United States Department of Labor
Employees' Compensation Appeals Board

E.C., Appellant	)	
and	)	**Docket No. 07-605**
	)	**Issued: July 16, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Lehigh Valley, PA, Employer	)	

Appearances:
Jeffrey 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 22, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated December 5, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained more than a 25 percent permanent impairment of her right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

This case has previously been on appeal before the Board.[1] In a July 21, 2006 decision, the Board found that the case was not in posture for decision.[2] The Board found that the second opinion physician, Dr. Salem, did not explain how he arrived at his rating of impairment. The Board remanded the case to the Office to further develop the medical evidence of record as necessary to obtain an opinion in conformance with the A.M.A., *Guides* as to whether appellant had any impairment to the right upper extremity causally related to her November 27, 2000 employment injury. The facts and the history contained in the prior appeal are incorporated by reference.

By letter dated August 21, 2006, the Office referred appellant, together with a statement of accepted facts and copies of medical records to Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated September 18, 2006, Dr. Mandel reviewed appellant's history of injury and treatment and conducted a physical examination of the upper extremities. He noted that appellant had multiple surgical scars on the upper extremities but exhibited a normal range of motion with the exception of the right wrist which had slight restriction. Dr. Mandel determined that the right wrist had 70 degrees of dorsiflexion, 45 degrees of palmar flexion, 10 degrees of radial deviation and 25 degrees of ulnar deviation. He indicated that appellant had unrestricted pronation and supination, a stable distal radio ulnar joint, no hypermobility or piano keying in the distal ulnar and no subluxation in the extensor carpus ulnari tendon. Dr. Mandel advised that appellant had tenderness to palpation over the ulnar carpal joint and that her grip strength was 18, 30 and 26 pounds on the right and 42, 48 and 44 pounds on the left. He determined that appellant's neurological examination was normal and indicated that appellant's Tinel's and carpal tunnel compression tests were positive on the right and that he had a negative Phalen's test and Tinel's examination over the cubital tunnels and peripheral nerves. Dr. Mandel opined that appellant was at maximum medical improvement from the accepted injury of sprain and tendinitis of the right wrist and was capable of working in a limited-duty capacity with restrictions. He noted that he had utilized the A.M.A., *Guides* and determined that appellant had an upper extremity impairment of 24 percent. Appellant's impairment was based on a 20 percent rating for decreased strength according to Table 16-34[3] and a 4 percent rating for decreased wrist motion pursuant to Figures 16-28 and 16-31.[4]

In a memorandum dated November 13, 2006, the Office medical adviser applied the findings of Dr. Mandel to the fifth edition of the A.M.A., *Guides*. He noted that grip strength

[1] Docket No. 06-628 (issued July 21, 2006).

[2] The record reflects that the Office accepted appellant's claim for sprain of the right wrist, extensor carpi ulnaris tendinitis of the right wrist and steroid injections. The Office also authorized an arthrogram of the right wrist. On September 19, 2001 the Office authorized arthroscopy of the right wrist with repair of the triangular fibrocartilage complex.

[3] A.M.A., *Guides*, 509.

[4] *Id*. at 467, 469.

testing was not conducted during appellant's previous evaluations and she did not previously receive a schedule award for weakness. The Office medical adviser noted that appellant had slight restriction of motion which included 70 degrees of dorsiflexion, 45 degrees of palmar flexion, 10 degrees of radial deviation and 25 degrees of ulnar deviation, with normal pronation and supination. He also noted that appellant was right hand dominant and her grip strength testing measured 18, 20 and 26 pounds on the right and 42, 48 and 44 pounds on the left. The Office medical adviser indicated that Dr. Mandel did not explain how he arrived at his strength calculation but had provided the data needed to make the calculation. He noted that, if the left side was normal size and the right side abnormal, the formula would be normal strength minus limited strength over normal strength, which was equal to the strength loss index. The Office medical adviser utilized the formula and opined that 44 minus 26 is 18, divided by 44, equals 40 strength loss index. He referred to Table 16-34[5] for upper extremity joint impairments due to loss of grip strength and opined that a pinch strength loss index of 31 to 60 equaled a 20 percent upper extremity impairment.

For range of motion of the wrist, the Office medical adviser referred to Figure 16-28[6] to calculate impairments due to lack of flexion extension of the wrist joint and noted that 70 degrees of dorsiflexion equaled 0 percent and 45 degrees of palmar flexion rounded off to 40 degrees of palmar flexion equaled a 3 percent impairment of the right upper extremity. He referred to Figure 16-31[7] for abnormal radial and ulnar deviations of the wrist joint and determined that appellant had radial deviation of 10 degrees which was to a 2 percent impairment and ulnar deviation of 25 degrees which was rounded to 20 degrees and equaled a 2 percent impairment. The Office medical adviser added the values for radial and ulnar deviation and opined that this was equal to a 4 percent impairment. He referred to the Combined Values Chart[8] and determined that the 20 percent impairment due to loss of grip strength, combined with the 4 percent impairment due to loss of radial and ulnar deviation and 3 percent for loss of wrist flexion resulted in a 25 percent impairment. The Office medical adviser noted that appellant reached maximum medical improvement on September 18, 2006 and that she had previously received a rating of two percent impairment. He opined that appellant was entitled to an additional 23 percent impairment based upon loss of grip strength and loss of range of motion. The Office medical adviser explained that Dr. Mandel made a miscalculation in his range of motion reading of the pie chart. The increased schedule award was supported as strength measurements were not documented in the previously submitted evaluation and represented new information pertaining to appellant's impairment.

