United States Department of Labor
Employees' Compensation Appeals Board

V.A., Appellant	)	
and	)	**Docket No. 08-0003**
	)	**Issued: April 15, 2008**
U.S. POSTAL SERVICE, POST OFFICE, West New York, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 27, 2007 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated November 6, 2006 and May 1, 2007 concerning his schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

ISSUE

The issue is whether appellant has established more than five percent left upper extremity impairment and more than five percent right upper extremity impairment, for which she received a schedule award.

FACTUAL HISTORY

On November 14, 2002 appellant, then a 30-year-old letter carrier, filed a claim for employment-related carpal tunnel syndrome. The Office accepted her claim for bilateral carpal tunnel syndrome and paid appropriate benefits, including time lost from work due to right carpal

tunnel release surgery on May 27, 2003 and on the left on September 26, 2003. Appellant returned to full-time work on January 2, 2004.

On April 7, 2005 appellant filed a schedule award claim. In a November 22, 2004 report, Dr. David Weiss, an osteopath, noted the history of injury, appellant's subjective complaints, and presented findings on examination. He opined that appellant reached maximum medical improvement on November 22, 2004. Dr. Weiss found a positive Phalen's sign of the left wrist and hand and a perceived sensory deficit over the median nerve distribution of the right hand. Based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he opined that appellant had 34 percent permanent impairment of the right arm and 3 percent impairment of the left arm. Impairment to the right arm consisted of a 31 percent sensory deficit under Table 16-10, page 482 and Table 16-15, page 492 of the A.M.A., *Guides* and a 3 percent pain-related impairment under Table 18-1, page 574 of the A.M.A., *Guides*. Impairment to the left arm consisted of a three percent pain-related impairment under Table 18-1, page 574 of the A.M.A., *Guides*. In a March 23, 2005 statement, Dr. Mark Filippone, a Board-certified physiatrist, agreed with Dr. Weiss' November 22, 2004 impairment rating.

On May 11, 2005 the Office referred the medical evidence to its Office medical adviser to determine the extent of appellant's permanent impairment to the right and left upper extremities under the A.M.A., *Guides*. In a June 9, 2005 report, the Office medical adviser agreed that appellant reached maximum medical improvement on November 22, 2004. Based on Dr. Weiss' evaluation, the Office medical adviser opined that appellant had five percent impairment of the right arm and three percent impairment of the left arm. For the right arm, the Office medical adviser stated that, under page 495 of the A.M.A., *Guides*, appellant was only entitled to five percent impairment as Dr. Weiss indicated that appellant had a perceived and not an objective sensory deficit over the median nerve distribution. He agreed that appellant only had three percent impairment to the left arm based on pain under Table 18-1, page 574 of the A.M.A., *Guides*.

Given the discrepancy between the impairment ratings of Dr. Weiss and the Office medical adviser, the Office referred appellant to Dr. Paul A. Foddai, a Board-certified orthopedic surgeon, for a second opinion. In a July 18, 2005 report, Dr. Foddai reviewed materials provided by the Office and provided examination findings. He noted that appellant had persistent subjective complaints. With regard to the left hand, Dr. Foddai found that appellant had a normal range of motion, normal motor and normal sensory examination, as well as normal grip strength with negative Phalen's and negative Tinel's signs. He opined that there was no permanency due to the accepted left carpel tunnel diagnosis. On the right side, Dr. Foddai found that appellant had no motor deficit but had nine percent impairment due to sensory deficit of the median nerve. Under Table 16-5, page 492 of the A.M.A., *Guides*, he opined that appellant had nine percent impairment due to involvement of the middle finger and five percent involvement due to the index finger, which totaled 14 percent sensory impairment. Under Table 16-10a, page 482 of the A.M.A., *Guides*, Dr. Foddai opined that appellant had a Grade 3 or 60 percent sensory deficit. Multiplying the 14 percent sensory impairment with the 60 percent sensory deficit, he found that appellant had 8.4 or 9 percent impairment due to sensory deficit of the median nerve. In a September 15, 2005 report, an Office medical adviser reviewed Dr. Foddai's report and

concurred that appellant had a zero percent impairment to the left arm and nine percent impairment to the right arm.

