United States Department of Labor
Employees' Compensation Appeals Board

P.N., Appellant	)	
and	)	**Docket No. 07-607**
	)	**Issued: June 6, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Kenosha, WI, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 28, 2006 appellant filed a timely appeal from the November 17, 2006 decision of the Office of Workers' Compensation Programs' hearing representative, affirming the Office's November 29, 2005 granting of appellant's schedule award for a one 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 the schedule award decision.

ISSUE

The issue is whether appellant has established that he has more than one percent permanent impairment of his left upper extremity, for which he received a schedule award.

FACTUAL HISTORY

On September 5, 2002 appellant, then a 38-year-old letter carrier, filed an occupational disease claim, Form CA-2, alleging that he felt pain in his left elbow while sorting mail. In a report dated December 8, 2002, Dr. Dennis J. Anderson, a Board-certified orthopedic surgeon, opined that appellant's symptoms were consistent with tendinitis from repetitive stress caused by

working with his hands at the employing establishment. On July 11, 2003 the Office accepted his claim for left medial epicondylitis. On April 27, 2004 Dr. Todd Barnhardt, a Board-certified orthopedic surgeon, performed an authorized submuscular ulnar nerve transposition and medial epicondyle debridement on appellant's left elbow.

On July 13, 2005 appellant filed a claim for a schedule award for the permanent impairment of his left arm. The same day Dr. Barnhardt reported that appellant had reached maximum medical improvement. He stated that appellant's left arm was doing "fairly well," though he did experience occasional tingling when he leaned his forearm onto a surface and some soreness with resisted internal rotation of the forearm or grasping heavy objects. Dr. Barnhardt noted that appellant had full range of motion, symmetric supination and pronation, no pain over the medial epicondyle and a negative Tinel's sign at the elbow. He indicated that appellant would be under permanent work restrictions of no more than 50 hours of work per week and no working with a third bundle of mail. Dr. Barnhardt stated that he would provide a disability rating based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.).

By letter dated September 7, 2005, the Office requested specific information about appellant's elbow impairment and emphasized that the impairment rating provided by his treating physician must be determined in accordance with the A.M.A., *Guides*.

On September 28, 2005 Dr. Barnhardt stated that appellant had a left arm impairment rating of five percent because of sensory deficit and pain. He stated that appellant reached maximum medical improvement on July 13, 2005 and that he had active flexion of 140 degrees, active extension of 0 degrees and pronation and supination of 80 degrees. Dr. Barnhardt did not find any ankylosis of the elbow joint. On a form from the Wisconsin Department of Workforce Development, he indicated that appellant had a history of pain in his left medial elbow and numbness and tingling in his ring and small fingers[1] and had been diagnosed with chronic left medial epicondylitis and ulnar neuritis with subluxing ulnar nerve.

On October 12, 2005 the Office provided appellant's file to the Office medical adviser for a determination of the permanent impairment of his left upper extremity. In a report dated October 23, 2005, the Office medical adviser found that appellant had a permanent impairment rating of one percent of his upper left extremity. Based on his review of the medical evidence he found that appellant's complaints included occasional pain at the elbow and mild tingling when leaning his forearms on surfaces. He found that the medical records revealed full normal range of motion at the elbow, negative Tinel's sign and no documented tenderness over the medical epicondyle or decreased grip strength. His award of one percent of the left arm was based on a Grade 4 pain and sensory deficit of 25 percent in the distribution of the medial antebrachial cutaneous nerve (Table 16-10, page 482 and Table 16-15, page 492).

By decision dated November 29, 2005, the Office issued appellant a schedule award for the one percent impairment of his left arm, for the period July 15 to August 5, 2005, which

[1] The Board notes that this history was taken from a report prepared by Dr. Anderson on October 4, 2002. On June 17, 2004 following the surgery, Dr. Barnhardt found that appellant's sensation had been normalized.

equaled 3.12 weeks of compensation. It stated that the impairment rating had been calculated by the Office medical adviser based on the findings provided by the examining physician.

