office's decision dated January 12, 2000. The Board found that the Office failed to consider the employee's preexisting impairment with his employment-related impairment when calculating his impairment rating. The Board remanded the case and instructed the Office to further develop the medical evidence as to his bilateral upper extremity condition and obtain an

impairment rating based on the employee's accepted injuries and any preexisting medical conditions.[1] The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.[2]

There is pertinent medical evidence submitted prior to the Board's decision which is relevant to the present appeal before the Board. Appellant submitted a report from Dr. David Weiss, an osteopath, dated September 14, 1999, who determined that the employee reached maximum medical improvement on August 26, 1999. He noted findings upon physical examination of positive Tinel's sign on the left and right, sensory examination revealed sensory deficit over the left C5, C6 and C7 dermatomes and correlate to the median ulnar and radial nerve distribution of the left upper extremity, sensory examination of the right reveals sensory deficit over the C6 and C7 dermatomes in the right hand over the median nerve distribution of the right upper extremity. Dr. Weiss diagnosed cumulative and repetitive trauma disorder, bilateral carpal tunnel syndrome, left radial tunnel syndrome, left ulnar nerve dysfunction at the cubital tunnel, right ulnar nerve neuropathy at the cubital tunnel, status post left carpal tunnel syndrome times bilaterally, left radial tunnel decompression, right ulnar nerve transposition and status post carpal tunnel syndrome release times bilaterally. He noted that in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] the employee sustained a 64 percent impairment of the left upper extremity and a 46 percent impairment of the right upper extremity. Dr. Weiss noted left radial nerve entrapment for an impairment rating of 15 percent,[4] left ulnar nerve entrapment at the elbow for an impairment rating of 30 percent[5] and left median nerve entrapment at the wrist for an impairment rating of 40 percent.[6] With regard to the right upper extremity, he noted right ulnar nerve entrapment at the elbow for an impairment rating of 10 percent[7] and right median nerve entrapment at the wrist for an impairment rating of 40 percent.[8] Dr. Weiss opined that the work-related injury of January 15, 1994 was the competent producing factor for the employee's subjective and objective findings.

The Office referred appellant to Dr. Steven J. Valentino, an osteopath and Board-certified orthopedic surgeon, for an evaluation of the extent of any permanent impairment arising from his accepted employment injury and any preexisting medical conditions in accordance with the

[1] The Office accepted appellant's claim for tendinitis of both elbows and bilateral carpal tunnel syndrome and authorized carpal tunnel release. In a decision dated April 29, 1998, he was awarded 10 percent impairment for each upper extremity. The period of the award was from February 20, 1997 to May 2, 1998.

[2] Docket No. 00-1734 (issued December 3, 2001).

[3] A.M.A., *Guides*, (4th ed. 1993).

[4] *Id*. at 57, Table 16.

[5] *Id.*

[6] *Id*. at 57, Table 16.

[7] *Id.*

[8] *Id*. at 57, Table 16.

A.M.A, *Guides*.[9] In a report dated January 15, 2002, he noted that motor examination, strength and mass and tone about the upper extremities were normal, with mild diffuse weakness about the right lower extremity which rated 4/5; however, the latter was not related to the employee's industrial work-related injury. Dr. Valentino noted no evidence of myelopathy, the sensory examination was intact, there was full range of motion of the shoulders, elbows, wrists and hands and the shoulder examination was negative for instability and impingement. Examination of the elbows revealed absence of synovitis, effusion or internal derangement, epicondylar region, forearm flexors and extensors were normal, there was no crepitus upon range of motion, the olecranon and antecubital region were normal, the examination of the wrist revealed absence of synovitis, effusion or internal derangement, carpal bones were normal and the Phalen's and Tinel's signs were normal. Dr. Valentino diagnosed a history of bilateral carpal tunnel syndrome and bilateral elbow tendinitis and advised that appellant reached maximum medical improvement on February 20, 1997. He noted that appellant underwent carpal tunnel decompression with subsequent electromyogram (EMG) findings, noting a significant improvement, with normal sensibility and apposition strength. Dr. Valentino opined that, in accordance with the A.M.A., *Guides*, he had no findings remarkable for any residuals for tendinitis and no permanent functional loss of use of the bilateral upper extremities; however, calculated a five percent impairment rating of the left and right upper extremity for findings remarkable for an abnormal EMG in the past.[10]

Dr. Valentino's report and the case record were referred to an Office's medical adviser who, in a report dated January 31, 2002, concurred with Dr. Valentino's determination that appellant sustained a five percent impairment of both the left and right upper extremities. He noted that Dr. Valentino found no evidence of impairment of the radial or ulnar nerves from either arm and no impairment from tendinitis. The Office medical adviser indicated that Dr. Valentino's impairment of 5 percent was based on the fifth edition of the A.M.A., *Guides*[11] and the prior award of 10 percent bilateral impairment was based on Table 16, page 57 of the fourth edition of the A.M.A., *Guides* which was deleted from the fifth edition.

