United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 07-630**
	)	**Issued: July 16, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Appellant, pro se
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 January 3, 2007 appellant filed a timely appeal from a December 5, 2006 merit decision of the Office of Workers' Compensation Programs concerning her schedule award claim. 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 a four percent permanent impairment to her right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On February 25, 2005 appellant, then a 44-year-old carrier technician, filed an occupational disease claim alleging that she developed carpal tunnel syndrome as a result of repetitive work tasks. She was first aware that her condition was caused or aggravated by her employment on February 17, 2005. On March 31, 2005 the Office accepted her claim for right carpal tunnel syndrome and right ulnar nerve lesion.

Appellant stopped work May 25, 2005 and underwent a right carpal tunnel and cubital tunnel release. She returned to work in a limited-duty capacity June 13, 2005 and resumed work without restrictions July 18, 2005.

Appellant filed a claim for a schedule award May 30, 2006.[1] She submitted a July 14, 2005 progress report from her attending physician, Dr. John J. Fernandez, a Board-certified orthopedic surgeon, who released her from medical care.

In a letter dated April 21, 2006, the Office requested that Dr. Fernandez determine whether appellant had any permanent partial impairment of the right wrist and arm due to the accepted employment injury in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In a report dated May 25, 2006, Dr. Fernandez provided examination findings, noting full range of motion of the right shoulder, elbow, wrist and hand. The two-point discrimination was five-six millimeters (mm) in all digits tested and pinch strength was measured at 15 pounds as a result of wrist pathology. Additionally, grip strength in the right upper extremity was measured at 50 pounds and pinch strength was measured at 15 pounds as a result of elbow pathology.

On July 3, 2006 an Office medical adviser reviewed the medical evidence from Dr. Fernandez. He found that the date of maximum medical improvement was July 18, 2005 and opined that there was no objective evidence to support a right upper extremity permanent impairment. The Office medical adviser advised the grip strength in the right upper extremity of 22.7 kilograms (kg) was above the threshold at which permanent partial impairment was awarded under Table 16-31, page 509 of the A.M.A., *Guides.* He also advised that the pinch strength of 6.8 kg was also above the threshold to award permanent partial impairment under Table 16-33, page 509 of the A.M.A., *Guides*.

By decision dated August 8, 2006, the Office denied appellant's claim for a schedule award on the basis that there was no evidence of a permanent, measurable, scheduled impairment.

On August 16, 2006 the Office notified appellant that a second opinion examination was necessary and referred her to Dr. Edward Forman, a Board-certified orthopedic surgeon.

On August 19, 2006 appellant disagreed with the Office's August 8, 2006 decision and requested an oral hearing.

In a September 5, 2006 report, Dr. Forman opined that appellant reached maximum medical improvement July 18, 2005 and had a 10 percent permanent impairment of the right upper extremity. Examination revealed full range of motion at the shoulder, elbow and wrist, a two-point discrimination of four-five mms and intact sharp and dull sensation in all digits of the hand. Grip strength on the right was 40 pounds or 18.2 kg. Under Table 16-32, page 509 of the A.M.A., *Guides,* Dr. Forman stated that the average strength of grip for a 46-year-old patient in her major hand should be 23.4 kg and appellant's dominant right hand was approximately

[1] A claim for a schedule award was previously filed on May 24, 2005.

22 percent less than the average strength. Under Table 16-34, page 509 of the A.M.A., *Guides*, Dr. Forman opined that the 22 percent strength loss equated to 10 percent upper extremity impairment.

On October 9, 2006 the Office medical adviser advised that the date of maximum medical impairment remained July 18, 2005. He noted that Dr. Forman measured the right grip strength as 18.2 kg while Dr. Fernandez had measured it at 22.7 kg. The Office medical adviser averaged the two measurements to arrive at 20.5 kg, which he stated was a 16 percent strength deficit. Under Table 16-34, page 509 of the A.M.A., *Guides*, the Office medical adviser found that the 16 percent strength deficit equaled a 4 percent right upper extremity impairment.

By decision dated October 26, 2006, the Office hearing representative set aside the Office's August 8, 2006 decision. The case was remanded for a recalculation of the schedule award in light of the reports from Dr. Forman and the Office medical adviser.

By decision dated December 5, 2006, the Office granted appellant a schedule award for a four percent permanent impairment of the right upper extremity. The period of the award ran for 12.48 weeks from July 18 to October 13, 2005.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees Compensation Act[2] and its implementing regulation[3] 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.[4]

The A.M.A., *Guides* evaluates the permanent impairment caused by carpal tunnel syndrome by determining whether such a condition falls within one of three categories discussed in section 16.5d of Chapter 16.[5] Under the first category, if there are positive clinical findings of median nerve dysfunction and an electrical conduction delay, the condition is rated under the standards found earlier in Chapter 16 for evaluating sensory or motor deficits due to peripheral nerve disorders. Under the second category, if there is normal sensibility (evaluated by two-point discrimination and Semmes-Weinstein monofilament testing) and normal opposition strength with abnormal sensory and/or motor latencies or abnormal electromyogram testing of the thenar muscles, an impairment rating not to exceed five percent of the upper extremity may

