United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant **and** **DEPARTMENT OF THE NAVY, NAVAL SURFACE WARFARE CENTER, Philadelphia, PA, Employer**	)	**Docket No. 08-1135** **Issued: December 5, 2008**

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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 10, 2008 appellant filed a timely appeal of an October 2, 2007 merit decision of the Office of Workers' Compensation Programs in which an Office hearing representative found that she had no more than five percent impairment of the left upper extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award.

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board. In a January 18, 2005 decision, the Board affirmed the Office's February 5, 2004 decision, which granted appellant a schedule award for five percent impairment to her right upper extremity, but set aside the remainder of the

decision, which granted her a schedule award for five percent impairment to her left upper extremity.[1] The Board noted that Dr. Stuart Gordon, a Board-certified orthopedic surgeon and second opinion examiner, upon which the schedule award was based, had incorrectly applied a section of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[2] (A.M.A., *Guides*) regarding carpal tunnel syndrome in determining appellant's left arm impairment. The Board also found that the September 21, 2001 report of Dr. David Weiss, appellant's physician, who opined that she had 33 percent impairment of each arm, did not conform with the A.M.A., *Guides*. The Board remanded the case to the Office to further develop the medical evidence on the extent of appellant's left arm impairment under the A.M.A., *Guides*. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.[3] The facts relevant to the present appeal are set forth.

As instructed by the Board, the Office developed the medical evidence pertaining to appellant's schedule award claim by requesting Dr. Gordon reexam appellant. In a May 11, 2005 report, Dr. Gordon stated that his opinion concerning the extent of permanent impairment to the left upper extremity remained unchanged. By decision dated June 22, 2005, the Office determined that appellant had no more than five percent permanent impairment of the left upper extremity.

Following a March 3, 2006 hearing, by decision dated June 5, 2006, an Office hearing representative set aside the June 22, 2005 decision. The hearing representative found that referral to another second opinion examiner was necessary since Dr. Gordon failed to provide a rationalized opinion explaining his opinion that appellant had five percent impairment of the left arm under the appropriate tables of the A.M.A., *Guides*.

The Office subsequently referred appellant to Dr. Havinder S. Pabla, a Board-certified orthopedic surgeon and Office referral physician, for further evaluation. In a September 18, 2006 report, Dr. Pabla provided a detailed description of the results of his physical examination of both upper extremities. With respect to the left upper extremity, he reported that there was a sensory deficit in the ulnar nerve distribution but that light touch and two-point discrimination was intact in the median nerve distribution. Dr. Pabla reported that the Phalen's test was negative as was the median nerve compression test. Range of motion of the wrist and finger were normal and there were no signs of atrophy of the thenar, hypothenar or intrinsic muscle or loss of grip strength. Dr. Pabla stated that her subjective complaints of numbness were associated with minimal objective physical findings. Taking all those factors into consideration, he concluded that appellant had five percent impairment of the left upper extremity, citing Table 16-10, 16-11 and 16-15 of the A.M.A., *Guides*.

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[1] Docket No. 04-1654 (issued January 18, 2005).

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

[3] To briefly summarize the facts, on June 2, 1999 appellant, then a 32-year-old program analyst, filed an occupational disease claim for bilateral carpal tunnel syndrome as a result of her employment duties. The Office accepted the claim for right carpal tunnel syndrome and a right carpal tunnel release was performed in October 1999, with subsequent recurrences in October 1999 and January 2001. It additionally accepted the claim for left carpal tunnel syndrome and authorized a left carpal tunnel release, which appellant did not undergo.

In an October 14, 2006 report, an Office medical adviser opined that Dr. Pabla correctly applied the A.M.A., *Guides* in determining the impairment rating and that the five percent impairment rating was "within the realm of acceptable impairments for this kind of median nerve deficit." The Office medical adviser noted that appellant reported numbness in both hands. He stated that she qualified for Grade 4 sensory deficit under Table 16-10, page 482 of the A.M.A., *Guides* and noted that Table 16-15 was also used.

