United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 07-315**
	)	**Issued: April 18, 2007**
DEPARTMENT OF THE NAVY, PUBLIC WORKS CENTER, 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:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 15, 2006 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated November 1, 2006 finding that he had no more than 23 percent impairment of his right upper extremity and no more than 25 percent impairment of his left upper extremity. 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 23 percent impairment of his right upper extremity and 25 percent impairment of his left upper extremity for which he received a schedule award.

FACTUAL HISTORY

This is the second appeal in this claim. On July 7, 1999 appellant, then a 53-year-old roofer, filed an occupational disease claim alleging that he developed bilateral carpal tunnel syndrome due to his employment duties. The Office accepted his claim for bilateral carpal

tunnel syndrome as well as bilateral ulnar neuropathy. The Office authorized a left carpal tunnel release on November 2, 2001. On November 19, 2001 Dr. Stephanie Sweet, a Board-certified orthopedic surgeon, performed a left ulnar nerve transposition, left medial fasciotomy of the elbow and a left carpal tunnel release. The Office also authorized the left cubital tunnel release on November 20, 2001. Dr. Sweet performed a right carpal tunnel release on February 25, 2002.

Appellant requested a schedule award on November 1, 2005. In a letter dated November 16, 2005, the Office asked that appellant's physician provide a description of his permanent impairments in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Appellant provided a report dated January 12, 2006 from Dr. George L. Rodriguez, a physiatrist, noting his complaints of constant bilateral elbow pain, frequent numbness in both hands with intermittent swelling. Dr. Rodriguez reviewed appellant's medical records and diagnosed bilateral carpal tunnel syndrome and ulnar neuropathy. He found that appellant reached maximum medical improvement regarding his conditions on September 30, 2003. Dr. Rodriguez found that appellant had 27 percent impairment of his right upper extremity based on a Grade 3 sensory and motor impairment of the median nerve of 60 percent. He noted 27 percent impairment of the left upper extremity due to similar median nerve impairments, as well as an additional 13 percent impairment due to a Grade 4 sensory and motor impairment of the ulnar nerve for a total of 36 percent impairment of the left upper extremity.

The Office medical adviser reviewed this report on March 16, 2006 and found that appellant's impairments were encompassed by Grade 4 impairment of the peripheral nerves.[1] He did not provide additional explanation for this reduction from Dr. Rodriguez's impairment rating. The Office medical adviser stated that the maximum median nerve deficit below the midforearm is 39 percent and the maximum ulnar nerve above midforearm is 7 percent. The Office medical adviser found that appellant had 10 percent bilateral impairment due to the median nerve sensory deficit.[2] He found that appellant had two percent impairment of the left upper extremity due to ulnar nerve sensory deficit.[3] The Office medical adviser concluded that appellant had 12 percent impairment of his left upper extremity and 10 percent impairment of his right upper extremity. He listed appellant's date of maximum medical improvement as January 12, 2006. The Office medical adviser did not address any motor impairment on either the median or ulnar nerves as found by Dr. Rodriguez.

By decision dated March 27, 2006, the Office granted appellant schedule awards for 10 percent impairment of his right upper extremity and 12 percent of his left upper extremity for which he received schedule awards. Appellant appealed this decision to the Board. In its September 27, 2006 decision,[4] the Board found that the medical opinion evidence from Dr. Rodriguez and the Office medical adviser was not of sufficient probative value to establish appellant's permanent impairment for schedule award purposes. The Board remanded the case for the Office to obtain rationalized medical opinion evidence on the extent of appellant's

[1] A.M.A., *Guides*, 482, Table 16-10.

[2] *Id*.

[3] *Id*. at 492, Table 16-15, 482, Table 16-10.

[4] Docket No. 06-1085 (issued September 27, 2006).

permanent impairment due to his accepted conditions as well as a determination of maximum medical improvement.

