United States Department of Labor
Employees' Compensation Appeals Board

P.P., Appellant	)	
and	)	**Docket No. 06-929**
	)	**Issued: September 28, 2006**
U.S. POSTAL SERVICE, ABSECON POST OFFICE, Absecon, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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 March 14, 2006[1] appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated March 8 and November 4, 2005, granting schedule awards. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than 18 percent impairment of her right upper extremity and 4 percent impairment of her right lower extremity, for which she received schedule awards.

[1] Although appellant's appeal letter was not filed by the Board until March 14, 2006, it was postmarked on March 8, 2006 within one year of the March 8, 2005 schedule award decision. Therefore, appellant filed a timely appeal of both merit decisions. *See* 20 C.F.R. § 501.3(d)(2)(ii).

FACTUAL HISTORY

On July 19, 1999 appellant, then a 33-year-old distribution clerk, filed a traumatic injury claim alleging on that date she injured her neck, shoulder, hip and back in the performance of duty. The Office accepted appellant's claim for cervical, thoracic and lumbar strains.

On October 14, 2002 Dr. David Weiss, an osteopath, evaluated appellant for schedule award purposes. He noted her history of injury and described her continued cervical pain and stiffness, right upper extremity numbness going to her right hand, right shoulder pain, lumbar pain and great toe numbness in her right lower extremity. Dr. Weiss examined appellant's lumbar spine and found limitations in her range of motion. In regard to appellant's cervical spine, Dr. Weiss found marked paravertebral muscle spasm and tenderness with pain on extremes of range of motion. Appellant's right shoulder had 170 degrees of abduction with marked rhomboid tenderness and spasm as well as perceived sensory deficit over the C6 and 7 dermatomes of the right upper extremity. Dr. Weiss found positive Tinel's and Phalen's signs. He noted that appellant's grip strength performed at Level 3 on the Jamar hand Dynamometer on the right was 26 kilograms (kg) of force strength and on the left was 36 kg of force strength. Dr. Weiss stated that this equated to a strength deficit of 28 percent of the right hand.

Dr. Weiss diagnosed chronic post-traumatic cervical and lumbosacral strain and sprain as accepted by the Office. He also diagnosed, herniated disc at C3-4 based on magnetic resonance imaging scan as well as aggravation of preexisting multilevel degenerative disc disease of the cervical spine. Dr. Weiss found right cervical radiculopathy at C5, 6 and 7 based on electromyelogram. He diagnosed right shoulder girdle strain and sprain. Dr. Weiss also found post-traumatic right carpal tunnel syndrome as well as cervical and lumbar myofascial pain syndrome.

Dr. Weiss concluded that appellant had six percent impairment of the right C6 nerve root due to sensory deficit and four percent impairment of the right C7 nerve root due to sensory deficit. He also found that appellant had 10 percent impairment due to right hand grip strength deficit. He provided citations to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[2] in support of his ratings, but no explanation of how he reached the rating. Dr. Weiss combined these impairments to reach 18 percent impairment of the right upper extremity. To this he added an additional 3 percent impairment due to pain for a total of 21 percent impairment.

In regard to appellant's right lower extremity, Dr. Weiss found that appellant had four percent impairment due to right S1 sensory deficit and again added an additional three percent impairment due to pain for a total of seven percent impairment of the right lower extremity. Dr. Weiss concluded that appellant had reached maximum medical improvement on October 14, 2002.

Appellant's attorney requested a schedule award on her behalf on January 8, 2003. Appellant completed a claim for compensation requesting a schedule award on January 25, 2003.

[2] A.M.A., *Guides* (5th ed. 2000).

Dr. James G. Lowe, a Board-certified neurosurgeon, completed a report on April 4, 2003 and opined that appellant had not yet reached maximum medical improvement as she could perhaps pursue surgical options. On April 22, 2003 appellant's attorney requested that her schedule award request be placed on hold while appellant investigated additional treatment alternatives. However, in a letter dated July 14, 2004, appellant's attorney noted that she was not interested in surgery and wished to proceed with adjudication of her schedule award.

