United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
	)	**Docket No. 08-1466**
and	)	**Issued: December 1, 2008**
	)	
DEPARTMENT OF THE NAVY, NAVAL ELECTRONIC SYSTEMS COMMAND, North Charleston, SC, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 23, 2008 appellant filed a timely appeal from a January 18, 2008 decision of the Office of Workers' Compensation Programs, granting a schedule award, and a March 25, 2008 decision that denied his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has more than four percent impairment of his right upper extremity and five percent impairment of his left upper extremity causally related to his accepted bilateral carpal tunnel syndrome and left cubital tunnel syndrome; and (2) whether the Office properly denied his request for a hearing.

FACTUAL HISTORY

On February 3, 2004 appellant, then a 52-year-old electronics technician, filed an occupational disease claim alleging that he developed bilateral carpal tunnel syndrome due to his

work activities. His claim was accepted for bilateral carpal tunnel syndrome and left cubital tunnel syndrome. Appellant subsequently filed a claim for a schedule award.

In a November 30, 2004 report, Dr. Gerald J. Shealy, a Board-certified orthopedic surgeon specializing in hand surgery, stated that appellant had reached maximum medical improvement following left carpal tunnel decompression on October 2, 2002, right carpal tunnel decompression on May 19, 2004 and left ulnar nerve transposition on July 22, 2004. He found that appellant had 10 percent impairment of his left upper extremity due to residual ulnar neuropathy and five percent impairment due to residual median neuropathy, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a November 15, 2006 report, Dr. James L. Bumgartner, a Board-certified neurologist and psychiatrist, stated that nerve conduction studies of appellant's upper extremities revealed normal median motor values bilaterally, bilateral median sensory neuropathy and left ulnar sensory and motor neuropathy.[1]

In a December 13, 2006 clinical note, Dr. Shealy stated that appellant had 13 percent impairment of his left upper extremity, including five percent for ulnar nerve sensory loss, three percent for ulnar nerve motor loss and five percent impairment for median nerve sensory loss.

On May 1, 2007 an Office medical adviser stated that appellant had five percent impairment of his left upper extremity.[2] He rated four percent for sensory loss of the median nerve based on Table 16-10 at page 482 and Table 16-15 at page 492 of the A.M.A., *Guides*. The Office medical adviser allowed 10 percent sensory deficit (Grade 4) from Table 16-10 multiplied by 39 percent maximum for the median nerve from Table 16-15, to equal 3.9, rounded to 4 percent. He found 1 percent for ulnar nerve sensory loss, 10 percent (Grade 4) multiplied by 7 percent maximum for the ulnar nerve. The Office medical adviser based these ratings on the November 15, 2006 electrodiagnostic studies. He also found that appellant had four percent impairment of his right upper extremity for median nerve sensory loss based on Tables 16-10 and 16-15.

[1] Regarding motor deficit of the left ulnar nerve, Dr. Bumgartner stated that left ulnar motor response demonstrated borderline slowing across the elbow without significant drop in amplitude. A nerve conduction study of appellant's left upper extremity performed on March 19, 2007 revealed no significant change since the November 15, 2006 study.

[2] *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).

By decision dated January 18, 2008, the Office granted appellant schedule awards for five percent impairment of his left upper extremity and four percent of his right upper extremity, a total of 28.08 weeks from October 30, 2004 to May 15, 2005.[3]

By letter dated February 19, 2008 and postmarked February 21, 2008, appellant requested an oral hearing.

By decision dated March 25, 2008, the Office denied appellant's January 21, 2008 request for an oral hearing, postmarked January 21, 2008, on the grounds that it was not timely filed within 30 days of the January 18, 2008 decision and the issue could be addressed equally well through a request for reconsideration and additional evidence.[4]

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Act[5] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[6]

Chapter 16 of the fifth edition of the A.M.A., *Guides* provides the framework for assessing upper extremity impairments.[7] Office procedures[8] provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies, such as cubital tunnel syndrome, should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[9]

[3] The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of the upper extremity. 5 U.S.C. § 8107(c)(10). Multiplying 312 weeks by nine percent equals 28.08 weeks of compensation.

