

**United States Department of Labor
Employees' Compensation Appeals Board**

G.S., Appellant

and

U.S. POSTAL SERVICE, MAIN POST OFFICE,
New Orleans, LA, Employer

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**Docket No. 07-1834
Issued: November 20, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 2, 2007 appellant filed a timely appeal from an April 5, 2007 Office of Workers' Compensation Programs' decision, denying her claim for a 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 any permanent impairment of her upper extremities which entitles her to a schedule award.

FACTUAL HISTORY

This is the third appeal in this case.¹ By decisions dated March 8, 2006 and April 10, 2007, the Board reversed Office wage-earning capacity decisions dated June 29, 2005 and August 25, 2006. The findings of fact and conclusions of law from the prior Board decisions are incorporated herein by reference.

¹ Docket No. 07-21 (issued April 10, 2007); Docket No. 06-30 (issued March 8, 2006).

On September 24, 2001 the Office accepted that appellant, then a 41-year-old mail processing clerk, sustained bilateral entrapment neuropathy and bilateral radiculopathy caused by her duties of patching mail, labeling envelopes, folding letters and sealing and stuffing envelopes eight hours a day. The Office provided appropriate wage-loss compensation and medical benefits. Appellant returned to work in a limited-duty capacity on September 21, 2002. On March 26, 2004 appellant filed a claim for a schedule award.

On June 8, 2001 Dr. Mary Mathai, a Board-certified physiatrist and specialist in electrodiagnostic medicine, noted that appellant's reflexes and grip strength were normal in both extremities but she had positive Tinel's and Phalen's signs. A nerve conduction study (NCS), performed on her upper extremities revealed normal distal latencies, amplitudes and conduction velocities in both the median and ulnar nerves with the exception of a slowing of conduction velocity in the ulnar nerve across the right elbow. An electromyogram (EMG) was consistent with entrapment neuropathy as seen in cubital tunnel syndrome and also revealed chronic C6-7 bilateral radiculopathy.

On April 21, 2005 Dr. Windsor S. Dennis, an attending orthopedic surgeon, provided findings on physical examination and diagnosed cervical radiculopathy, originating at C6-8, and cubital tunnel syndrome. He stated that appellant had a 43.5 percent bilateral impairment of her upper extremities based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² including 6 percent for each upper extremity due to loss of range of motion in her wrists, 4.5 percent for each upper extremity due to spinal nerve deficit at the C6-8 levels, 18 percent for median nerve motor deficit of the right upper extremity and 15 percent for motor deficit of the left upper extremity. On June 14, 2005 Dr. H. Mobley, an Office medical adviser, stated that the report of Dr. Dennis contained insufficient information for determining appellant's bilateral upper extremity impairment.

An August 16, 2006 magnetic resonance imaging (MRI) scan of appellant's cervical spine noted normal body height and alignment. The disc spaces appeared to be well maintained in height with diffuse disc dessication. There was no evidence of abnormal signal or swelling in her cervical spine. An August 17, 2006 EMG and NCS examination of appellant's upper extremities was essentially normal. There was mild bilateral median nerve entrapment of her wrists consistent with carpal tunnel syndrome but no evidence of cervical radiculopathy or ulnar neuropathy on either side.

In a report dated July 26, 2006, Dr. Christopher E. Cenac, an orthopedic surgeon and an Office referral physician, provided findings on physical examination as follows:

“[Appellant] has no specific tenderness of the brachial plexus bilaterally. Reflex testing is normal in both upper extremities. Grip strength is symmetrical with the dynamometer on three occasions at 20 foot pounds equally. [Appellant] is right handed. No sensory deficits are identified to pinprick or light touch in the arms or hands. Tinel's test is positive at both wrists and elbows. Atrophy is not documented by direct measurement above or below the elbows. [Appellant] has

² A.M.A., *Guides* (5th ed. 2001).

full range of motion of the neck with subjective complaints at extremes of motion. No point tenderness is elicited in the cervical spine. [Appellant] has normal pinch and grasping ability. She has normal fine and gross dexterity bilaterally. Range of motion of the shoulder, elbow, wrist is normal. Distal pulses are intact. The Phalen's test is negative.

"Cervical x-ray studies show reversal of the cervical lordosis.³ Mild degenerative changes are noted at C6-7 and C6-T1.

"A review of the EMG/NCS previously accomplished [June 8, 2001] reveals an entrapment neuropathy of the right ulnar nerve at the elbow and a chronic C6-7 radiculopathy bilaterally. Imaging studies revealed only findings consistent with straightening of the cervical lordosis without any cord compression or nerve root impingement identified.

"[Appellant] has not had any recent diagnostic testing to support her subjective complaints. Imaging studies have been scheduled locally and EMG/NCS are also scheduled. Upon receipt of these test results additional comments will be forwarded relative to assessment of impairment...."

