United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
	)	**Docket No. 08-1249**
and	)	**Issued: December 1, 2008**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Phoenix, AZ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 24, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 27, 2007 merit decision, which affirmed the denial of his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has established that he sustained permanent impairment due to his accepted bilateral carpal tunnel condition.

FACTUAL HISTORY

On September 7, 2004 appellant, then a 48-year-old locksmith, filed an occupational disease claim alleging bilateral carpal tunnel syndrome as a result of performing his work duties. He became aware of his condition on July 28, 2004 and did not stop work but returned to a light-duty position. In a decision dated June 22, 2005, the Office accepted his claim for bilateral

carpal tunnel syndrome. It authorized bilateral carpal tunnel release surgery, which was performed on the right side on January 13, 2005 and on the left side on May 5, 2005.

Appellant came under the treatment of Dr. Marc S. Ercius, a Board-certified neurologist. On November 10, 2004 Dr. Ercius noted a history of appellant's condition and diagnosed symptoms suggestive of carpal tunnel syndrome. On November 16, 2004 he was seen by Dr. Keith Nachmanson, a neurologist, who noted appellant's four-month history of numbness and tingling in both hands and diagnosed bilateral hand numbness and pain. Appellant underwent an electromyogram (EMG) on November 17, 2004, which revealed bilateral severe carpal tunnel syndrome, left Martin Gruber anastomosis and bilateral ulnar neuropathies at the level of the ulnar grooves. A November 16, 2004 x-ray of the bilateral wrists revealed a small periarticular calcification of the right wrist. A bilateral hand x-ray revealed bilateral fifth metacarpal healed fracture deformities. On December 13, 2004 appellant was treated by Dr. March I. Dinowitz, a Board-certified neurologist, who diagnosed bilateral carpal tunnel syndrome and recommended surgery. On January 13, 2005 Dr. Dinowitz performed a right carpal tunnel release and on May 5, 2005 he performed a left carpal tunnel release and diagnosed bilateral carpal tunnel syndrome. He opined that appellant's diagnosed carpal tunnel syndrome was work related.

On May 10, 2006 appellant filed a claim for a schedule award. He submitted a March 29, 2006 report from Dr. Nachmanson, who noted tenderness in appellant's thumbs and diagnosed degenerative arthritic changes.

In a letter dated May 12, 2006, the Office requested Dr. Paul Laven, an attending osteopath, to provide an impairment evaluation of the arms pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[1] (A.M.A., *Guides*). On June 8, 2006 the Office also requested that Dr. Dinowitz provide an impairment rating of the bilateral upper extremities in accordance with the A.M.A., *Guides.*

The Office referred appellant to Dr. Joseph M. Scoggin, a Board-certified orthopedic surgeon, for a second opinion. Dr. Scoggin was asked to evaluate the extent of any permanent impairment in accordance with the A.M.A., *Guides.* In a report dated August 30, 2006, he reviewed the records provided to him and noted findings on examination of appellant. Dr. Scoggin noted that appellant had undergone surgery for right and left carpal tunnel releases, which provided excellent results and that appellant had completely recovered. Examination revealed well-healed incisions from the bilateral carpal tunnel releases, no sensory loss in the hands, no atrophy of the thenar or hypothenar muscles, negative Finkelstein test, negative Tinel's and Phalen's signs at the wrists bilaterally with triggering of the right ring finger. Dr. Scoggin observed that grip strength was 18, 22 and 14 on the right and 20, 14 and 14 on the left side, with no specific motor weakness in the upper extremities. He noted flexion and extension measured 60 degrees, radial deviation measured 20 degrees and ulnar deviation measured 25 degrees bilaterally. Dr. Scoggin diagnosed status post bilateral carpal tunnel syndrome. He opined that appellant had no evidence of any ongoing pathologic process involving compression of the medial nerve. Dr. Scoggin found no convincing signs of arthrosis or loss of range of motion in

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

either upper extremity and grip strength measurements showed a wide variation suggesting inconsistent effort. He opined that, to a reasonable degree of medical certainty, appellant had no impairment as a result of his accepted conditions or surgery and that he could return to his regular job without restrictions. Dr. Scoggin noted that appellant reached maximum medical improvement on August 1, 2005.

In a decision dated September 11, 2006, the Office denied appellant's claim for a schedule award.

Appellant requested an oral hearing which was held on January 12, 2007. In a June 20, 2006 report, Dr. Dinowitz noted that physical examination revealed range of motion for dorsi-flexion measured 60 degrees on the right[2] and 65 degrees on the left[3] for a zero percent impairment, flexion measured 40 degrees on the right for a three percent impairment[4] and 30 degrees on the left for a five percent impairment,[5] radial deviation measured 8 degrees on the right for a three percent impairment[6] and five degrees on the left for a three percent impairment[7] and ulnar deviation was measured at 25 degrees on the right for a one percent impairment[8] and 15 degrees on the left for a three percent impairment.[9] He further noted grip strength testing on the right via Jamar Hand Dynamometer revealed 19 kilogram (kg) of force strength on the right and 26 kg of force strength on the left and pinch strength was 6 kg of force strength on the right and 5.8 kg on the left for an impairment of 20 percent impairment per hand pursuant to Table 16-34 of A.M.A., *Guides*. Dr. Dinowitz attributed some of appellant's loss of strength to severe tenosynovitis. He noted that, based on the fifth edition of the A.M.A., *Guides*, appellant had 25 percent impairment of the right arm and 27 percent impairment of the left arm based on loss of range of motion and grip strength deficit.[10]

In a decision dated March 27, 2007, the hearing representative affirmed the Office decision dated September 11, 2006.