In a decision dated February 8, 2002, the Office denied appellant's claim for an additional schedule award for the left and right upper extremity.

On February 19, 2002 appellant requested an oral hearing before an Office hearing representative. The hearing was held on October 23, 2002.

In a decision dated January 16, 2003, the hearing representative set aside the February 8, 2002 decision dated and remanded the claim for further development.[12] He instructed the Office to seek clarification from Dr. Valentino as to the tables and charts of the A.M.A., *Guides* used to determined appellant's upper extremity impairment. The hearing representative further noted

[9] A.M.A., *Guides* (5th ed. 2001).

[10] *See Impairment Rating of Entrapment/Compression Neuropathies*, page 493-95 (A.M.A., *Guides*).

[11] *Id.*

[12] The record reflects that the employee died on August 29, 2002.

that appellant, through his attorney, advised that he would not pursue the recurrence of disability claim filed on August 18, 1997.

In a letter dated February 7, 2003, the Office requested a supplemental report from Dr. Valentino. In a supplemental report dated February 11, 2003, Dr. Valentino stated that he used Tables 16-10, 16-11, 16-12, 16-15, Figure 16-47 and 16-48 of the A.M.A., *Guides* in determining the employee's upper extremity impairment.

In decision dated February 20, 2003, the Office denied the employee's claim for an additional impairment of the upper extremities.

By letter dated February 25, 2003, appellant requested an oral hearing before an Office hearing representative. The hearing was held on October 22, 2003. In a letter dated November 7, 2003, appellant, through her attorney, noted that Dr. Valentino's report of February 11, 2003 was insufficient because he failed to explain how he applied the A.M.A., *Guides*. Further, she asserted that there was a conflict in opinion between Dr. Valentino and Dr. Weiss as to the extent of the employee's upper extremity impairment.

By decision dated January 16, 2004, the hearing representative set aside the February 20, 2003 decision. The hearing representative instructed the Office to request further clarification from Dr. Valentino as to how he applied the cited tables and charts in the A.M.A., *Guides* to determine the employee's upper extremity impairment.

In a letter dated February 18, 2004, the Office requested a supplemental report from Dr. Valentino. In a supplemental report dated March 9, 2004, Dr. Valentino referred to his February 11, 2003 report and noted that the employee's neurologic function was normal, range of motion was normal and there was no objective evidence of impairment; however, he noted that the employee had a positive EMG which resulted in a five percent impairment rating.[13]

Dr. Valentino's report and the case record were referred to the Office's medical adviser who, in a report dated March 31, 2004, noted that the employee reached maximum medical improvement on February 20, 1997. The medical adviser used Dr. Valentino's findings upon examination to determine the impairment rating in accordance with the A.M.A., *Guides* and opined that the employee sustained five percent impairment for each upper extremity. The medical adviser noted that bilateral carpal tunnel syndrome has a maximum award of five percent, specifically when neurologic function and range of motion were normal. In this instance, Dr. Valentino determined that there were no residuals of tendinitis. The medical adviser further opined that Dr. Weiss' report was not consistent with the medical record.

In a decision dated May 10, 2004, the Office denied the employee's claim for an additional impairment of the upper extremities.

By letter dated May 12, 2005, appellant requested an oral hearing before an Office hearing representative. The hearing was held on February 14, 2005.

[13] *See* A.M.A., *Guides* at 493-95.

In a decision dated May 13, 2005, the hearing representative affirmed the decision of the Office dated May 10, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[14] and its implementing regulation[15] 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 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* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[16]

ANALYSIS

The Office accepted that the employee developed tendinitis of both elbows and bilateral carpal tunnel syndrome and paid appropriate compensation. It granted schedule awards for 10 percent impairment of the left and right upper extremities. On appeal, the Board remanded the case and instructed the Office to further develop the medical evidence as to the employee's bilateral upper extremity condition and obtain an impairment rating based on the his accepted injuries and any preexisting medical conditions.

In December 2001, the Office referred the employee for a second opinion to Dr. Valentino. In reports dated January 15, 2002, February 11, 2003 and March 9, 2004, he opined that, in accordance with the A.M.A., *Guides*, the employee had no findings remarkable for any residuals for tendinitis and no permanent functional loss of use of the bilateral upper extremities; however, Dr. Valentino determined that he sustained a five percent impairment rating of the left and right upper extremity for finding remarkable for an abnormal EMG in the past. He noted that motor and sensory examination was normal, there was full range of motion of the shoulders, elbows, wrists and hands, examination of the elbows, epicondylar region, forearm flexors and extensors were normal, examination of the wrist was normal and Phalen's and Tinel's signs were normal. Dr. Valentino diagnosed a history of bilateral carpal tunnel syndrome and bilateral elbow tendinitis and advised that the employee reached maximum medical improvement on February 20, 1997. He therefore, concluded that there was no additional residual impairment attributable to these conditions. Dr. Valentino calculated a five percent impairment rating of the left and right upper extremity for findings remarkable for an abnormal EMG in the past.[17]

[14] 5 U.S.C. § 8107.

