United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 08-779**
	)	**Issued: August 19, 2008**
DEPARTMENT OF THE NAVY, SUBMARINE BASE, Groton, CN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 16, 2008 appellant filed a timely appeal from a December 17, 2007 Office of Workers' Compensation Programs' hearing representative. Under 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 is entitled to a schedule award for more than the five percent permanent impairment of the right and left upper extremity already awarded.

FACTUAL HISTORY

Appellant, a 52-year-old supervisory security specialist, filed a Form CA-2 claim for benefits on August 11, 2000, alleging that he developed a bilateral carpal tunnel condition causally related to employment factors. The Office accepted the claim for bilateral carpal tunnel syndrome.

Appellant underwent surgery for right carpal tunnel release on October 26, 2001 and left carpal tunnel release on November 14, 2001. These procedures were performed by Dr. Robert W. Geist, Board-certified in orthopedic surgery.

On November 5, 2004 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left and right upper extremities.

In a report dated November 18, 2004, Dr. Geist reviewed appellant's medical history and noted that he had mild persistent symptoms of bilateral carpal tunnel symptoms as of his most recent evaluation in June 2003. He advised that appellant had full range of motion and that his surgical incisions were well healed. Dr. Geist found that appellant had a five percent impairment of each hand pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) fifth edition.

In a supplemental report dated February 24, 2005, Dr. Geist found that appellant had a 10 percent left upper extremity impairment based on loss of function from decreased strength of the left arm at Tables 16-32 and 16-34 at page 509 of the A.M.A., *Guides*; and a five percent right upper extremity impairment from sensory deficit, pain or discomfort, right arm, at Table 16-15 on page 492 of the A.M.A., *Guides*. He stated:

> "Based on the [A.M.A., *Guides*], page 495, paragraph 2, [appellant] has a five percent impairment of his right hand due to mild persistent carpal tunnel symptoms.
>
> "Based on manual strength testing, he has an average grip strength of 95 pounds. This is less than a 10 percent deficit from the expected grip strength for the dominant hand of a 57[-]year[-]old manual worker. No additional impairment is given for loss of strength, less than 10 percent.
>
> "The evaluation of his left hand shows an 11 percent loss of strength. This translates into a 10 percent impairment, based on the [A.M.A., *Guides*], page 509, [T]able 16-34.
>
> "Because this value exceeds the five percent from the minimal persistent sensory symptoms, the greater impairment is used. He, therefore, has a 10 percent impairment of the left arm…."

The Office determined that Dr. Geist did not provide sufficient data upon which to base a schedule award. It referred appellant to Dr. Daniel J. Mastella, a specialist in orthopedic surgery, for a second opinion examination.

In an August 8, 2006 report, Dr. Mastella found that appellant had a four percent impairment of the right hand and an eight percent impairment of the left hand. He found based on examination that appellant had wrist flexion of 60 degrees on the right and 40 degrees on the left, with 60 degrees extension on the right wrist and 50 degrees on the left wrist. Appellant showed 80 degrees pronation on the right wrist and 70 degrees on the left; 80 degrees on the right wrist and 70 degrees on the left wrist. Dr. Mastella stated:

> "Neurologic examination shows a positive Tinel's at the carpal tunnel on the right, negative on the left; negative at the ulnar nerve at the elbow, wrist and radial nerve bilaterally. Phalen's test is positive on the right and negative on the left. Forearm compression test is immediately positive on the right and slight

> delay to positive left. Cubital tunnel compression test and elbow compression test are negative bilaterally. Thenar strength is four out of five on the right and four plus out of five on the left. First dorsal interosseous and FPL testing are five out of five bilaterally. Moving two-point discrimination is five mm [millimeters] in the thumb and index on the right; four mm in the middle, ring and small on the right; four mm in all digits on the left. Vibratory stimulation at 256 cycles per second shows decreased sensation in the median nerve distribution on the right versus the left as well as versus the examiner bilaterally."
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> "Jamar grip strength in the first, third and fifth positions right/left is 15/10, 30/50 and 35/50."
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> * * *
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> "Based on today's history, physical examination and findings and with reference to the [A.M.A., *Guides*], [f]ifth [e]dition, including sections on rating impairment for carpal tunnel syndrome as well as peripheral nerve deficits for motor strength and sensibility, I assign him a permanent … impairment of four percent of the right dominant hand and eight percent of the left nondominant hand."

In a September 1, 2006 report, Dr. Mastella stated that his ratings were based on the pertinent sections in the A.M.A., *Guides* for rating permanent impairment of the upper extremity due to peripheral nerve disorders, including carpal tunnel syndrome and sensory motor dysfunction, under section 16.5 at page 480.

