United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 06-2026**
	)	**Issued: March 23, 2007**
U.S. POSTAL SERVICE, MURRAY HILL STATION, New York, NY, Employer	)	

Appearances:
Thomas R. Uliase, 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 August 31, 2006 appellant filed a timely appeal from a March 28, 2006 merit decision of an Office of Workers' Compensation Programs' hearing representative which found a 15 percent impairment of the right upper extremity and a 20 percent impairment of the 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 appeal. On appeal, counsel argues that the report of the impartial specialist, Dr. Sanford R. Wert, a Board-certified orthopedic surgeon, requires clarification.

ISSUE

The issue is whether appellant had more than a 15 percent impairment of the right upper extremity and a 20 percent impairment of the left upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On February 14, 1995 appellant, then a 50-year-old carrier, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome causally related to her federal

employment. On April 7, 1995 the Office accepted her claim for bilateral carpal tunnel syndrome. The Office authorized left wrist carpal tunnel release surgery on September 20, 1995 and right wrist carpal tunnel release surgery on March 5, 1996. The surgeries were performed on November 14, 1995 and June 18, 1996. Appellant returned to limited-duty work on January 2, 1996, stopped work on June 18, 1996 and returned to limited-duty work on July 21, 1996.[1]

Appellant filed a claim for a schedule award on July 9, 2000 and submitted an April 23, 2000 report from Dr. David Weiss, an osteopath, who reviewed her medical history and her complaint of bilateral pain and stiffness in the hands as well as "pins and needles sensation." She noted that she had difficulty making a fist bilaterally. Physical findings of the left hand and wrist included "suggestive thenar atrophy," positive Tinel's, Phalen's and carpal compression testing. A physical examination of the right hand and wrist revealed thenar atrophy, positive Tinel's sign, Phalen's and carpal compression testing. Grip strength testing with a Jamar hand dynamometer demonstrated 18 kilograms on the right and 14 on the left. Sensory examination of the ulnar and median nerve failed "to reveal any perceived dermatomal abnormalities." Dr. Weiss diagnosed cumulative and repetitive trauma disorder and bilateral carpal tunnel syndrome, status post release. He advised that, under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[2] at Table 16, page 57, appellant had a 20 percent impairment for median nerve entrapment at the right wrist and a 30 percent impairment for median nerve entrapment at the left wrist.

By memorandum dated August 22, 2000, the Office requested that the Office medical adviser make a determination of appellant's impairment under the A.M.A., *Guides*. On October 10, 2000 the Office medical adviser concluded that appellant had a 10 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity. In a report dated October 30, 2000, the Office medical adviser stated that he used Table 16 on page 57 to calculate a 10 percent impairment for mild right carpal tunnel syndrome and a 20 percent impairment for moderate left carpal tunnel syndrome.

By letter dated December 6, 2000, the Office referred appellant to Dr. Wert to resolve the conflict between appellant's treating physician, Dr. Weiss, and the Office medical adviser with regard to the extent of appellant's impairment. In a medical report dated January 3, 2001, Dr. Wert related appellant's history, current complaints and findings on physical examination. A physical examination of the right wrist revealed 70 degrees of volar flexion, 65 degrees of dorsiflexion, 10 degrees of radial deviation and 10 degrees of ulnar deviation. The left wrist physical findings included 70 degrees of volar flexion, 65 degrees of dorsiflexion, 10 degrees of radial deviation and 10 degrees of ulnar deviation. Dr. Wert reported positive Tinel's and Phalen's signs and pain with wrist movement. He then provided his opinion on permanent impairment:

> "Based upon today's examination, in conjunction with the claimant's story, the claimant's occupation propitiated the condition in her hands resulting in bilateral carpal tunnel syndrome. The claimant underwent surgery for right and left carpal

[1] Appellant retired from the employing establishment.

[2] A.M.A., *Guides* (4th ed.)

tunnel release in 1995 and 1996 respectively. Based upon the A.M.A., [*Guides*], the claimant is afforded an impairment rating as follows:

> With respect to the right wrist, the claimant is afforded a 15 percent loss of use.
>
> With respect the left wrist, the claimant is afforded a 20 percent loss of use."

On March 19, 2001 the Office referred Dr. Wert's January 3, 2001 schedule award evaluation to another Office medical adviser for review. In a report dated April 5, 2001, an Office medical adviser reviewed the medical reports and concluded that appellant had a 10 percent impairment of the right upper extremity and a 10 percent impairment of the left upper extremity based on Table 16, page 57.

On May 9, 2001 the Office issued a schedule award for a 10 percent impairment of each upper extremity. The period of the award ran from April 19 to June 29, 2001.

Appellant requested an oral hearing which was held on October 25, 2001.