On December 12, 2005 appellant requested an oral hearing to review the Office's decision. At the September 13, 2006 hearing, he expressed confusion over why his award was based on left arm impairment rating of one percent when his treating physician, Dr. Barnhardt, rated his left arm impairment at five percent. The Office hearing representative reiterated the need for Dr. Barnhardt to explain how he reached his rating based on the procedures outlined in the A.M.A., *Guides*. He left the record open for appellant to obtain and submit the requested information.

On October 5, 2006 Dr. Barnhardt submitted a report detailing appellant's condition. He stated that appellant's ulnar nerve transposition and medial epicondylar debridement had yielded satisfactory results, but that he still had some pain with repetitive grasping of the hand or flexing of the wrist. Dr. Barnhardt noted that he still had some paresthesias around his surgical incisions. He found that appellant had an impairment rating of five percent due to sensory deficit, pain and loss of strength.

By decision dated November 17, 2006, the Office hearing representative affirmed the Office's November 29, 2005 decision, noting that Dr. Barnhart's report did not explain his rating using the A.M.A., *Guides*. The Office hearing representative found that the weight of the evidence rested with the Office medical adviser, who reviewed the medical evidence and correctly applied the A.M.A., *Guides*.

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 should be determined. For 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 standards applicable to all claimants.[4] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[5]

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.[6] Chapter 16 of

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id*. at § 10.404(a).

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

[6] *See Paul A. Toms*, 28 ECAB 403 (1987).

the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.[7]

ANALYSIS

The Board finds that the Office medical adviser correctly followed the procedures outlined in the A.M.A., *Guides* in determining appellant's permanent impairment. The Office medical adviser based his determination on the complete examination performed by Dr. Barnhardt, appellant's treating Board-certified orthopedic surgeon. Based on his findings of occasional pain in the left elbow and mild tingling with leaning on objects, the Office medical adviser found Grade 4 pain and sensory deficit of 25 percent in the medial antebrachial cutaneous nerve.[8] This nerve distribution group was properly utilized because it covers the affected regions of the arm.[9] The maximum impairment allowed for pain and sensory deficits in this nerve is five percent.[10] When multiplied by the 25 percent pain and sensory deficit found by the Office medical adviser, the resulting impairment rating is one and a quarter percent. He properly rounded impairment of this percentage down to one percent. The Office medical adviser did not provide a rating for decreased strength because there was no evidence of decreased grip strength. Likewise, he did not provide a rating for decreased range of motion because Dr. Barnhart's examination found that appellant had normal range of motion. Accordingly, the Board finds that the Office medical adviser properly established the impairment rating and the Office correctly relied on it in issuing its schedule award.

The Board further finds that Dr. Barnhardt's rating of five percent impairment does not form the basis for a schedule award. In both his September 28, 2005 and October 5, 2006 reports he found that appellant had five percent permanent impairment of his left arm. However, the only explanation Dr. Barnhard offered was that the rating was based on sensory deficit, pain and loss of strength. In his September 28, 2005 report he did not state the current symptoms on which he had based his impairment rating or indicate how he measured them. In his October 5, 2006 report he listed symptoms of "some pain with repetitive grasping of the hand or flexing of the wrist" and paresthesias around the surgical incision, but did not explain how he used these factors to rate appellant's impairments in accordance with the A.M.A., *Guides*. Because Dr. Barnhardt did not explain his rating in a manner that could be objectively verified according to the A.M.A., *Guides*, the Board finds that it is not adequate to support an increased schedule award under the Act.

[7] A.M.A., *Guides* 433-521, Chapter 16, The Upper Extremities, (5th ed. 2001).

[8] *See id.* at 482, Table 16-10. The pain is described as: "Distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity."

[9] A.M.A., *Guides* 488, Figure 16-48.

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

CONCLUSION

The Board finds that appellant has not established that he has more than one percent permanent impairment of his left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 17, 2006 is affirmed.

Issued: June 6, 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