By decision dated October 24, 2006, the Office found that appellant had five percent permanent impairment of the left arm. By decision dated January 9, 2007, an Office hearing representative set aside the October 24, 2006 decision as it was not possible to determine how Dr. Pabla or the Office medical adviser utilized Table 16-10 in conjunction with Table 16-15 of the A.M.A., *Guides* to calculate five percent left arm impairment. The hearing representative directed the Office to obtain a supplemental report from Dr. Pabla explaining how he calculated left arm impairment by using Table 16-10 in conjunction with Table 16-15. He also stated that Dr. Pabla should explain why an impairment rating due to sensory or motor deficit for areas innervated by the median nerve was assigned as no motor or sensory deficit was described on physical examination of the left upper extremity.

In a January 16, 2007 letter, the Office requested that Dr. Pabla provide an explanation to the questions raised by the Office hearing representative. In an undated addendum, Dr. Pabla noted that he used Table 16-10 and 16-11 of the A.M.A., *Guides* and, although appellant had good strength and negative Phalen test, the five percent impairment was due to other factors including persistent pain and numbness. He advised sensory and motor deficit was one criteria for assigning a permanent disability rating.

In a March 9, 2007 report, an Office medical adviser opined that Dr. Pabla correctly applied the A.M.A., *Guides* in determining the five percent rating. He noted that appellant reported numbness in both hands. The Office medical adviser stated that she qualified for Grade 4 sensory deficit under Table 16-10, page 482 of the A.M.A., *Guides* as appellant had symptoms, but not objective measurements, consistent with median nerve sensory dysfunction that affected her activity of daily living. He advised that since appellant's left carpal tunnel syndrome meets only half the criteria to achieve the full 25 percent deficit in category 4 under Table 16-10, page 482 of the A.M.A, *Guides,* she has a 12.5 percent deficit. The Office medical adviser further noted that the maximum sensory deficit for median nerve under Table 16-15, page 492 of the A.M.A., *Guides,* equaled 39 percent upper extremity impairment. He multiplied the Grade 4 or 12.5 percent median nerve sensory deficit by the 39 percent maximum sensory deficit for median nerve to achieve a 4.875 or 5 percent upper extremity impairment. The Office medical adviser further stated that the five percent impairment rating by Dr. Pabla was "within the realm of acceptable impairments for this kind of median nerve deficit."

By decision dated March 20, 2007, the Office found that appellant had five percent permanent impairment of the left upper extremity.

On March 28, 2007 appellant disagreed with the March 20, 2007 decision and requested a hearing, which was held July 26, 2007. By decision dated October 2, 2007, an Office hearing representative affirmed the Office's March 20, 2007 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] 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.[6]

Office procedures[7] provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[8]

Office procedures further provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides,* with the Office medical adviser providing rationale for the percentage of impairment specified.[9]

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome, which is an entrapment or compression neuropathy. In its January 18, 2005 decision, the Board found that, the opinion of Dr. Weiss, appellant's treating physician, was not in conformance with the A.M.A., *Guides.* Based on the opinion of Dr. Gordon, an Office referral physician, the Board affirmed that appellant was entitled to five percent permanent impairment to her right arm. However, it remanded the case for further determination on the issue of appellant's left arm impairment as Dr. Gordon had incorrectly applied the section of the A.M.A., *Guides,* cited on page 495, to determine her left upper extremity impairment as she did not undergo a left carpal tunnel release. The A.M.A., *Guides* states that in entrapment or compression neuropathies, sensory and motor deficits are evaluated according to the chapter on peripheral nerve disorders. This means following the grading scheme and procedure for rating sensory and motor deficits under Table 16-10, page 482 and Table 16-11, page 484, respectively.

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[4] 5 U.S.C. § 8107(a)-(c).