[4] Subsequent to the March 25, 2008 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

[7] A.M.A., *Guides* 433-521.

[8] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[9] A.M.A., *Guides* 491, 482, 484, 494, respectively.

Additionally, 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."[10]

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.[11]

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for a decision.

On November 30, 2004 Dr. Shealy found that appellant had 10 percent impairment of his left upper extremity due to residual ulnar neuropathy and five percent impairment due to residual median neuropathy causally related to his accepted bilateral carpal tunnel syndrome and left cubital tunnel syndrome. However, he did not explain how he determined appellant's impairment with reference to specific sections and tables of the A.M.A., *Guides*. On December 13, 2006 Dr. Shealy stated that appellant had 13 percent impairment of his left upper extremity, including five percent for ulnar nerve sensory loss, three percent for ulnar nerve motor loss and five percent impairment for median nerve sensory loss. Again he did not reference any specific sections or tables of the A.M.A, *Guides*. Because Dr. Shealy did not explain his impairment rating with reference to applicable sections of the A.M.A., *Guides*, his rating is not sufficient to establish appellant's schedule award for his left upper extremity. Additionally, he did not provide an impairment rating for appellant's right upper extremity. The nerve conduction studies performed on November 15, 2006 revealed bilateral median sensory neuropathy as well as left ulnar sensory and motor neuropathy. Therefore, Dr. Shealy should

[10] *Id*. at 495.

[11] *Kimberly M. Held,* 56 ECAB 670, 674 (2005).

have provided an impairment rating for appellant's right upper extremity caused by median nerve sensory loss.

The Office medical adviser found that, based on the medical evidence, appellant had five percent impairment of his left upper extremity, including four percent for sensory loss of the median nerve according to Table 16-10 at page 482 and Table 16-15 at page 492 of the A.M.A., *Guides*. He apparently found that appellant had a Grade 4 sensory loss based on Table 16-10 as Grade 4 provides for a range of 1 to 25 percent impairment. The Office medical adviser multiplied 10 percent by the 39 percent maximum for median nerve sensory loss from Table 16-15 which constitutes 3.9 percent, rounded to 4 percent. He apparently also found a Grade 4 sensory loss for the left ulnar nerve and multiplied 10 percent from Table 16-10 by the 7 percent maximum for ulnar nerve sensory loss from Table 16-15 which constituted 1 percent sensory loss for the ulnar nerve. The Office medical adviser found that appellant had four percent impairment of his right upper extremity for median nerve sensory loss based on Tables 16-10 and 16-15, using the same calculations he made in determining appellant's left upper extremity sensory loss. However, he did not provide medical rationale explaining how he determined that appellant had a Grade 4 impairment of his left and right upper extremities based on the descriptions of sensory deficit in Table 16-10.[12] Additionally, the Office medical adviser did not explain how he determined 10 percent sensory loss from Grade 4 when, as noted, Grade 4 provides for a range of 1 to 25 percent. Further, he did not explain why he did not find any impairment due to left ulnar nerve motor deficit when Dr. Shealy found such motor deficit and the nerve conduction study noted left ulnar nerve motor deficit. Due to these deficiencies, the impairment rating by the Office medical adviser is not sufficient to establish appellant's right and left upper extremity impairment due to his accepted bilateral carpal tunnel syndrome and left cubital tunnel syndrome. On remand, the Office should further develop the medical evidence regarding the nature and extent of his right and left upper extremity impairment.

CONCLUSION

The Board finds that this case is not in posture for a decision on the issue of appellant's entitlement to a schedule award for his left and right upper extremities. On remand, the Office should further develop the medical evidence as to the nature and extent of his impairment causally related to his accepted bilateral carpal tunnel syndrome and left cubital tunnel syndrome. After such further development as the Office deems necessary, it should issue an appropriate decision. Due to the posture of the first issue, the second issue in this case is moot.

[12] Table 16-10 provides for a range of Grade 5 (0 percent sensory deficit) to Grade 0 (100 percent sensory deficit).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 25 and January 18, 2008 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 1, 2008
Washington, DC

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

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

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