The Office determined that a conflict of medical opinion existed between the impairment evaluations of Dr. Weiss and Dr. Foddai. On October 5, 2005 the Office referred appellant, the medical record and a statement of accepted facts, to Dr. Thomas E. Helbig, a Board-certified orthopedic surgeon, for an impartial medical examination. In a November 1, 2005 report, Dr. Helbig reviewed the medical evidence of record. He opined that appellant reached maximum medical improvement in early 2004, when she was cleared to return to work. On examination, appellant had no sensory deficit of the right hand, but diminished sensation in the second, third and fourth fingers and thumb on the left hand. Dr. Helbig noted that, although both Dr. Weiss and Dr. Foddai found worsening symptoms on the right side, he was unable to explain the discrepancy. He opined that there were inconsistent sensory findings on his examination when compared to the examinations of Dr. Weiss and Dr. Foddai. Based on abnormal electrodiagnostic studies obtained and with no motor deficits noted by either him or the other treating physicians postoperatively, he assigned a five percent permanent impairment to the right upper extremity and a five percent permanent impairment to the left upper extremity under page 495, paragraph 2 of the A.M.A., *Guides.* Dr. Helbig further noted that, on page 494 of the A.M.A., *Guides,* additional impairment values were not given for decreased motion or decreased grip strength. In a November 5, 2006 report, the Office medical adviser concurred with Dr. Helbig's impairment findings.

In a November 6, 2006 decision, the Office granted schedule awards for five percent permanent impairment to her left upper extremity and a five percent permanent impairment to her right upper extremity. The period of the award ran for 31.20 weeks from November 1, 2005 to June 7, 2006. The decision was sent to the addresses provided by both appellant and her attorney of record.

In a February 2, 2007 letter, appellant requested reconsideration. Counsel asserted that he first received the Office's November 6, 2006 decision on January 26, 2007. He asserted that Dr. Helbig's opinion was flawed as he did not provide range of motion measurements for the wrist and fingers, did not measure for atrophy of the wrists, and did not explain his sensory findings or his application of the A.M.A., *Guides*. Counsel requested that the Office either request a supplemental report from Dr. Helbig or arrange for a second impartial impairment evaluation.

On April 11, 2007 the Office requested that the Office medical adviser review the medical evidence. On April 11, 2007 the Office medical adviser stated that Dr. Helbig had adequately explained how he arrived at the five percent impairment rating for each upper extremity in accordance with the A.M.A., *Guides*. The Office medical adviser noted that range of motion was not to be considered in carpal tunnel syndrome which affects the distal median nerve at the wrist, as it does not cause range of motion loss. He further noted that Dr. Helbig found inconsistent sensory findings on the left side as compared to Dr. Weiss and Dr. Foddai, with no motor deficits in either hand. He opined under page 495, paragraph 2 of the A.M.A., *Guides,* five percent impairment applies where the preoperative electromagnetic test was positive.

By decision dated May 1, 2007, the Office found that appellant had not established that she sustained greater than five percent permanent impairment of the right arm or five percent permanent impairment of the left arm. The Office noted that the weight of the medical evidence rested with Dr. Helbig. It also found that there was no evidence to support that a copy of the Office's November 6, 2006 decision was not mailed to the attorney in the ordinary course of business and, thus, no basis to reissue the prior decision.

On appeal, appellant's attorney argues that Dr. Helbig's November 1, 2005 report is flawed and is insufficient to carry the weight of the medical opinion evidence.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] 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. The Act, however, does not specify the manner in which the percentage loss of a member 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.) has been adopted by the Office for evaluating schedule losses.[3]

Section 8123(a) of the Act provides that, 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.[4] When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[5]

ANALYSIS

A conflict in medical evidence was created between Dr. Weiss, appellant's physician, who found 34 percent right upper extremity impairment and 3 percent left upper extremity impairment, and Dr. Foddai, an Office referral physician, who found that she had 9 percent right upper extremity impairment and no left upper extremity impairment. The Office referred appellant to Dr. Helbig for an impartial evaluation.

