United States Department of Labor
Employees' Compensation Appeals Board

P.G., Appellant	)	
and	)	**Docket No. 07-1544**
	)	**Issued: November 8, 2007**
U.S. POSTAL SERVICE, COTTAGE HILL POST OFFICE, Mobile, AL, 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 May 18, 2007 appellant filed a timely appeal from the December 4, 2006 decision of an Office of Workers' Compensation Programs hearing representative affirming a July 11, 2006 schedule award. 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 met her burden of establishing that she has more than 10 percent permanent impairment of each upper extremity, for which she received a schedule award. On appeal, she contends that the medical evidence presented by her treating physician established that she was entitled to 35 percent impairment for each arm.

FACTUAL HISTORY

On June 28, 1998 the Office accepted appellant's occupational disease claim for bilateral carpel tunnel syndrome arising from her letter carrier duties sorting and delivering mail. On August 13, 1998 appellant underwent a carpal tunnel release in her right hand. On December 2, 2003 she underwent a carpal tunnel release in her left hand. On March 17, 2006 appellant, then a

57-year-old retired letter carrier, filed a claim for a schedule award. Dr. Robert Zarzour, a Board-certified orthopedic surgeon, stated that appellant was under his care following bilateral carpal tunnel surgeries. He opined that she had a 10 percent impairment of the right hand and a 10 percent impairment of the left hand.

On March 23, 2006 the Office provided appellant's file to an Office medical adviser, Dr. G.M. Pujadas, who noted that Dr. Zarzour had provided no basis for his impairment rating. Dr. Pujadas also stated that he could not find a copy of the operative report for the right carpal tunnel release. He stated that clarification was needed on these issues before a schedule award could be issued.

On March 31, 2006 the Office informed appellant of the deficiencies in her claim and requested that she provide a report in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

On May 2, 2006 Dr. Zarzour stated that appellant had recurrent bilateral carpal tunnel syndrome with neuropathy, paresthesia and decreased motor functions bilaterally. He noted that she also had atrophy in the first/second webspace of the left hand. Dr. Zarzour stated that appellant's right thumb had 10 percent loss of adduction and that her left thumb had a 20 percent loss of adduction according to Figure 16-18, page 459, of the A.M.A., *Guides.* He stated that, via Table 16-18a,[1] page 459, this impairment translated to two percent for each hand or one percent whole body. Using Figure 16-35, page 473, Dr. Zarzour found that appellant had loss of pronation and supination in both elbows. He stated that she had lost 10 degrees of pronation in the right arm and 20 degrees in the left arm and lost 30 degrees of supination in the right arm and 60 degrees in the left arm. Using Figure 16-36 and Figure 16-37, pages 473-74, Dr. Zarzour found that appellant had elbow range of motion impairments of 14 percent for the right arm and 22 percent for the left arm, which respectively equaled 8 percent and 14 percent whole person impairment. He stated that, using Table 16-10, page 482, appellant's sensory deficits associated with C6 deficit translated to five percent whole person impairment for the right arm and 12 percent whole person or 19.5 percent upper extremity impairment for the left arm. Dr. Zarzour also found impairment associated with "decrease of motion" using Table 16-11, page 484. He stated that appellant had motor deficit impairments of 18 percent for the right arm and 14 percent for the left arm, which translated to one percent whole person impairment for each arm. Combining all of the noted impairments, Dr. Zarzour opined that appellant had a "total whole body impairment of 40 percent," *i.e.*, 26 percent "whole body impairment" for the left upper extremity and 14 percent "total body impairment" for the right upper extremity.

