United States Department of Labor
Employees' Compensation Appeals Board

D.N., Appellant	)	
and	)	**Docket No. 06-1250**
	)	**Issued: April 5, 2007**
DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 8, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 7, 2006 decision, finding three percent impairment to his left upper extremity and to both lower extremities. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merit issue of the case.

ISSUE

The issue is whether appellant has established greater than three percent impairment to his left upper extremity and each lower extremity.

FACTUAL HISTORY

On August 29, 1989 appellant, then a 32-year-old high voltage electrician, filed a traumatic injury claim alleging that she sustained an injury to her head, neck, shoulders and back as a result of a work-related motor vehicle accident on that date. Her claim was accepted for contusions to the neck, back and shoulders as well as a cervical and lumbar radiculopathy with

disc herniation at C5-6. Medical and compensation benefits were paid. By decision dated January 26, 1999, appellant's compensation benefits were reduced to zero as the Office found that she had the capacity to earn wages as a computer systems hardware analyst.

On August 8, 2002 appellant filed a claim for a schedule award. By letter dated September 18, 2002, the Office requested that Dr. Paul J. Sedacca, a general practitioner, provide an impairment rating pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). In a report dated June 27, 2003, Dr. Sedacca indicated that appellant sustained a disc herniation at the C5-6 level with a cervical radiculopathy at the C6 levels directly related to the trauma of August 29, 1989. This caused a serious impairment of body function with regard to appellant's use of her neck and upper extremities. Dr. Sedacca noted that appellant sustained further trauma on August 4, 1999 and because of the new injuries, he saw her on August 17, 1999. However, he had not seen her since that date. Dr. Sedacca opined that, as of that date, appellant had sustained an 18 percent impairment of her whole person as a result of her disc herniation and radiculopathy.

In an impairment rating report dated July 8, 2004, Dr. George L. Rodriguez, a Board-certified physiatrist, found that appellant had a 22 percent impairment of her left upper extremity as a result of her work-related injury. He applied the A.M.A., *Guides* to find that appellant had a Grade 4 deficit of the median nerve, which resulted in a two percent deficit and a Grade 4 impairment of the ulnar nerve, which resulted in a one percent deficit. Dr. Rodriguez combined these two figures to arrive at his conclusion that appellant had a three percent impairment of her left upper extremity as a result of sensory nerve impairment.[1] He then concluded that appellant had a 33 stress loss index, which he found resulted in a 20 percent impairment of the left upper extremity.[2] Dr. Rodriguez combined the 3 percent impairment due to sensory nerve impairment and the 20 percent impairment due to grip strength deficit using the combined values tables of the A.M.A., *Guides*[3] to determine that appellant had 22 percent impairment to her left upper extremity. With regard to appellant's left lower extremity, he determined that appellant had a Grade 4 impairment (which he calculated to be 25 percent) of the sciatic nerve (maximum allowed 75 percent), resulting in a 19 percent deficit.[4] Dr. Rodriguez then calculated appellant's right lower extremity impairment as a Grade 4 deficit (which he calculated to be 25 percent) of the sciatic nerve (maximum 75 percent), resulting in a 19 percent deficit of the right lower extremity.[5] He then found that the total of all of these impairments was 49 percent.

[1] Dr. Rodriguez found that a Grade 4 impairment (for which he allotted 5 percent) of appellant's median nerve (which has a maximum impairment of 39 percent) resulted in a 2 percent deficit. He found that a Grade 4 impairment (for which he again allotted five percent) of appellant's ulnar nerve (maximum impairment of seven percent) resulted in a one percent deficit. Combining these two figures, he allotted three percent impairment for sensory nerve impairment to the left upper extremity. *See* A.M.A., *Guides* at 482, Table 16-10 and 492, Table 16-15.

[2] A.M.A., *Guides* at 509, Table 16-34.

[3] *Id*. at 604.

[4] *Id*. at 552, Table 17-37.

[5] *Id*.

The report of Dr. Rodriguez was sent to the Office medical adviser on November 29, 2004 for comment. The Office medical adviser responded that the upper extremity information was inconsistent with the rating provided. He further stated that Dr. Rodriguez incorrectly calculated the claimant's lower extremity impairment and used the incorrect table in his calculations. The Office medical adviser noted that Dr. Rodriguez erred in that grip strength cannot be permitted if sensory and motor tables are used. Instead, he determined that appellant was entitled to a three percent impairment rating to her left upper extremity and a three percent impairment rating to each lower extremity after applying the A.M.A., *Guides.*

By decision dated December 15, 2004, the Office issued a schedule award for three percent impairment to the right lower extremity, three percent impairment to the left lower extremity and three percent impairment to the left upper extremity.