On December 5, 2006 the Office granted appellant a schedule award for an additional 23 percent impairment of the right upper extremity. The award covered a period of 502.32 weeks from September 21, 2005 to February 5, 2007.

[5] *Id*. at 509.

[6] *Id*. at 467.

[7] *Id*. at 469.

[8] *Id*. at 604.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[9] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[10] The Act, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[11] The Act's implementing regulation has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule award losses.[12]

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[13] However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.

ANALYSIS

On August 24, 2006 the Office referred appellant for a second opinion examination with Dr. Mandel, a Board-certified orthopedic surgeon. In a report dated September 18, 2006, Dr. Mandel noted that he had utilized the A.M.A., *Guides* and reviewed appellant's history of injury and treatment. He conducted an examination and determined that appellant had an upper extremity impairment of 24 percent which was comprised of a 20 percent rating for decreased grip strength according to Table 16-34[14] and a 4 percent rating for decreased wrist motion pursuant to Figures 16-28 and 16-31.[15] However, Dr. Mandel did not explain how he arrived at his rating. While he provided grip strength findings, the A.M.A., *Guides* provides that loss of strength may be rated separately if such a deficit has not been considered adequately by other rating methods. The A.M.A., *Guides* further provides that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximum force.[16] Dr. Mandel did not provide any explanation as to why

[9] 5 U.S.C. §§ 8101-8193.

[10] 5 U.S.C. § 8107.

[11] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[12] 20 C.F.R. § 10.404.

[13] *See William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

[14] *See supra* note 3.

[15] *See supra* note 4.

[16] *See* A.M.A., *Guides* 508, section 16.8a.

grip strength findings were an appropriate basis for rating impairment in light of the restrictions set forth in the A.M.A., *Guides*. Thus, it was improper to utilize grip strength with the loss of motion.

In a report dated November 13, 2006, the Office medical adviser applied the findings of Dr. Mandel to the fifth edition of the A.M.A., *Guides* and determined that appellant was entitled to a 25 percent impairment of her right upper extremity. He included the findings for grip strength testing as appellant did not previously receive a schedule award for weakness. The Office medical adviser determined that appellant had a 40 strength loss index, referred to Table 16-34[17] for upper extremity joint impairments due to loss of grip strength and opined that a pinch strength loss index of 31 to 60 equaled a 20 percent upper extremity impairment. However, as noted above, he did not explain why grip strength findings should be utilized.[18] The Board also notes that 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 are based on anatomic impairment. The A.M.A., *Guides* do 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.[19]

Regarding range of motion for the wrist, the Board finds that the Office medical adviser properly referred to Figure 16-28,[20] to calculate impairments due to lack of flexion extension of the wrist joint and noted that 70 degrees of dorsiflexion equaled 0 percent and 45 degrees of palmar flexion rounded off to 40 degrees of palmar flexion equaled a 3 percent impairment of the right upper extremity. He also referred to Figure 16-31,[21] for abnormal radial and ulnar deviations of the wrist joint and determined that appellant had radial deviation of 10 degrees which equated to 2 percent impairment and ulnar deviation of 25 degrees which was rounded to 20 degrees and equaled 2 percent impairment. The Office medical adviser added the values for radial and ulnar deviation and opined that this was equal to four percent impairment. The Board notes that four percent impairment due to loss of radial and ulnar deviation added with three percent for loss of wrist flexion results in seven percent impairment. As the schedule award on appeal is premised on ratings not adequately explained by Dr. Mandel or the Office medical adviser, the case will be remanded for appropriate development on the issue of impairment to appellant's right upper extremity.

[17] *See supra* note 3.

[18] *See supra* note 16.

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

[20] *See supra* note 6.

[21] *See supra* note 7.

On appeal, appellant's representative requested that the Board instruct the Office to issue a schedule award to the left upper extremity. However, the record does not contain a decision on that matter and the issue is not presently before the Board.[22]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 5, 2006 be set aside, the case is returned to the Office for further development to be followed by a *de novo* decision.

Issued: July 16, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

[22] *See* 20 C.F.R. § 501.2(c). Counsel may wish to contact the branch of the Office servicing appellant's claim regarding any claim for a left arm schedule award.