The Office medical adviser reviewed Dr. Weiss' report on January 29, 2005. Dr. Weiss listed that appellant had sensory impairment of the C6 nerve root of six percent as well as sensory impairment of the C7 nerve root of four percent. He also awarded appellant 10 percent impairment due to loss of grip strength. The Office medical adviser combined these impairment ratings to reach 18 percent impairment of the right upper extremity. The Office medical adviser provided the page citations to the A.M.A., *Guides* for the above impairments without further explanation. He stated that he did not add three percent for pain due as the measurements were unreliable. The Office medical adviser also found that appellant had S1 sensory impairment of four percent in the right lower extremity.

On March 8, 2005 the Office granted appellant schedule awards for 18 percent impairment of her right upper extremity and 4 percent impairment of her right lower extremity.

Appellant, through her attorney requested an oral hearing on March 24, 2005. On August 9, 2005 appellant's attorney altered this to a request for review of the written record. He argued that appellant was entitled to an additional three percent impairment due to pain in accordance with Figure 18-1 of the A.M.A., *Guides*.

By decision dated November 4, 2005, the hearing representative found that Dr. Weiss did not offer any supportive rationale for his inclusion of the additional three percent for pain in the upper and lower extremities. She concluded that the Office medical adviser's report was entitled to the weight of the medical evidence.[3]

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] 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 regulation as the appropriate standard for evaluating schedule losses.

[3] Following the Office's November 4, 2005 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

Section 18.3b of the A.M.A., *Guides* provides that pain-related impairment should not be used if the condition can be adequately rated under another section of the A.M.A., *Guides*.[6] Office procedures provide that, if the conventional impairment adequately encompasses the burden produced by pain, the formal impairment rating is determined by the appropriate section of the A.M.A., *Guides*.[7] However, an impairment rating can, in some situations, be increased by up to three percent if pain increases the burden of the employee's condition.[8]

Grip strength is used to evaluate power weaknesses related to the structures in the hand wrist or forearm. The A.M.A., *Guides* do not encourage the use of grip strength as an impairment rating because strength measurements are functional tests influenced by subjective factors that are difficult to control and the A.M.A., *Guides* for the most part is based on anatomic impairment. Thus, the A.M.A., *Guides* does not assign a large role to such measurements. Only in rare cases should grip strength be used and only when it represents an impairing factor that has not been otherwise considered adequately.[9] The A.M.A., *Guides* stated: *"Otherwise, the impairment ratings based on objective anatomic findings take precedence."*[10] (Emphasis in the original). The A.M.A., *Guides* also provide a protocol for performing grip strength evaluations in which the measurements are repeated three times and the results averaged.[11]

It is the responsibility of the evaluating physician to explain in writing why a particular method to assign the impairment rating was chosen.[12] The A.M.A., *Guides* provide that decreased strength cannot be rated in the presence of decreased motion or painful conditions unless based on an unrelated etiology or pathomechanical causes.[13]

ANALYSIS

The Office accepted that appellant sustained cervical, thoracic and lumbar strains due to her employment injury. On January 25, 2003 appellant filed a claim for a schedule award and submitted a report dated October 14, 2002 from Dr. Weiss, who found that appellant had sensory deficits in her right upper extremity and right lower extremity in addition to loss of grip strength in the upper extremity. He also awarded an additional three percent impairment due to pain for

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

[7] FECA Bulletin No. 01-05 (issued January 29, 2001).

[8] *Linda Beale*, 57 ECAB ___ (Docket No. 05-1536, issued February 15, 2006); *Richard B. Myles*, 54 ECAB 379, 381 (2003).

[9] *Mary L. Henninger*, 52 ECAB 408, 409 (2001).

[10] A.M.A., *Guides* 508.

[11] *Id*. The A.M.A., *Guides* recommend that grip strength tests are repeated three times with each hand at different times during the examination and then the values are recorded and later compared. The Board adopted this method in *Henniger, supra* note 9.

[12] *Tara L. Hein*, 56 ECAB ___ (Docket No. 05-91, issued April 4, 2005).

[13] A.M.A., *Guides* 508 and 526, Table 17-2; *Patricia J. Horney*, 56 ECAB __ (Docket No. 04-2013, issued January 14, 2005).

both the upper and lower right extremities. Although Dr. Weiss provided page citations to the A.M.A., *Guides*, he did not provide any explanation of how he derived his impairment ratings.