[2] A.M.A., *Guides* 467, Figure 16-28.

[3] *Id.*

[4] *Id*.

[5] *Id.*

[6] *Id.* at 469, Figure 16-31.

[7] *Id.*

[8] *Id*.

[9] *Id.*

[10] *Id*. at 509, Table 16-34.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[11] and its implementing regulation[12] 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.[13]

ANALYSIS

On appeal, appellant contends that he has permanent impairment of the both upper extremities. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and paid appropriate compensation. It also authorized bilateral carpal tunnel release surgery, which was performed on the right side on January 13, 2005 and on the left side on May 5, 2005.

The Office referred appellant to Dr. Scoggin for a second opinion. In an August 30, 2006 report, Dr. Scoggin found no evidence of residual or impairment arising from the accepted bilateral carpal tunnel syndrome. He noted that appellant had undergone right and left carpal tunnel releases from which appellant obtained excellent results. Dr. Scoggin noted findings upon physical examination of well-healed open incisions from the bilateral carpal tunnel releases, no sensory loss in his hands, no specific motor weakness in the upper extremities on examination, no atrophy of the thenar or hypothenar muscles, negative Finkelstein test and negative Tinel's and Phalen's signs at the wrists bilaterally. He found no convincing signs of arthrosis or loss of range of motion in either extremity. Dr. Scoggin diagnosed status post bilateral carpal tunnel syndrome and opined that appellant had no evidence of any ongoing pathologic process involving compression of the medial nerve. He opined that to a reasonable degree of medical certainty appellant had no impairment as a result of his bilateral carpal tunnel syndrome and bilateral carpal tunnel releases.

The Board finds that Dr. Scoggin conducted a thorough examination and that his report established no basis for finding permanent impairment of either arm.

The Board notes that the June 28, 2006 report of Dr. Dinowitz found permanent impairment in each arm; however, he did not adequately explain how his rating was obtained in accordance with the relevant standards of the A.M.A., *Guides*.

Dr. Dinowitz rated 25 percent impairment of the right upper extremity and 27 percent impairment of the left upper extremity based on loss of range of motion and grip strength

[11] 5 U.S.C. § 8107.

[12] 20 C.F.R. § 10.404 (1999).

[13] *Id. See B.C.*, 58 ECAB ___ (Docket No. 06-925, issued October 13, 2006).

deficit.[14] He specifically noted 7 percent impairment for decreased range of motion of the right wrist and 11 percent impairment for the left wrist[15] and 20 percent impairment per hand for loss of grip strength pursuant to Table 16-34 of the A.M.A, *Guides.* However, the Board notes that, in carpal tunnel cases, there generally will be no ratings based on loss of motion or grip strength.[16] Office procedures[17] 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.[18] Under the fifth edition of the A.M.A., *Guides*, schedule awards for carpal tunnel syndrome are predicated only on motor and sensory impairments.[19] Section 16.5d of the A.M.A., *Guides* provides:

> "In compression neuropathies, additional impairment values are not given for decreases grip strength. In the absence of CRPS [complex regional pain syndromes], additional impairment values are not given for decreased motion."[20]

This section of the A.M.A., *Guides* sets for the procedure for rating impairment for carpal tunnel syndrome where there has been optimal recovery time following surgical decompression.[21] Dr. Dinowitz did not properly apply this section of the A.M.A., *Guides* or offer any reasoning to explain why the A.M.A., *Guides* would not apply to appellant's situation. Consequently, the impairment rating of Dr. Dinowitz is of diminished probative value. The Board finds that the Office properly denied appellant's claim for a schedule award.

CONCLUSION

The Board finds that appellant has not established that he sustained permanent impairment of his upper extremities due to his accepted conditions.

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[14] *Supra* note 10.

[15] *Id.* at 466-69, Figure 16-26 to 16-31.

[16] *See id.* at 494-95.

[17] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Evaluation of Schedule Awards*, Chapter 2.808 (August 2002).

[18] A.M.A., *Guides*; *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[19] *Kimberly M. Held*, 56 ECAB 670, 674 (2005); *Robert V. Disalvatore*, 54 ECAB 351 (2003) (where the Board found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory impairments only); *John E. Hesser*, Docket No. 03-1359 (issued December 31, 2003) (where the Board found that, in a carpal tunnel schedule award case, there generally will be no ratings based on loss of motion or grip strength as schedule awards for carpal tunnel syndrome are predicated on motor and sensory impairments only).

[20] *Supra* note 16.

[21] *See id* at 495.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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