On June 29, 2006 the Office provided Dr. Zarzour's report to the Office medical adviser, Dr. James Dyer, a Board-certified orthopedic surgeon, for a determination of appellant's permanent impairment. On July 3, 2006 Dr. Dyer stated that appellant reached maximum medical improvement on February 1, 2006. He stated that Dr. Zarzour did not apply the A.M.A., *Guides* correctly in his May 2, 2006 report. Dr. Dyer noted that Dr. Zarzour found a C6 deficit in the upper extremities, but that he described it using hand, wrist and arm deficits, which are not related to the acromioclavicular area. He found that Dr. Zarzour's February 1, 2006 report

[1] The Board notes that this is likely a typo and that he intended to reference Table 16-18b: Table 16-18a deals with abduction while Table 16-18b deals with adduction, which was what he measured.

correctly identified a 10 percent impairment in each of appellant's upper extremities. Dr. Dyer found that the impairment rating was correct because the medical evidence established a Grade 4 motor and sensory deficit of the median nerve, which yielded a 10 percent impairment in each upper extremity when Table 16-15, page 492, was used in conjunction with Table 16-10, page 482 and Table 16-11, page 484.

By decision dated July 11, 2006, the Office granted appellant a schedule award for 20 percent impairment of an "upper extremity."

On August 3, 2006 appellant requested a review of the written record. She contended that the evaluation conducted by Dr. Zarzour according to the A.M.A., *Guides* was ignored by the Office. On November 7, 2006 appellant stated that she experienced constant pain, numbness and tingling in both of her hands, the left more than the right. She stated that her left hand had gotten much worse since her last evaluation.

By decision dated December 4, 2006, the Office hearing representative found that the medical evidence failed to establish that appellant had more than 10 percent impairment to both upper extremities. She found that Dr. Zarzour did not properly assess appellant's impairment under the A.M.A., *Guides*, because he used whole body impairments and that Dr. Dyer properly used medical evidence of record to determine that appellant had 10 percent impairment to each upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulations[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 the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedure for

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] 20 C.F.R. § 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).

determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.[7]

ANALYSIS

The Board finds that this case is not in posture for a decision as the permanent impairment rating on which the Office relied was insufficient to establish the schedule award.

The Office referred the medical evidence of record, including the reports of appellant's attending physician, Dr. Zarzour, to the Office medical adviser, Dr. Dyer, a Board-certified orthopedic surgeon, for an impairment rating in accordance with the protocols of the A.M.A., *Guides*. The Board finds that Dr. Dyer's opinion is insufficient to establish a permanent impairment rating for 10 percent for each of appellant's upper extremities.

While Dr. Dyer generally referenced the tables in the A.M.A., *Guides* on which he based his impairment rating, he did not adequately explain his rating. Dr. Dyer stated that Dr. Zarzour's February 1, 2006 impairment rating correctly described Grade 4 motor and sensory deficits of the median nerve. Dr. Dyer stated that combining Table 16-15, page 492, with Table 16-10, page 482 and Table 16-11, page 484 yielded a rating of 10 percent impairment for each of appellant's arms. However, it is unclear how he determined which nerve was involved or how he applied Table 16-15 to determine the maximum impairments for either sensory or motor loss.[8] Table 16-15 requires combination with results from Table 16-10, page 482, sensory deficit and pain and Table 16-11, page 484, motor and loss of power deficit, to reach an impairment rating.[9] Dr. Dyer stated that appellant's conditions were consistent with Grade 4 on each of these tables, which indicates a deficit of 1 to 25 percent, but did not indicate the exact percentages he applied to Table 16-15. Without this information, the Board is unable to verify his calculation of 10 percent permanent impairment for each upper extremity.

The Board also finds that Dr. Dyer did not adequately discuss findings that Dr. Zarzour made on examination, namely those related to thumb and elbow range of motion. Dr. Dyer stated that Dr. Zarzour did not correctly apply the A.M.A., *Guides*, but failed to explain why he did not account for the limitations of appellant's thumb adduction and elbow pronation and supination in his own rating.

The Board finds that Dr. Dyer's medical opinion evidence was an insufficient basis for the Office's schedule award decisions.

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

[8] *Id*. at 492. The Board notes that the median nerve below the midforearm provides a maximum impairment of 10 percent for motor deficit.

[9] *Id.*

CONCLUSION

The Board finds that the case is not in posture for decision and will be remanded for further development of the medical evidence, to be followed by a *de novo* decision on the percentages of impairment to appellant's upper extremities.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 4 and July 11, 2006 are set aside and remanded for actions consistent with this decision.

Issued: November 8, 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