By letter dated December 16, 2004, appellant requested a hearing. However, by letter dated December 8, 2005, she changed her request to a review of the written record.

In a decision dated February 7, 2006, the hearing representative found that appellant had not met her burden of proof that she established greater than three percent impairment to the left upper extremity and each lower extremity. The hearing representative concluded that the weight of the evidence rested with the Office medical adviser.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[6] and its implementing regulation[7] set 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.[8]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides,* with the medical adviser providing rationale for the percentage of impairment specified.[9]

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

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

[9] *See* Federal (FECA) Procedure Manual, Part 2 -- *Claims, Schedule Awards and Permanent Disability Claims,* Chapter 2.808.6(d) (March 1995).

Grip strength is used to evaluate power weaknesses related to the structures in the hand, wrist or forearm.[10] The A.M.A., *Guides* does 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.[11] Otherwise, the impairment ratings based on objective anatomic findings take precedence.[12]

ANALYSIS

Dr. Sedacca indicated that appellant sustained an 18 percent impairment of the whole person as a result of her disc herniation and radiculopathy pursuant to the A.M.A., *Guides.* However, he did not explain how he applied the A.M.A., *Guides* by referring to appropriate pages and tables. Furthermore, Dr. Sedacca stated the impairment finding with regard to whole person impairment. However, the Act does not provide for whole person impairment ratings.[13]

Appellant was then evaluated by Dr. Rodriguez. However, this opinion is also deficient. Dr. Rodriguez found a 22 percent impairment of appellant's upper extremity and a 19 percent impairment of each lower extremity. However, when he examined appellant on July 8, 2004 he noted that the extremities were within normal limits. Dr. Rodriguez' neurological examination revealed that appellant's sensation was normal throughout all dermatomes and nerve distributions. Given appellant's normal physical and neurologic findings, it is unclear how Dr. Rodriguez arrived at his conclusion that appellant had motor deficits involving the median, ulnar and sciatic nerves. He does not identify any objective clinical or diagnostic findings to support impairment of the above-mentioned nerves. Further, Dr. Rodriguez found that appellant had 20 percent impairment due to grip strength impairment. However, he did not adequately explain why such impairment rating was warranted in this case.

The Office medical adviser determined that the maximum percent loss of function due to sensory deficit and pain for the L5 nerve was five percent. To determine the lower extremity impairment for pain one multiplies appellant's Grade 4 classification (25 percent)[14] by the maximum impairment for the affected nerve. According to Table 15-17, A.M.A., *Guides*, 424, a

[10] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

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

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

[13] *Tania R. Keka*, 55 ECAB 354 (2004); *Guiseppe Aversa*, 55 ECAB 164 (2003).

[14] With respect to sensory loss, a Grade 4 classification is characterized by distorted sensation or pain, that is forgotten during activity. This classification represents a 1 to 25 percent sensory deficit. Table 15-15, A.M.A., *Guides* 424. Motor deficits are graded under Table 15-16, A.M.A., *Guides* 424. A Grade 4 classification represents active movement against gravity with some resistance, with a percentage deficit range from 1 to 25. *Id.* An almost identical grading systems appears under Table 16-10 and 16-11, A.M.A., *Guides*, 482, 484, regarding the upper extremity impairments. These tables may also be applied for determining the extent of lower extremity impairments due to sensory and motor deficits. *See* section 17.21, A.M.A., *Guides* 550.

C6 nerve root impairment affecting the upper extremity represents a maximum eight percent loss due to sensory deficit or pain. The Office medical adviser incorrectly found that the maximum for impairment to the C6 nerve was only five percent and based his calculations accordingly. Therefore, the Office medical adviser erred in determining appellant's impairment the left upper extremity.

The Office medical adviser also determined that appellant warranted a two percent additional impairment for pain in both lower extremities and the left upper extremity citing Figure 18-1, A.M.A., *Guides* 574.[15] However, the Office medical adviser did not explain why the conventional impairment rating did not encompass the burden of appellant's condition. In the absence of a valid explanation for utilizing Chapter 18, the Office should not have relied on the Office medical adviser's report as the basis for determining extent of impairment.

Accordingly, the Board finds that the record does not include a probative medical opinion on the nature and extent of appellant's impairment. The case will be remanded to the Office for further development of the medical evidence, as appropriate, followed by a *de novo* decision regarding appellant's entitlement to a schedule award.

CONCLUSION

The Board finds that this case is not in posture for decision.

[15] *See* section 18.3d, A.M.A., *Guides* 573.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further proceedings in accordance with this decision.

Issued: April 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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