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] *See* 20 C.F.R. § 10.404; *see also David W. Ferrall*, 56 ECAB 362 (2005).

[4] 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

[5] *Manuel Gill*, 52 ECAB 282 (2001).

Dr. Helbig found that appellant had five percent impairment rating to both the right and left upper extremities. He stated that his examination did not reveal any motor deficits but revealed diminished sensation on the left side as opposed to the right side, which Dr. Weiss and Dr. Foddai had reported. Dr. Helbig advised that he could not explain why appellant now had diminished sensation on her left side. He noted that, since appellant had no motor deficits postoperatively but had an abnormal electrodiagnostic studies preoperatively, he would assign a five percent impairment rating to both upper extremities under option two on page 495 of the A.M.A., *Guides*. Dr. Helbig explained that the A.M.A., *Guides*, at page 494, did not provide for impairment based on loss of motion or grip strength in cases of entrapment neuropathies. He found no basis under the A.M.A., *Guides* on which to attribute any greater impairment.

The Office medical adviser reviewed Dr. Helbig's evaluation and noted that Dr. Helbig properly applied the A.M.A., *Guides* in determining appellant's permanent impairment. The Board has held that, while an Office medical adviser may review the opinion of an impartial medical specialist in a schedule award case, the resolution of the conflict is the specialist's responsibility.[6] In this case, the Office medical adviser indicated that Dr. Helbig's findings and conclusions were in conformance with the A.M.A., *Guides*. Dr. Helbig assigned the five percent impairment rating for both the right and left upper extremities respectively based on the fact that appellant exhibited normal motor deficits postoperatively but abnormal electrodiagnostic studies preoperatively. The Board notes that this is consistent with option two on page 495 of the A.M.A., *Guides* which allow for an impairment rating not to exceed five percent in situations where a person has normal sensibility and abnormal sensory with optimal recovery time after surgical decompression. The medical adviser confirmed, as did Dr. Helbig, that the A.M.A., *Guides* generally preclude ratings based on loss of motion or grip strength in carpal tunnel cases.[7]

The Board finds that Dr. Helbig's opinion is well rationalized and based on a proper factual background. It is to be given special weight and establishes that appellant has no more than five percent permanent impairment of each arm. As the evidence does not establish more than five percent impairment for both the right and the left upper extremities respectively, the Board will affirm the Office's finding on appellant's permanent impairment.

Counsel asserted that he did not timely receive the Office's November 6, 2006 decision. A review of the evidence reveals that the Office mailed its November 6, 2006 decision to the address of record provided by both appellant and her attorney.[8] There is no record of either appellant or her attorney changing addresses and there is no indication that the November 6, 2006 decision was returned to the Office as being undeliverable. The Board has found that, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business, such as in the course of the Office's daily activities, is presumed to have arrived at

[6] *See, e.g., Willie C. Howard*, 55 ECAB 564 (2004) (where the Office medical adviser concurred that the impartial medical specialist's impairment rating was appropriate under the fifth edition of the A.M.A., *Guides*).

[7] *Cristeen Falls*, 55 ECAB 420 (2004).

[8] The Office's regulations provide that a copy of the decision shall be mailed to the employee's last known address and also to any designated representative. 20 C.F.R. § 10.127.

the mailing address in due course.[9] This is known as the "mailbox rule." The Board finds that it is presumed that the Office's November 6, 2006 decision arrived at both appellant's home and her attorney's office in due course.

CONCLUSION

The Board finds that appellant does not have more than five percent impairment to her right and the left upper extremities.

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2007 and November 6, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 15, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] *See Nelson R. Hubbard*, 54 ECAB 156, 157 (2002).