United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
	)	**Docket No. 07-1207**
and	)	**Issued: September 20, 2007**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Lenoir, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 3, 2007 appellant filed a timely appeal from decisions dated January 30, 2007 and September 8, 2006 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 three percent permanent impairment of each upper extremity.

FACTUAL HISTORY

This case was previously before the Board. On August 3, 2006 the Board remanded the case for further development of the medical evidence. The August 3, 2006 decision of the Board is herein incorporated by reference.[1]

[1] Docket No. 06-1074 (issued August 3, 2006).

On December 30, 2002 appellant, then a 53-year-old letter carrier, filed an occupational disease claim for an injury to both hands caused by her job activities. The Office accepted her claim for bilateral carpal tunnel syndrome. Appellant underwent surgery on her upper extremities on May 12 and June 2, 2003 performed by Dr. A. Gregory Rosenfeld, an attending Board-certified neurosurgeon. She returned to work in a limited-duty capacity on June 18, 2003. On September 23, 2003 Dr. Rosenfeld stated that appellant had significant improvement of her carpal tunnel syndrome postoperatively but still had significant episodes of discomfort, particularly at work. When appellant used her hands frequently, she experienced persistent discomfort. On January 29, 2004 she filed a claim for a schedule award. By decision dated April 12, 2005, the Office granted appellant a schedule award for 18.72 weeks, from March 31 to August 9, 2004, for a three percent permanent impairment of each upper extremity. On March 31, 2006 the Office denied her request for reconsideration.

In a March 31, 2004 report, Dr. Andrea A. Stutesman, a Board-certified physiatrist, provided findings on physical examination. She noted that appellant had bilateral hand numbness, tingling and pain. Appellant experienced pain at night, which awakened her. She experienced swelling and numbness of both hands when she performed a task requiring grasping. Appellant's pain was aggravated by driving, lying in any position, reaching, pushing, pulling, gripping, pinching and writing by hand. Range of motion of the hands was normal. In a May 25, 2004 impairment rating, Dr. Stutesman noted that a March 12, 2004 nerve conduction study was reported as normal for both sensory and motor function. She found that appellant had a three percent permanent impairment of each upper extremity due to sensory deficit, pain or discomfort, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition,[2] based on Table 16-10 at page 482, Table 16-15 at page 492 and the second scenario for rating carpal tunnel syndrome at page 495.[3]

In a June 16, 2004 report, Dr. Kathryn A. Caulfield, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on physical examination. She stated that appellant had a 21 percent impairment of each hand, including 10 percent for decreased grip strength, based on Table 16-32 and 16-34 at page 509 of the A.M.A., *Guides*, and 12 percent for sensory loss and pain, based on Table 16-10 at page 482 (Grade 3, 30 percent) and Table 16-15 at page 492 (39 percent maximum for the median nerve) (30 percent multiplied by 39 percent equals 11.7 percent, rounded to 12 percent). Dr. Caulfield stated that appellant had nighttime and morning numbness and tingling and dropped mail when she was casing. She experienced numbness in her hands when talking on the telephone. Appellant noticed weakness when she tried to write. Lifting caused pain in her palm. Appellant's grip strength was 40 pounds on both the right and left side and it decreased with rapid exchange.

[2] A.M.A., *Guides* (5th ed. 2001).

[3] The Office based its April 12, 2005 schedule award decision on Dr. Stutesman's report.

On September 7, 2006 Dr. James W. Dyer, an Office medical adviser,[4] found that appellant had no more than a three percent impairment of each upper extremity based on scenario two for carpal tunnel syndrome at page 495 of the A.M.A., *Guides*, fifth edition. He noted that she had good results from her carpal tunnel surgeries. A nerve conduction study showed no residual deficit of either upper extremity. Dr. Dyer noted that scenario two provided for no more than a five percent impairment. He found that a three percent impairment rating was appropriate considering appellant's excellent surgical results, minimal symptoms and normal electrodiagnostic testing.

On September 8, 2006 Office denied appellant's claim for more than a three percent impairment to each upper extremity.