In response to the Board's directive, the Office referred the case to the Office medical adviser for an opinion with rationale addressing appellant's impairment rating. The Office medical adviser responded on October 29, 2006 and noted that, while Dr. Rodriguez provided a motor deficit award based on median and ulnar nerve weaknesses, Dr. Rodriguez did not provide a basis for recommending a motor deficit and his examination did not provide any justification for this impairment. The Office medical adviser noted that appellant's prior physicians had reported normal strength. However, he felt on further review that Grade 3 impairment of the median nerves due to sensory loss, as found by Dr. Rodriquez, could be supported by the record. The Office medical adviser awarded 23 percent bilaterally for median sensory loss and on the left, an additional 2 percent for ulnar sensory loss, totaling 25 percent. He concluded that the date of maximum medical improvement was January 12, 2006, the date of Dr. Rodriguez's examination.

By decision dated November 1, 2006, the Office issued a schedule award decision finding that appellant had 23 percent impairment of his right upper extremity and 25 percent impairment of his left upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulation[6] 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. Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[7]

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (August 2002).

must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[8]

ANALYSIS

Appellant submitted a report from Dr. Rodriguez, a physiatrist, providing his impairments for schedule award purposes. In the prior appeal, the Board found that this report was not sufficiently detailed to support the finding of strength impairments in accordance with the A.M.A., *Guides*. Specifically, the Board noted that Dr. Rodriguez did not offer the necessary explanation of why motor impairments of the median and ulnar nerves were appropriate, and that he did not offer a clear description of any specific impairment based on motor deficit. The Board also found that the prior medical reports of record did not suggest any loss of strength. Finally, the Board found that the strength ratings were not graded in accordance with the A.M.A., *Guides*.

On remand from the Board, the Office requested that the Office medical adviser address the impairment rating and provide medical reasoning supporting his conclusions. The Office medical adviser also found that Dr. Rodriguez had not provided a basis for recommending motor deficits and that Dr. Rodriguez's examination as recorded in his written report did not provide a basis for recommending motor deficit of the median and ulnar nerves. He also concluded that the medical record did not support strength impairments of the median and ulnar nerves.

In regard to the bilateral median nerve impairments, the Office medical adviser reassessed the medical evidence contained in Dr. Rodriguez's report as well as the remainder of the medical evidence of record and concluded that there was sufficient documentation of sensory impairments to support Grade 3 impairment. This impairment rating encompasses, "Distorted superficial tactile sensibility, (diminished light touch and two point discrimination) with some abnormal sensations or slight pain, that interferes with some activities."[9] Dr. Rodriguez correctly applied the A.M.A., *Guides* to reach 23 percent impairment for median sensory loss.[10]

The Board finds that the medical evidence is sufficiently detailed and rationalized to support a bilateral median nerve impairment of no more than 23 percent due to sensory deficits.

Dr. Rodriguez awarded appellant 13 percent impairment of the ulnar nerve based on sensory and motor impairments. For the previously described reasons, the medical record, including Dr. Rodriguez's report, does not contain sufficiently detailed findings to support a motor impairment of the ulnar nerve. Dr. Rodriguez's report included the finding that appellant had Grade 4 sensory impairment of the ulnar nerve. In his initial report dated March 18, 2006, the Office medical adviser adopted this finding and reduced the ulnar nerve rating to reflect two percent impairment due to sensory deficit based on Grade 4 sensory impairment of this nerve.[11]

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

[9] A.M.A., *Guides*, 482, Table 16-10.

[10] *Id*. at 492, Table 16-15; 482, Table 16-10.

[11] *Id.*

As there is no dispute regarding the extent of appellant's sensory impairment of the ulnar nerve, the Board finds that appellant has not established that he is entitled to more than two percent impairment of the left ulnar nerve due to sensory impairment.

The weight of the medical opinion evidence establishes that appellant has no more than 23 percent impairment of his right upper extremity and 25 percent impairment of his left upper extremity for which he has received schedule awards.

CONCLUSION

The Board finds that the November 1, 2006 decision of the Office must be affirmed as the weight of the rationalized medical opinion evidence establishes that appellant has no more than 23 percent impairment of his right upper extremity and 25 percent impairment of his left upper extremity for schedule award purposes.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2007
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