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] *Id.*

[5] *See* A.M.A., *Guides* 495.

be justified. Under the third category, if there is normal sensibility, opposition strength and nerve conduction studies, there is no objective basis for an impairment rating.[6]

The A.M.A., *Guides* provides that the evaluation of grip strength under Tables 16-31 through 16-34 should only be included in the calculation of an upper extremity impairment if such a deficit has not been considered adequately by other impairment rating methods for the upper extremity. 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. 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.[7] Otherwise, the impairment ratings based on objective anatomic findings take precedence.[8] Office procedures provide that "clearly, grip and/or pinch strength should not be used to calculate upper extremity impairment caused by a compression neuropathy such as carpal tunnel syndrome."[9]

ANALYSIS

The Office accepted appellant's claim for right carpal tunnel syndrome and right ulnar nerve lesion and granted a schedule award of four percent upper extremity impairment based on loss of grip strength under Table 16-34, page 509 of the A.M.A., *Guides*. Pursuant to section 16.8a of the A.M.A., *Guides*, an impairment based on grip strength is allowable only under circumstances where the examiner believes the employee's loss of strength represents an impairing factor that has not been considered adequately by other methods in the A.M.A., *Guides*.[10]

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[6] *Id. See Kimberly M. Held*, 56 ECAB ___ (Docket No. 05-1050, issued August 16, 2005).

[7] *Mary L. Henninger*, 52 ECAB 408, 409 (2001). An example of an impairment that would not be adequately considered by other rating methods would be loss of strength caused by a severe muscle tear that healed leaving a palpable muscle defect. A.M.A., *Guides* 508.

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

[9] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exhibit 4 (June 2003).

[10] *See* A.M.A., *Guides* 508. The criteria for diagnosing and rating weakness not due to other ratable conditions and for using grip and pinch strength measurements, have been clarified in section 16.8, pages 507-11 of the A.M.A., *Guides*. The A.M.A., *Guides* now state that the loss of strength should be rated separately only if it is based on an unrelated cause or mechanism. "Otherwise, the impairment ratings based on objective anatomic findings take precedence. Decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts that prevent effective application of maximal force in the region being evaluated." The A.M.A., *Guides* 508. Moreover, it continues to say that "motor weakness associated with disorders of the peripheral nervous system and various degenerative neuromuscular conditions are evaluated according to section 16.5 and Chapter 13." The A.M.A., *Guides* 508. Office procedures interpret this section to mean grip and/or pinch strength should not be used to calculate upper extremity impairment caused by a compression neuropathy such as carpal tunnel syndrome. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exhibit 4 (June 2003). *See Kimberly M. Held, supra* note 6.

In this case, loss of grip strength was the only impairing factor found by Dr. Fernandez and Dr. Forman. However, neither physician provided an explanation as to why appellant's loss of grip strength represented an impairing factor which needed to be rated separately to justify a loss of grip strength impairment rating. Dr. Fernandez merely presented his impairment findings. He did not mention any such additional impairing factors due to loss of strength in his May 25, 2006 report. While Dr. Forman advised that appellant's grip strength was approximately 22 percent less than the average strength of grip for appellant's age group, he merely applied the appropriate table without providing an explanation as to why a loss of grip strength impairment rating was warranted. Thus, the reports from Dr. Fernandez and Dr. Forman are of diminished probative value.

The Office medical adviser provided a four percent impairment rating based on loss of grip strength by averaging the grip strength measurements of Dr. Forman and Dr. Fernandez.[11] However, this impairment rating is unsupported as the Office medical adviser also failed to provide any supporting rationale to justify an impairment rating based on loss of grip strength. Consequently, the Office medical adviser's opinion is of diminished probative value.

The Board finds that the report of Dr. Forman's report is not based upon correct application of the relevant sections of the fifth edition of the A.M.A., *Guides* pertaining to impairment due to carpal tunnel syndrome. Therefore, his opinion is not sufficient to resolve the issue of appellant's entitlement to a schedule award for her accepted upper extremity conditions, right carpal tunnel syndrome and right ulnar nerve lesion. Having undertaken further development of the medical opinion evidence by sending appellant to an Office referral physician for an impairment rating, the Office should not have issued a final decision on the matter without obtaining a medical rating based on correct application of Office procedures and the A.M.A., *Guides*. As the Office referred appellant to Dr. Forman, it has the responsibility to obtain an evaluation that will resolve the issue of the degree of appellant's permanent impairment of the right arm.[12] On remand, the Office should refer appellant to Dr. Forman or another appropriate medical specialist and request a thorough impairment evaluation based on correct application of the relevant sections of the A.M.A., *Guides* and Office procedures.

CONCLUSION

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

[11] The Office medical adviser averaged Dr. Forman's grip strength of 18.2 kg and Dr. Fernandez' grip strength of 22.7 kg to arrive at 20.5 kg.

[12] *See Robert Kirby*, 51 ECAB 474 (2000); *Mae Z. Hackett***,** 34 ECAB 1421 (1983) (in these cases the report of the Office referral physician did not resolve the issue in the case).

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this 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