[5] 20 C.F.R. § 10.404.

[6] *See Mark A. Holloway*, 55 ECAB 321(2004).

[7] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). *See also Cristeen Falls*, 55 ECAB 420 (2004).

[8] A.M.A., *Guides* 491, 482, 484, 492, respectively; *see Joseph Lawrence, Jr.,* 53 ECAB 331 (2002).

[9] *See Thomas J. Fragale*, 55 ECAB 619 (2004); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

Initially, the Board notes that the Office acted properly in referring appellant for another second opinion evaluation with Dr. Pabla. The Office requested a clarification report from Dr. Gordon. In his May 11, 2005 supplemental report, Dr. Gordon advised that his opinion was unchanged. However, he failed to provide a rationalized opinion explaining the basis for his opinion that appellant had five percent impairment of the left upper extremity under the appropriate Tables of the A.M.A., *Guides*. As Dr. Gordon's supplemental report did not adequately address the relevant issue, the Office properly referred appellant to Dr. Pabla for another second opinion evaluation.[10]

In his September 18, 2006 report, Dr. Pabla provided a detailed description of the results of his physical examination of appellant's upper extremities. He advised that appellant's subjective complaints of numbness were associated with minimal objective physical findings. Dr. Pabla concluded that appellant had five percent permanent impairment of the left upper extremity under Tables 16-10, 16-11 and 16-15 of the A.M.A., *Guides*. In an addendum report, he advised that the five percent impairment was due to other factors including persistent pain and numbness. The Office medical adviser, relying on Dr. Pabla's findings, agreed with the physician's opinion that appellant had five percent permanent impairment of the left upper extremity. In his March 9, 2007 report, the medical adviser noted that appellant reported numbness in both hands. The Office medical adviser stated that she qualified for Grade 4 sensory deficit under Table 16-10, page 482 of the A.M.A., *Guides,* which corresponds to a 12.5 percent sensory deficit. Under Table 16-10 page 482 of the A.M.A., *Guides,* a Grade 4 sensory deficit is described as: "distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity" and has a range of sensory deficit from 1 to 25 percent. The Office medical adviser found that appellant's symptoms consistent with median nerve sensory dysfunction that affect her activity of daily living. He explained that since her left carpal tunnel syndrome met only half the criteria to achieve the full 25 percent deficit for Grade 4 under Table 16-10, page 482 of the A.M.A, *Guides*, she had a 12.5 percent deficit. Using Table 16-15 at page 492, the Office medical adviser found that the maximum sensory deficit for median nerve is 39 percent. He multiplied the Grade 4 or 12.5 percent median nerve sensory deficit by the 39 percent maximum sensory deficit for median nerve, the procedure outlined in part B of Table 16-10, to derive a 4.875 or 5 percent upper extremity impairment. The Board finds that the Office medical adviser explained the basis of his calculation and properly applied the A.M.A., *Guides* to rate appellant's left upper extremity impairment. His March 9, 2007 report establishes that appellant has no more than five percent left arm impairment.

There is no other probative medical evidence establishing that appellant sustained any additional permanent impairment. On appeal, her counsel contends that there is a conflict in medical opinion concerning the extent of permanent impairment of the left upper extremity between Dr. Weiss and the Office medical adviser. However, the Board previously determined in its January 18, 2005 decision that Dr. Weiss' impairment evaluation was not in conformance

[10] *See Ayanle A. Hashi*, 56 ECAB 234 (2004) (when the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues).

with the A.M.A., *Guides* and Office procedures. Thus, there is no conflict in medical opinion requiring resolution by an impartial medical specialist.

Accordingly, the Board finds that appellant is entitled to a schedule award for her left upper extremity of five percent, for which she received a schedule award.

CONCLUSION

The Board finds that appellant has no greater than five percent left upper extremity impairment, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 2, 2007 is affirmed.

Issued: December 5, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees'' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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