

**United States Department of Labor
Employees' Compensation Appeals Board**

E.L., Appellant

and

**U.S. POSTAL SERVICE, OHARE AIR MAIL
CENTER, Chicago, IL, Employer**

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**Docket No. 07-347
Issued: April 24, 2007**

Appearances:
Appellant, pro se
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 November 20, 2006 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated April 24 and September 25, 2006 granting her a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUES

The issues are: (1) whether appellant has any permanent impairment of her right upper extremity; and (2) whether appellant has more than a 10 percent permanent impairment of the left upper extremity.

FACTUAL HISTORY

On April 2, 2004 appellant, then a 64-year-old mail handler, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome causally related to factors of her federal employment. She did not stop work. The Office accepted her claim for bilateral carpal tunnel

syndrome. Appellant underwent a right carpal tunnel release on September 7, 2004. She stopped work on September 7, 2004 and resumed work with restrictions on September 16, 2004. Appellant retired on December 1, 2004.

On December 13, 2004 appellant filed a claim for a schedule award. On August 15, 2005 the Office requested that she submit an impairment evaluation from her attending physician addressing the extent of any permanent impairment of the upper extremities in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001).

In an impairment evaluation dated September 2, 2005, Dr. Mark S. Cohen, a Board-certified orthopedic surgeon, stated:

“[Appellant] reports that her right-sided tingling and numbness have completely resolved. Intermittently, she drops objects with her right hand. She states that her left hand is currently her chief complaint. [Appellant] has some difficulty during light activities such as sweeping. She reports tingling and numbness in her left hand as well as some intermittent catching and locking of her left middle finger.”

On examination, Dr. Cohen measured the range of motion of appellant’s wrists as 60 degrees bilateral extension and 65 degrees bilateral flexion. He determined that she had bilateral pinch strength of 16 pounds and grip strength of 60 pounds on the right and 35 pounds on the left. Dr. Cohen noted that she experienced “tingling and numbness in her left hand during a median nerve compression test.” In an accompanying form report, he found that appellant had no impairment of the right upper extremity.

An Office medical adviser reviewed Dr. Cohen’s report and found that appellant had a 10 percent impairment of the left upper extremity due to loss of grip strength according to Tables 16-31 and 16-34 on page 509 of the A.M.A., *Guides*. He determined that appellant had no impairment on the right side. The Office medical adviser indicated that she reached maximum medical improvement on the right side on December 15, 2004 and on the left side on September 2, 2005.

By decision dated April 24, 2006, the Office granted appellant a schedule award for a 10 percent impairment of the left upper extremity. The period of the award ran for 31.2 weeks from September 20, 2005 to April 8, 2006.

On May 22, 2006 appellant requested a review of the written record. She submitted a report dated July 31, 2006 from Dr. Cohen who discussed appellant’s complaints of pain and numbness in her right hand. Dr. Cohen found no evidence of tenosynovitis, full range of motion of the right wrist and grip strength of 58 pounds on the right and 45 pounds on the left. He indicated that she had no “positive provocative tests for carpal tunnel syndrome” on examination. Dr. Cohen questioned whether her symptoms on the right side were due to carpal tunnel syndrome.

In a decision dated September 25, 2006, an Office hearing representative affirmed the April 24, 2006 decision. The hearing representative found that appellant had no more than a 10 percent left upper extremity impairment and had no impairment of the right upper extremity.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking compensation under the Federal Employees' Compensation Act,¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.² Section 8107 provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³ It is the claimant's burden to establish that he or she sustained permanent impairment of a scheduled member or function as a result of an employment injury.⁴

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for bilateral carpal tunnel syndrome. She underwent a right carpal tunnel release on September 7, 2004. On December 13, 2004 she filed a claim for a schedule award.

Appellant has not submitted evidence establishing that she has any permanent impairment of the right upper extremity. In a report dated September 2, 2005, her attending physician, Dr. Cohen, noted that the numbness and tingling on her right side had resolved. He found that she had no impairment of the right upper extremity. An Office medical adviser reviewed Dr. Cohen's report on November 28, 2005 and concurred with his finding that appellant had no right upper extremity impairment. On July 31, 2006 Dr. Cohen discussed appellant's complaints of numbness and pain of the right hand. He indicated that tests for carpal tunnel syndrome were negative and questioned whether her right-sided symptoms were due to carpal tunnel syndrome. As appellant has not submitted any medical evidence supporting that she has a permanent impairment of the right upper extremity due to her accepted employment injury, she has not established entitlement to a schedule award for the right side.⁵

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of the Act⁶ and its implementing federal 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

¹ 5 U.S.C. § 8107.

² *Tammy L. Meehan*, 53 ECAB 229 (2001).

³ 5 U.S.C. § 8107.

⁴ *Edward W. Spohr*, 54 ECAB 806 (2003).

⁵ *Id.*

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

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 claimants.⁸

The A.M.A., *Guides* provides that upper extremity impairment due to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.⁹ Section 16.5d of the A.M.A., *Guides* provides that, in rating compression neuropathies, additional impairment values are not given for decreased grip strength.¹⁰

ANALYSIS -- ISSUE 2

The Office accepted appellant's claim for bilateral carpal tunnel syndrome. She did not undergo a left carpal tunnel release. In an impairment evaluation dated September 2, 2005, Dr. Cohen discussed her complaints of numbness and tingling of the left hand. He measured range of motion of the left wrist and listed findings for grip and pinch strength. Dr. Cohen noted that appellant reported "tingling and numbness in her left hand during a median nerve compression test."

An Office medical adviser reviewed Dr. Cohen's report on November 28, 2005. He opined that appellant had a 10 percent impairment of the left upper extremity due to loss of grip strength according to Tables 16-31 and 16-34 on page 509 of the A.M.A., *Guides*.

The A.M.A., *Guides* on page 495 provides three scenarios for determining the permanent impairment due to carpal tunnel syndrome after an optimal recovery time following surgical decompression. The Board notes, however, that as appellant did not undergo surgical decompression on the left side, the specific method for determining impairment due to carpal tunnel syndrome provided on page 495 of the A.M.A., *Guides* does not apply. The Office medical adviser based his impairment finding on grip strength measurements. In evaluating impairment due to carpal tunnel syndrome, however, there generally will be no ratings based on loss of grip strength.¹¹ Under the fifth edition of the A.M.A., *Guides*, schedule awards for carpal tunnel syndrome are predicated only on motor and sensory impairments.¹² As the Office medical adviser did not properly apply the A.M.A., *Guides* in determining appellant's left upper extremity impairment, the case will be remanded to the Office. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁸ *Id.* at § 10.404(a).

⁹ *Willie C. Howard*, 55 ECAB 564 (2004).

¹⁰ A.M.A., *Guides* 494.

¹¹ *Id.* at 494-95; *David D. Cumings*, 55 ECAB 285 (2004).

¹² *Robert V. Disalvatore*, 54 ECAB 351 (2003).

CONCLUSION

The Board finds that appellant has not established that she has a permanent impairment of the right upper extremity. The Board further finds that the case is not in posture for decision on the issue of whether appellant has more than a 10 percent permanent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 25, 2006 is affirmed in part and set aside in part. The decision dated April 24, 2006 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 24, 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