In accordance with the A.M.A., *Guides*, to make a proper finding regarding sensory impairment of nerve root, a physician should determine the nerve root involved, ascertain the maximum value for that nerve root due to sensory impairment in accordance with Table 15-17 or Table 15-18[14] and the extent of any sensory loss based on Table 15-15 of the A.M.A., *Guides*[15] and then multiple the severity of the sensory deficit by the maximum value of the relevant nerve.[16] Dr. Weiss did not provide the value of the C6, C7 or S1 nerve roots in accordance with Tables 15-17 and 15-18. He did not provide the grade of the sensory impairment of either nerve root under Table 15-15 of the A.M.A., *Guides.* Dr. Weiss did not discuss the appropriate tables, follow the appropriate procedure or clearly explain how he derived his impairment ratings.[17]

The Office medical adviser reviewed Dr. Weiss' report and found that appellant had six percent impairment of the C6 nerve root as well as four percent impairment of the C7 nerve root due to sensory deficits. In regard to appellant's right lower extremity, the Office medical adviser also concurred with Dr. Weiss in regard to the sensory deficit of S1 of four percent. The Office medical adviser provided page citations to the A.M.A., *Guides*, but like Dr. Weiss failed to provide any medical reasoning explaining how the degree of impairment was reached based on appellant's findings on physical examination. There is no medical evidence in the record conforming to the A.M.A., *Guides*, which establishes the extent of appellant's permanent impairment due to sensory deficit.

The Office medical adviser concluded that the additional three percent impairment due to pain in both the right upper and lower extremities awarded by Dr. Weiss, was not appropriate as the measurements were unreliable. The Board notes that the Office medical adviser and Dr. Weiss found (without explanation) that appellant's upper and lower extremity sensory impairments included decreased superficial cutaneous pain and tactile sensibility with abnormal sensations or moderate pain, that might prevent some activities. The Board has previously found that awards for pain under Chapter 18 of the A.M.A., *Guides* should not be given for any condition that can be adequately rated on the basis of the body and organ impairment systems given in the other chapters of the A.M.A., *Guides*.[18] Dr. Weiss did not provide any medical reasoning for relying on this section and indeed did not provide a citation to the A.M.A., *Guides* for his addition of three percent impairment due to pain beyond that already included in his evaluation of sensory deficits. It was only through appellant's attorney that an explanation for this addition was provided. As Dr. Weiss' impairment rating does not conform to the A.M.A.,

[14] A.M.A., *Guides* 424, Tables 15-17, 15-18.

[15] A.M.A., *Guides* 424, Table 15-15.

[16] A.M.A., *Guides* 423.

[17] *See Belinda H. Wilson*, 57 ECAB ___ (Docket No. 05-1426, issued October 19, 2005).

[18] *Beale*, *supra* note 8.

Guides, his opinion is of diminished probative value in establishing the degree of any permanent impairment.[19]

In regard to the impairment rating for grip strength awarded appellant by both Dr. Weiss and the Office medical adviser, this impairment rating also fails to conform to the standards of the A.M.A., *Guides*. There is no evidence that Dr. Weiss performed the grip strength testing in accordance with the A.M.A., *Guides*, as he only mentions one measurement in his report, not an average of three separate measurements as required by the A.M.A., *Guides*.[20]

As neither appellant's physician nor the Office medical adviser complied with the A.M.A., *Guides*, in reaching an impairment rating, the case will be remanded to the Office to secure probative medical evidence that properly determines the degree of permanent impairment to the right upper and lower extremities under the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The medical evidence of record was not sufficient to establish that the schedule awards for 18 percent of the right upper extremity and 4 percent of the right lower extremity was appropriate under the A.M.A., *Guides* and the case will be remanded for further development.

[19] *Id.*

[20] A.M.A., *Guides* 508; *Henniger, supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the November 4 and March 8, 2005 decisions of the Office of Workers' Compensation Programs are set aside and remanded for further development consistent with this decision of the Board.

Issued: September 28, 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