

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

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**S.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POSTAL ANNEX,  
Media, PA, Employer**

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**Docket No. 07-1129  
Issued: September 13, 2007**

*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 March 20, 2007 appellant filed a timely appeal from an October 17, 2006 decision of the Office of Workers' Compensation Programs adjudicating 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 13 percent impairment of each upper extremity.

**FACTUAL HISTORY**

On December 9, 2002 appellant, then a 58-year-old clerk, filed an occupational disease claim alleging that she sustained injuries to her hands causally related to her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome and right trigger thumb. Appellant underwent a right carpal tunnel and right trigger thumb release on April 1, 2003 and a

left carpal tunnel release on June 3, 2003. On April 28, 2004 she submitted a claim for a schedule award.

In a February 16, 2004 report, Dr. David Weiss, an osteopathic orthopedic specialist, provided findings on physical examination. He found that appellant had a 45 percent combined impairment of her right upper extremity, including 30 percent for grip strength deficit, based on Tables 16-32 and 16-34 at page 509 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>1</sup> 18 percent for Grade 3 motor strength deficit due to abnormal thumb abduction, based on Table 16-11 at page 484 and Table 16-15 at page 492 and 3 percent for pain, based on Figure 18-1 at page 574. Dr. Weiss found a 37 percent combined impairment of appellant's left upper extremity, including 20 percent for grip strength deficit, based on Tables 16-32 and 16-34 at page 509, 18 percent for Grade 3 motor strength deficit for abnormal thumb abduction, based on Table 16-11 at page 484 and Table 16-15 at page 492, and 3 percent for pain, based on Figure 18-1 at page 574. He stated:

“[Appellant] states the pain level on a scale of 0 to 10 is 6-8/10 in her right hand and 5-8/10 in her left hand as objectified by using the Visual Analogue Scale.”

\* \* \*

“Examination of the right hand and wrist reveals thenar atrophy.... No trigger phenomenon is noted over the right thumb. There is, however, residual thickening noted over the A1 pulley.... Wrist range of motion reveals dorsiflexion of 0-75/75 degrees, palmar flexion of 0-75/75 degrees, radial deviation of 0- 20/20 degrees, and ulnar deviation of 0-35/35 degrees. The Tinel's sign is negative. The one-minute Phalen's sign is positive. Carpal compression test is positive. Resisted thumb abduction is graded at 3/5.

“Examination of the left hand and wrist reveals.... There is atrophy noted over the thenar eminence. Wrist range of motion reveals dorsiflexion of 0-75/75 degrees, palmar flexion of 0-75/75 degrees, radial deviation of 0- 20/20 degrees, and ulnar deviation of 0-35/35 degrees. The Tinel's sign is positive. The one-minute Phalen's sign is negative. Carpal compression is negative. Resisted thumb abduction is graded at 3/5.

“Grip strength testing performed via Jamar Dynamometer at level III reveals eight kg [kilograms] of force strength in the right hand versus eight kg of force strength involving the left hand. [Appellant] is right hand dominant.”

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

“Neurological examination: Sensory examination fails to reveal any perceived dermatomal abnormalities over the median or ulnar nerve distributions of the left or right hands.”

\* \* \*

“[Appellant] notes throbbing pain in her right hand on a daily and constant basis; throbbing pain of her left hand on a daily basis that waxes and wanes; numbness and pins and needles of her right hand; and awaking at night with her right hand asleep.”

On May 3, 2004 an Office medical adviser found that appellant had an eight percent impairment of each upper extremity, including five percent based on the second scenario for carpal tunnel syndrome described at page 495 of the fifth edition of the A.M.A., *Guides* and three percent for pain, based on Figure 18-1 at page 574.

On May 26, 2004 the Office granted appellant a schedule award for 49.92 weeks<sup>2</sup> from February 16, 2004 to January 30, 2005 based on an eight percent impairment of each upper extremity.

On June 11, 2004 appellant requested an oral hearing that was held on September 7, 2005. By decision dated November 14, 2005, an Office hearing representative remanded the case for further development of the medical evidence.