In reports dated September 28 and October 6, 2006, an Office medical adviser found that appellant had a five percent impairment in his right and left upper extremity impairment pursuant to the A.M.A., *Guides*. In his September 28, 2006 report, he stated:

> "Using Table 16-15, page 492, the maximum upper extremity impairment for pain or sensory deficit when the median nerve is involved at the wrist is 39 percent. Table 16-10, Grade 4, page 482, allows 12 percent for mild pain. 12 percent of 39percent results in 5 percent impairment of the right upper extremity and 5 percent impairment of the left upper extremity.
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> "According to [s]ection 16.5d, page 494 (Impairment Rating of Entrapment/Compression Neuropathies), 'In compression neuropathies, additional impairment values are not given for decreased grip strength.'"

In his October 6, 2006 report, the Office medical adviser essentially reiterated his previous findings and conclusions. He stated, "[that] carpal tunnel syndrome, was secondary to median nerve compression at the wrist. It is an entrapment/compression neuropathy."

On October 31, 2006 the Office granted appellant a schedule award for a five percent impairment of his right and left upper extremities. This award covered the period November 14, 2002 to June 20, 2003, for a total of 31.2 weeks of compensation.

On November 14, 2006 appellant requested an oral hearing, which was held on October 17, 2007.

By decision dated December 17, 2007, an Office hearing representative affirmed the October 31, 2006 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[2] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* fifth edition as the standard to be used for evaluating schedule losses.[3]

ANALYSIS

The Board finds that there are no grounds for an additional award for appellant's right and left upper extremity impairments. The Office medical adviser, relying on Dr. Mastella's findings and calculations, found in his September 28, 2006 report that appellant had a five percent impairment of his right and left upper extremities based on the A.M.A., *Guides.* He derived this finding by relying on section 16.5d at page 491, 494 of the A.M.A., *Guides*, in the section titled, *Impairment Rating of Entrapment/Compression Neuropathies*, where impairments are rated at Table 16-15, page 492. The Office medical adviser noted that Table 16-15 rates "The maximum upper extremity impairment due to unilateral sensory or motor deficits…."

Using Table 16-15, the Office medical adviser found that the maximum upper extremity impairment for pain or sensory deficit when the median nerve is involved at the wrist is 39 percent. He then cited Table 16-10 at page 482, which is used for "*Determining Impairment of the Upper Extremity Due to Sensory Deficits of Pain resulting from Peripheral Nerve Disorders.*" The Office medical adviser found that appellant had a Grade 4 impairment under Table 16-10 and that his mild impairment rendered a 12 percent impairment for mild pain at Table 16-10. He then multiplied 12 percent times 39 percent, the procedure outlined in part B of Table 16-10, to derive a total 5 percent impairment of the right and left upper extremities.[4] The Office medical adviser rejected any additional upper extremity impairment by citing section

[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 5 U.S.C. § 8107(c)(19).

[3] 20 C.F.R. §10.404.

[4] Part B.4 of Table 16-10 advises the examiner to find the maximum upper impairment extremity impairment value due to sensory deficit or pain for each nerve structure involved. In appellant's case, this was the major peripheral nerves, the procedure for which is outlined at Table 16-15. A.M.A., *Guides* 482. Table 16-15 provides a method for determining upper extremity impairments due to unilateral sensory or motor deficits. A.M.A., *Guides* 492.

16.5d, page 494, *Impairment Rating of Entrapment/Compression Neuropathies*, which states, "In compression neuropathies, additional impairment values are not given for decreased grip strength." He determined that carpal tunnel syndrome is secondary to median nerve compression at the wrist, which should be rated as an entrapment/compression neuropathy. The Office medical adviser also properly denied an increased impairment value for decreased motion, in the absence of CRPS as required by section 16.5d, at page 494. The Office properly found in its October 31, 2007 decision that appellant had a five percent permanent impairment of the left and right upper extremity based on the Office medical adviser's September 28 and October 6, 2006 reports, which were rendered in conformance with the applicable protocols of the A.M.A., *Guides*.

There is no other probative medical evidence establishing that appellant sustained any additional permanent impairment. The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to rate appellant's right and left upper extremity impairments. His report constitutes the weight of medical opinion. Following the Office's decision, appellant requested a hearing but did not submit any additional medical evidence. The Board will affirm the December 17, 2007 Office decision.

CONCLUSION

The Board finds that appellant has no more than a five percent permanent impairment to his right and left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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