[15] 20 C.F.R. § 10.404 (1999).

[16] *See id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[17] *See* A.M.A., *Guides* at 493-95.

Office procedures specifically 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 of the A.M.A., *Guides*.[18]

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 computerized tomography (CT) scan 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 EMG testing of the thenar muscles: a residual CT 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."[19]

In this instance, Dr. Valentino based his rating on category two above and noted that the employee underwent carpal tunnel decompression with subsequent EMG findings noting a significant improvement, the employee had normal sensibility and apposition strength, there were no findings remarkable for any residuals for tendinitis and no permanent functional loss of use of the bilateral upper extremities. He properly determined that the employee would be entitled to an impairment rating not to exceed five percent.

The Board finds that, under the circumstances of this case, the opinion of Dr. Valentino established that the employee did not sustain a work-related impairment of the upper extremities greater than the 10 percent previously granted.

In support of his claim for an additional schedule award, the employee submitted a report from Dr. Weiss dated September 14, 1999. He indicated that there were positive subjective and objective findings as well as the positive EMG, which he associated with a 64 percent impairment of the left upper extremity and a 46 percent impairment of the right upper extremity in accordance with the fourth edition of the A.M.A., *Guides.*[20] Dr. Weiss noted left radial nerve

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[18] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[19] A.M.A., *Guides* at 495.

[20] A.M.A., *Guides*, (4th ed. 1993).

entrapment for an impairment rating of 15 percent,[21] left ulnar nerve entrapment at the elbow for an impairment of 30 percent[22] and left median nerve entrapment at the wrist for an impairment of 40 percent.[23] With regard to the right upper extremity, Dr. Weiss noted right ulnar nerve entrapment at the elbow for an impairment of 10 percent[24] and right median nerve entrapment at the wrist for an impairment of 40 percent.[25] However, his report was based on the fourth edition of the A.M.A., *Guides* and the fifth edition had been adopted by the Office effective February 1, 2001.[26] The Board notes that the method for rating impairment of carpal tunnel syndrome under the fourth and fifth editions is dissimilar.[27] For instance, Dr. Weiss' calculations were based on Table 16, page 57 of the fourth edition of the A.M.A., *Guides*, Upper Extremity Impairment Due to Entrapment Neuropathy; however, this section was deleted from the fifth editions of the A.M.A., *Guides*. The Board notes that the employee failed to submit an updated report from Dr. Weiss based on the fifth editions of the A.M.A., *Guides* and there are no findings in his September 14, 1999 report, which appear to correlate to the fifth editions, which would afford the employee a greater impairment rating than that which was previously granted.

The Office medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Valentino's January 15, 2002, February 11, 2003 and March 9, 2004 reports and determined that the employee had no impairment rating greater than five percent impairment of each upper extremity. He noted that Dr. Valentino found no evidence of impairment of the radial or ulnar nerves from either arm and no impairment from tendinitis. As noted above, the A.M.A., *Guides* provide that, when a residual CT is still present, an impairment rating not to exceed five percent of the upper extremity may be justified.

This evaluation conforms to the A.M.A., *Guides* and establishes that the employee has no impairment of the upper extremities greater than the 10 percent previously granted.

On appeal, appellant asserts that there is a conflict of opinion between the employee's treating physician, Dr. Weiss and the Office referral physician, Dr. Valentino, with regard to the impairment rating of the upper extremities. The Board finds this argument to be without merit. As noted above, Dr. Weiss' report was based on the fourth edition of the A.M.A., *Guides* and the fifth edition had been adopted by the Office effective February 1, 2001. Dr. Weiss' calculations were based on Table 16, page 57 of the fourth edition of the A.M.A., *Guides*; however, this section was deleted from the fifth edition of the A.M.A., *Guides*. Therefore, the Board finds his report insufficient to give rise to a conflict of opinion in this case.

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[21] *Id*. at 57, Table 16.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] FECA Bulletin No. 01-05, January 29, 2001; *Joseph Lawrence, Jr.*, 53 ECAB 331(2002).

[27] Compare analysis of entrapment neuropathy in Chapter 3, page 56 of the fourth edition with section 16.5d, page 495 of the fifth edition.

CONCLUSION

The Board finds that appellant is, therefore, not entitled to an additional schedule award for the upper extremities.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 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