In a decision dated February 4, 2002, an Office hearing representative found that there was an unresolved conflict in the medical opinion evidence and set aside the May 9, 2001 decision. He instructed the Office on remand to obtain clarification from Dr. Wert regarding his evaluation including using the fifth edition of the A.M.A., *Guides*.

In a supplemental report dated April 4, 2002, Dr. Wert calculated appellant's impairment as follows:

> "Page 467, deficits by wrist motion impairment, three percent for impairment in extension, and four percent for impairment in flexion, totaling seven percent in the left wrist (Figure 16[-]28). Page 495, Category 2, the claimant was afforded another five percent with respect to the left wrist due to due to (sic) positive findings, and another eight percent due to sensory deficit and pain Grade 4, according to [T]able 16-10, page 482. The total loss of use is 20 percent.
>
> "Page 467, deficits by wrist motion impairment, three percent for impairment in extension, and four percent for impairment in flexion, totaling seven percent in the left[3] wrist (Figure 16[-]28). Page 495, Category 2, the claimant was afforded another five percent with respect to the right wrist due to) positive findings, another three percent due to pain and the need to wear night braces according to [T]able 16-10, page 482. The total loss of use is 15 percent."

On April 22, 2002 the Office issued a schedule award for a 15 percent impairment of the right upper extremity and a 20 percent impairment of the left upper extremity. The period of the award was June 30, 2001 to May 23, 2002.

[3] This appears to be a typographical error as the physician is referencing the right wrist in this paragraph.

In a letter dated April 26, 2002, appellant requested an oral hearing which was held on February 8, 2006.

In a decision dated March 28, 2006, an Office hearing representative affirmed the April 22, 2002 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of the Act[4] and its implementing regulation[5] 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 regulations as the appropriate standard for evaluating schedule losses.[6] Effective February 1, 2001, the fifth edition of the A.M.A., *Guide*s is used to calculate schedule awards.[7]

Section 8123(a) of the Act provide, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[8] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[9] However, in a situation where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.[10]

ANALYSIS

The Office accepted appellant's claim for an aggravation of bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on June 18, 1996 and a left carpal tunnel release on November 14, 1995. She requested a schedule award on July 9, 2000. The

[4] 5 U.S.C. §§ 8101-8193.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); *see Jesse Mendoza*, 54 ECAB 802 (2003).

[8] 5 U.S.C. § 8123(a); *Darlene R. Kennedy*, 57 ECAB ___ (Docket No. 05-1284, issued February 10, 2006).

[9] *John E. Cannon*, 55 ECAB 585 (2004).

[10] *Nancy Keenan*, 56 ECAB ___ (Docket No. 05-949, issued August 18, 2005).

Board finds that this case is not in posture for a decision. Further development of the medical evidence is required.

Chapter 16 of the A.M.A., *Guides* provides the framework for assessing upper extremity impairments.[11] With regard to carpal tunnel syndrome, the A.M.A., *Guides* provides:

> "If after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present --
>
> > 1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described [in Tables 16-10a and 16-11a].
> >
> > 2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present and an impairment rating not to exceed [five percent] of the upper extremity may be justified.
> >
> > 3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating."[12]

In order to resolve the conflict between the opinion of appellant's physician Dr. Weiss and the Office medical adviser with regard to the degree of permanent impairment of the upper extremities, the Office properly referred appellant to Dr. Wert for an impartial medical examination. Pursuant to instructions from an Office hearing representative, the Office requested a supplemental report from Dr. Wert using the fifth edition of the A.M.A., *Guides*. Dr. Wert's April 4, 2002 supplemental report, however, does not resolve the issue. He does not discuss why appellant falls into category 2 of the standards for determining impairment for carpal tunnel syndrome. Dr. Wert failed to specify the applicable tables and figures of the A.M.A., *Guides* upon which he relied in calculating his impairment rating for lack of flexion and extension beyond noting the page number. With respect to the use of Table 16-10, page 482, Dr. Wert assigned appellant an eight percent impairment for the left wrist and a three percent impairment for the right wrist. However, Dr. Wert did not explain how he used Table 16-10 in reaching this impairment rating, *i.e.*, with regard to the grading classification for the description of sensory deficit or pain. It is also unclear whether and if he followed the procedure under Table 16-10b as he does not identify the peripheral nerve involved or reference the applicable table he used to calculate the impairment rating. Based on this report, the Board is unable to render an informed judgment as to whether Dr. Wert's impairment is in conformance with the protocols of the A.M.A., *Guides*.

[11] A.M.A., *Guides* 433-521.

[12] *Id.* at 495

As the opinion of Dr. Wert is in need of clarification and elaboration, his report may not be afforded the special weight of an impartial medical specialist. After such further development as the Office deems necessary, a *de novo* decision should be issued with regard to appellant's impairment of the upper extremities.

CONCLUSION

The Board finds that this case is not in posture for decision due to an unresolved conflict in the medical opinion evidence.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 26, 2006 opinion is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: March 23, 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