On September 23, 2006 appellant requested a review of the written record. She submitted a March 11, 2004 Office note in which Dr. Rosenfeld stated that he had referred appellant to Dr. Stutesman for an impairment rating. Appellant also submitted evidence previously of record.

By decision dated January 30, 2007, the Office affirmed the September 8, 2006 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulation[6] 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]

[4] *See* Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id.*

The fifth edition of the A.M.A., *Guides*, regarding impairment due to 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 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."[8]

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.[9]

ANALYSIS

Dr. Stutesman noted that a nerve conduction study was reported as normal for both sensory and motor function. Range of motion of the hands was normal. However, appellant had bilateral hand numbness, tingling and pain, especially at night. She experienced swelling and numbness of both hands when she performed a task requiring grasping. Dr. Stutesman found that appellant had a three percent permanent impairment of each upper extremity due to sensory deficit, pain or discomfort, according to the A.M.A., *Guides* based on Table 16-10 at page 482, Table 16-15 at page 492 and the second scenario for rating carpal tunnel syndrome at page 495. However, Tables 16-10 and 16-15 are used in the application of the first scenario at page 495, not the second scenario. Dr. Stutesman's physical findings and the negative nerve conduction study are more consistent with the second scenario described at page 495 which provides for an impairment rating not to exceed five percent. Dr. Dyer found that appellant had no more than a three percent impairment of each upper extremity based on the medical evidence and scenario two for carpal tunnel syndrome at page 495 of the A.M.A., *Guides*, fifth edition. He noted that she had good results from her carpal tunnel surgeries and a nerve conduction study showed no residual deficit of either upper extremity. Dr. Dyer noted that scenario two provided for no more than a five percent impairment. He found that a three percent impairment was appropriate

[8] A.M.A., *Guides* 495.

[9] *Kimberly M. Held,* 56 ECAB ___ (Docket No. 05-1050, issued August 16, 2005).

considering appellant's excellent surgical results, minimal symptoms and normal electrodiagnostic testing.

The Board finds that the Office properly determined that appellant has no more than a three percent impairment of each upper extremity based on Dr. Dyer's application of the medical evidence to the criteria for the second scenario at page 495 of the A.M.A., *Guides*. Dr. Dyer noted that the maximum impairment allowed for the second scenario was five percent but he found that three percent was appropriate considering appellant's minimal symptoms postsurgery and normal nerve conduction study.

On appeal, appellant contends that her schedule award should be based on Dr. Caulfield's impairment rating. Dr. Caulfield stated that appellant had a 21 percent impairment of each hand, including 10 percent for decreased grip strength, based on Table 16-32 and 16-34 at page 509 of the A.M.A., *Guides*, and 12 percent for sensory loss and pain, based on Table 16-10 at page 482 and Table 16-15 at page 492.

Regarding impairment due to grip strength, the A.M.A., *Guides* states in section 16.8 at page 508:

> "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…. If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength *could be combined* with the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence.* Decreased strength *cannot* be rated in the presence of decreased motion [range of motion], painful conditions, deformities, or absence of parts (*e.g.*, thumb amputation) that prevent effective application of maximal force in the region being evaluated." (Emphasis in the original.)

There is no basis for including impairment due to loss of grip strength in appellant's upper extremities. Dr. Caulfield provided findings based on appellant's residual sensory deficit and pain. Therefore, additional impairment based on grip strength is precluded by the procedures in the A.M.A., *Guides*.

Regarding Dr. Caulfield's impairment rating for appellant's sensory loss and pain, as noted, Table 16-10 at page 482 and Table 16-15 at page 492 are used for the first scenario described at page 495 for rating carpal tunnel syndrome. However, in appellant's case there are no positive clinical findings of median nerve dysfunction and electrical conduction delay. The nerve conduction study performed on March 12, 2004 revealed normal sensory function. Therefore, the first scenario is not applicable. There is no probative medical evidence of record, based on correct application of the fifth edition of the A.M.A., *Guides* that establishes that appellant had more than a three percent impairment of each upper extremity.

CONCLUSION

The Board finds that appellant has no more than a three percent impairment of each upper extremity for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 30, 2007 and September 8, 2006 are affirmed.

Issued: September 20, 2007
Washington, DC

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

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