On September 13, 2006 Dr. Cenac noted that he had reviewed recent EMG and NCS testing. He stated:

"[Appellant] has a mild bilateral median nerve entrapment at both wrists consistent with carpal tunnel syndrome. She has no evidence of cervical radiculopathy or ulnar radiculopathy on either extremity. The findings noted on the prior study, June 8, 2001, have resolved.

"Using [the A.M.A., *Guides*, fifth edition], the following opinion is submitted. [Appellant] has normal motion at the elbow, wrist and all digits. She has normal grip strength testing. [Appellant] has normal sensibility, [two-point] discrimination testing, and opposition strength. She has no sensory or motor deficits recorded. [Appellant] has mild findings on nerve conduction studies. Accordingly, there is no objective basis for an impairment rating based on the [A.M.A., *Guides*], Tables 16-10, 16-11, 16-15. [Appellant] reached MMI [maximum medical improvement] December 6, 2002 as documented by Dr. Windsor Dennis in his report of April 21, 2005."

On April 3, 2007 Dr. Mobley stated that appellant had no impairment of her upper extremities based on Dr. Cenac's report and the A.M.A., *Guides*.

³ Lordosis is an abnormal increase in the curvature of the spine. See DORLAND'S, *Illustrated Medical Dictionary* (30th ed. 2003) 1067.

By decision dated April 5, 2007, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish that she sustained any permanent impairment of her upper extremities causally related to her August 1, 2001 employment injury.⁴

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulations⁶ 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.⁷

ANALYSIS

Dr. Cenac provided findings on physical examination. He stated that appellant had no specific tenderness of the brachial plexus bilaterally and reflex testing was normal in both upper extremities. Tinel's test was positive at both wrists and elbows but the Phalen's test was negative. No sensory deficits were identified to pinprick or light touch in the arms or hands. Atrophy was not documented by direct measurement above or below the elbows. Appellant had full range of motion of her neck with subjective complaints at extremes of motion. No point tenderness was elicited in the cervical spine. Appellant had normal range of motion of her shoulders, elbows, wrists and all digits. She had normal pinch and grasping ability and normal fine and gross dexterity bilaterally. Distal pulses were intact. Dr. Cenac found that appellant had no sensory or motor deficits. He noted that a June 8, 2001 EMG/NCS report revealed an entrapment neuropathy of the right ulnar nerve at the elbow and chronic C6-7 radiculopathy bilaterally and that x-rays revealed findings consistent with cervical lordosis. Dr. Cenac noted that recent x-rays showed a reversal of appellant's cervical lordosis since the 2001 studies. In addition, an August 16, 2006 MRI scan of appellant's cervical spine noted normal body height and alignment and no evidence of abnormal signal or swelling. An August 17, 2006 EMG and NCS examination of appellant's upper extremities was reported as essentially normal. He noted that the recent studies revealed mild bilateral median nerve entrapment of her wrists consistent with carpal tunnel syndrome but no evidence of cervical radiculopathy or ulnar radiculopathy in either upper extremity. Dr. Cenac determined that appellant had no permanent impairment of her upper extremities. The Board finds that the detailed report of Dr. Cenac, which is based on his findings on physical examination, the results of objective testing and the A.M.A., *Guides*,

⁴ The Board notes that on April 30, 2007 the Office issued a wage-earning capacity decision. In the instant appeal, appellant is not seeking Board review of the April 30, 2007 decision.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ A.M.A., *Guides* (5th ed. 2001).

establishes that appellant has no permanent impairment of her upper extremities causally related to her August 1, 2001 employment injury.

On April 21, 2005 Dr. Dennis provided findings on physical examination and stated that appellant had a 43.5 percent bilateral impairment of her upper extremities based on the A.M.A., *Guides*, including 6 percent for each upper extremity due to loss of range motion in her wrists, 4.5 percent for each upper extremity due to spinal nerve deficit at the C6-8 levels, 18 percent for median nerve motor deficit of the right upper extremity and 15 percent for motor deficit of the left upper extremity. However, his examination of appellant was conducted more than one year prior to Dr. Cenac's examination. Objective testing performed at the time of Dr. Cenac's evaluation in 2006 revealed changes in appellant's upper extremities. For example, although a 2001 EMG revealed bilateral cervical radiculopathy, the August 17, 2006 EMG and NCS examinations of appellant's upper extremities were essentially normal with no evidence of radiculopathy. Dr. Dennis based his April 2005 impairment rating on findings of loss of range of motion and motor and sensory deficit. However, more than one year later, in July 2006, Dr. Cenac examined appellant and found no evidence of loss of range of motion or motor or sensory deficit. Due to these deficiencies, the report of Dr. Dennis is not sufficient to establish that appellant sustained any permanent impairment to her upper extremities causally related to her August 1, 2001 employment injury.

CONCLUSION

The Board finds that appellant failed to establish that she has any permanent impairment to her upper extremities causally related to her August 1, 2001 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 5, 2007 is affirmed.

Issued: November 20, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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