On February 9, 2006 Dr. Morley Slutsky, a Board-certified specialist in preventive medicine and an Office medical consultant, stated that appellant’s impairment should be rated using the carpal tunnel syndrome section at page 495 of the A.M.A., *Guides*, fifth edition. He stated that manual muscle impairment should only be used in a rare case, if the examining physician believes that the individual’s loss of strength represents an impairing factor that has not been adequately considered by other rating methods. Dr. Slutsky found that appellant had a 13 percent impairment of each upper extremity for peripheral nerve deficits, including 10 percent for sensory deficit of the median nerve, based on Table 16-15 at page 492 of the A.M.A., *Guides* (25 percent for a Grade 4 deficit,<sup>3</sup> multiplied by a maximum of 39 percent for sensory deficit below the mid forearm, equals 9.75 percent, rounded to 10 percent), and 3 percent for motor deficit of the median nerve, based on Table 16-11 at page 484 (25 percent for a Grade 4 deficit,<sup>4</sup> multiplied by a maximum of 10 percent for the median nerve below the mid forearm, equals 2.5

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<sup>2</sup> The Federal Employees’ Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by 16 percent (8 percent for each upper extremity) equals 49.92 weeks of compensation.

<sup>3</sup> See A.M.A., *Guides* 482, Table 16-10. Dr. Slutsky stated that appellant had a Grade 4 deficit because her physical examination by Dr. Weiss revealed no dermatomal abnormalities over the median or ulnar nerve distributions of the left or right hands but she had significant sensory symptoms.

<sup>4</sup> Dr. Slutsky stated that appellant had a Grade 4 deficit because her physical examination showed fairly good wrist range of motion but there was no mention that gravity was eliminated to accomplish this.

percent, rounded to 3 percent). He found no impairment of appellant's right thumb. Dr. Slutsky stated:

"The median nerve controls thumb abduction so I would not rate the [right] trigger thumb residual motor deficit as this may be due to a residual of [appellant's right carpal tunnel syndrome], status post [carpal tunnel syndrome] release. I would rate this based upon range of motion ... however, there was no documented [range of motion] loss of the right thumb despite a thick A1 pulley. Therefore I do not feel there is a ratable impairment for the right thumb trigger finger."

On February 15, 2006 the Office granted appellant an additional schedule award for 31.20 weeks<sup>5</sup> from January 31 to September 6, 2005 based on a five percent additional impairment of each upper extremity. On February 27, 2006 appellant requested an oral hearing that was held on August 16, 2006.

By decision dated October 17, 2006, an Office hearing representative affirmed the February 15, 2006 schedule award decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>6</sup> and its implementing regulation<sup>7</sup> 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.<sup>8</sup>

### **ANALYSIS**

The fifth edition of the A.M.A., *Guides*, regarding carpal tunnel syndrome, 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

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<sup>5</sup> As noted, the Act provides for 312 weeks of compensation for 100 percent loss or loss of use of an upper extremity. 5 U.S.C. § 8107(c)(1). Multiplying 312 weeks by 10 percent equals 31.20 weeks of compensation.

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.*

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.”<sup>9</sup>

The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.<sup>10</sup>

Dr. Weiss found that appellant had a 45 percent combined impairment of her right upper extremity, including 30 percent for grip strength deficit, based on Tables 16-32 and 16-34 at page 509 of the A.M.A., *Guides*, fifth edition (Chapter 16 describes impairment evaluation for the upper extremities), 18 percent for Grade 3 motor strength deficit due to abnormal thumb abduction, based on Table 16-11 at page 484 and Table 16-15 at page 492, and 3 percent for pain, based on Figure 18-1 at page 574. He found no sensory deficit. Regarding appellant’s left upper extremity, Dr. Weiss found a 37 percent combined impairment of appellant’s left upper extremity, including 20 percent for grip strength deficit, based on Tables 16-32 and 16-34 at page 509, 18 percent for Grade 3 motor strength deficit for abnormal thumb abduction, based on Table 16-11 at page 484 and Table 16-15 at page 492, and 3 percent for pain, based on Figure 18-1 at page 574. He found no sensory deficit of the left upper extremity.

Regarding impairment due to grip strength, section 16.8a at page 508 provides:

“In a rare case, if the examiner believes the individual’s loss of strength represents an impairing factor that has not been considered adequately by other methods in the [A.M.A.] *Guides*, the loss of strength may be rated separately. An example of this situation would be loss of strength due to a severe muscle tear that healed leaving a palpable muscle defect.”

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“Motor weakness associated with disorders of the peripheral nerve system ... [is] evaluated according to guidelines described in [s]ection 16.5....”

Section 16.5d, “Entrapment/Compression Neuropathy” states at page 494 that, “In compression neuropathies, additional impairment values are not given for decreased grip strength.” Dr. Weiss did not explain why loss of strength could not be rated by the methods for

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<sup>9</sup> A.M.A., *Guides* 495.

<sup>10</sup> *Kimberly M. Held*, 56 ECAB \_\_\_\_ (Docket No. 05-1050, issued August 16, 2005).

evaluating compression neuropathies, such as carpal tunnel syndrome, in section 16.5d of the A.M.A., *Guides*.

Regarding the 18 percent impairment, each, for right and left upper extremity Grade 3 motor strength deficit due to abnormal thumb abduction, Dr. Weiss did not explain how he calculated this percentage. Table 16-11 provides that a Grade 3 motor strength deficit ranges from 26 to 50 percent. Dr. Weiss did not indicate the percentage that he selected. In any event, Table 16-15 provides for a maximum of 10 percent for motor deficit of the median nerve. Therefore, the maximum impairment due to a Grade 3 motor strength deficit using Tables 16-11 and 16-15 is 5 percent (50 percent maximum for motor deficit from Table 16-11 multiplied by a 10 percent maximum for motor deficit of the median nerve below the mid forearm from Table 16-15).

Regarding impairment due to pain, Dr. Weiss noted that appellant experienced throbbing pain in her right hand on a daily and constant basis and numbness and a pins and needles sensation. Appellant had intermittent throbbing pain of her left hand on a daily basis. She described her pain level on a scale of 0 to 10 as 6-8/10 in her right hand and 5-8/10 in her left hand as objectified by using the Visual Analogue Scale. Dr. Weiss found that appellant had a three percent impairment due to pain, based on Chapter 18 of the A.M.A., *Guides*. However, Dr. Weiss did not support, with medical rationale, the calculation of a three percent right and left lower extremity impairment based on Chapter 18. Section 18.3b of Chapter 18 at page 571 of the fifth edition of the A.M.A., *Guides* provides that “Examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the [A.M.A.] *Guides*.” Dr. Weiss did not explain why appellant’s pain-related impairment could not be adequately addressed by applying Chapter 16 of the A.M.A., *Guides* which addresses upper extremity impairment, specifically section 16.5, “Impairment of the Upper Extremities due to Peripheral Nerve Injuries.” Section 16.5b, “Impairment Evaluation Methods” states:

“The upper extremity impairment is calculated by multiplying the grade of severity of the sensory deficit (Table 16.10a) and/or of the motor deficit (Table 16.11a) by the respective maximum upper extremity impairment value resulting from sensory and/or motor deficits of each nerve structure involved, as listed in [s]ection 16.5c, Regional Impairment Determination: spinal nerves, Table 16-13; brachial plexus, Table 16-14; and major peripheral nerves, Table 16-15.”

Dr. Weiss did not explain why application of Chapter 16 was not adequate to calculate appellant’s impairment due to upper extremity pain, justifying application of Chapter 18 of the A.M.A., *Guides*. For these reasons, the impairment rating provided by Dr. Weiss is of diminished probative value.

Dr. Slutsky found that appellant had a 13 percent impairment of each upper extremity for peripheral nerve deficits. This consisted of 10 percent for sensory deficit of the median nerve, based on Table 16-10 at page 482 of the A.M.A., *Guides* and Table 16-15 at page 492 (25

percent for a Grade 4 deficit,<sup>11</sup> multiplied by a maximum of 39 percent for sensory deficit of the median nerve below the midforearm, equals 9.75 percent, rounded to 10 percent). It also includes 3 percent for motor deficit of the median nerve, based on Table 16-11 at page 484 (25 percent for a Grade 4 deficit,<sup>12</sup> multiplied by a maximum of 10 percent for motor deficit of the median nerve below the midforearm, equals 2.5 percent, rounded to 3 percent). The impairment rating provided by Dr. Slutsky conforms with the protocols of the A.M.A., *Guides*. For this reason, it constitutes the weight of medical opinion. The 10 percent sensory loss to each upper extremity was combined with 3 percent for motor loss to total of 13 percent impairment of each arm.

### **CONCLUSION**

The Board finds that appellant has no more than 13 percent impairment to each upper extremity.

### **ORDER**

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

Issued: September 13, 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

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<sup>11</sup> Dr. Slutsky stated that appellant had a Grade 4 deficit because her physical examination by Dr. Weiss revealed no dermatomal abnormalities over the median or ulnar nerve distributions of the left or right hands but she had significant sensory symptoms.

<sup>12</sup> Dr. Slutsky stated that appellant had a Grade 4 deficit because her physical examination showed fairly good wrist range of motion but there was no mention that gravity was eliminated to accomplish this.