United States Department of Labor
Employees' Compensation Appeals Board

P.L., Appellant	)	
and	)	**Docket No. 08-1630**
	)	**Issued: December 4, 2008**
DEPARTMENT OF THE NAVY, NORFOLK NAVAL SHIPYARD, Portsmouth, VA, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 20, 2008 appellant filed a timely appeal from a March 19, 2008 decision of the Office of Workers' Compensation Programs granting a schedule award. Pursuant to 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 has more than five percent impairment of her left upper extremity or any impairment of her right upper extremity causally related to her accepted bilateral carpal tunnel syndrome.

FACTUAL HISTORY

On August 15, 1997 appellant, then a 50-year-old welder, filed an occupational disease claim alleging that she developed a bilateral wrist condition due to her work activities. Her claim was accepted for bilateral carpal tunnel syndrome. Appellant underwent a right wrist carpal tunnel release on February 25, 1998 and a left carpal tunnel release on March 31, 1998.

Her physician released her to regular work as of April 27, 1998. On March 29, 2005 appellant filed a claim for a schedule award.

In a March 26, 2007 report, Dr. Lawrence R. Morales, an attending Board-certified orthopedic surgeon, stated that appellant had 10 percent impairment to each upper extremity due to motor function deficit, according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He indicated that she had no right or left upper extremity impairment due to sensory deficit. However, in a January 7, 2008 report, Dr. Morales indicated that appellant complained of pain, numbness, tingling, soreness, achiness and burning in both hands and wrists. Appellant also had a tendency to drop things when her symptoms were severe.

In an August 2, 2007 report, Dr. Steven L. Gershon, a Board-certified physiatrist, stated that a nerve conduction study and electromyography [EMG] of appellant's right upper extremity were normal. On August 9, 2007 he stated that a nerve conduction study and EMG of her left upper extremity were normal with the exception of a prolonged medial-radial latency difference revealed in the sensory portion of the nerve conduction study. Based on the electrodiagnostic tests, Dr. Gershon found that appellant had mild recurrent left carpal tunnel syndrome.

In a January 9, 2008 report, Dr. Willie E. Thompson, a Board-certified orthopedic surgeon and an Office medical adviser, reviewed appellant's medical records, including the August 2007 nerve conduction studies and EMG reports. He stated that the physical examination by her attending physicians was "essentially within normal limits." Dr. Thompson found that, based on abnormal electrodiagnostic tests and a normal physical examination, appellant had five percent impairment of her left upper extremity according to Chapter 16, page 495 of the fifth edition of the A.M.A., *Guides* pertaining to impairment due to carpal tunnel syndrome. He found that she had no right upper extremity impairment, noting a normal nerve conduction study and electromyography.

By decision dated March 19, 2008, the Office granted appellant a schedule award based on five percent impairment of her left upper extremity for 15.60 weeks from August 9 to November 26, 2007.[1]

LEGAL PRECEDENT

Section 8107 of the Act[2] 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

[1] 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 five percent equals 15.60 weeks of compensation. Subsequent to the March 19, 2008 Office decision, appellant submitted additional evidence. 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.

[2] 5 U.S.C. § 8107.

permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified fifth edition of the A.M.A., *Guides*.[3]

Chapter 16 of the fifth edition of the A.M.A, *Guides* provides the framework for assessing upper extremity impairments.[4] Office procedures[5] 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.[6]

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."[7]

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.[8]

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[3] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

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

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

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

[7] *Id*. at 495.

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

ANALYSIS

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

Dr. Thompson found that appellant had five percent impairment of her left upper extremity based on her medical records, including the August 2007 nerve conduction studies and EMG reports. He stated that her physical examination was "essentially within normal limits." Dr. Thompson found that, based on abnormal electrodiagnostic tests and a normal physical examination, appellant had five percent impairment of her left upper extremity according to Chapter 16, page 495 of the fifth edition of the A.M.A., *Guides* pertaining to impairment due to carpal tunnel syndrome. Apparently, he found that her condition fit the second scenario described at page 495 regarding carpal tunnel syndrome which provides that, where there is "normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles," a residual carpal tunnel syndrome is present and an impairment rating "not to exceed five percent of the upper extremity may be justified." Dr. Thompson found that appellant had no right upper extremity impairment based on a normal nerve conduction study and EMG. His statement that she had an essentially normal physical examination is contradicted by Dr. Morales' January 7, 2008 report. Dr. Morales indicated that appellant had pain, numbness, tingling, soreness, achiness and burning in both hands and wrists and she sometimes dropped things. Therefore, appellant's most recent physical examination, on January 7, 2008, was not "essentially within normal limits." The symptoms described by Dr. Morales suggest some degree of bilateral sensory impairment. It is not clear whether Dr. Thompson reviewed the report of Dr. Morales as it was not addressed in his January 9, 2008 impairment rating. In August 2007, Dr. Gershon found that a nerve conduction study and EMG of appellant's left upper extremity were normal, with the exception of a prolonged medial-radial (median and radial nerves) latency difference revealed in the sensory nerve portion of the nerve conduction study. Thus, his report also supports left upper extremity sensory deficit. Additionally, Dr. Gershon's report correlates with the first scenario at page 495, which describes positive clinical findings of median nerve dysfunction and electrical conduction delays. Regarding his finding of normal electrodiagnostic studies for appellant's right upper extremity, as noted, Dr. Morales' January 7, 2008 report described both left and right upper extremity symptoms of pain, numbness, tingling, soreness, achiness, burning and a tendency to drop things, suggesting sensory impairment.[9] Dr. Morales found, in his March 26, 2007 report, that appellant had bilateral motor function deficit which is compatible with the first carpal tunnel syndrome scenario at page 495. The Board finds that the medical evidence is not sufficiently developed to establish appellant's left and right upper extremity impairment due to her accepted bilateral carpal tunnel syndrome. On remand, the Office should further develop the medical evidence regarding the nature and extent of appellant's left and right upper extremity impairment causally related to her accepted bilateral carpal tunnel syndrome.

[9] The A.M.A., *Guides* indicates at page 495 that five percent of individuals with carpal tunnel syndrome may have normal electrophysiologic studies.

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 her left and right upper extremities. On remand, the Office should further develop the medical evidence as to the nature and extent of her impairment causally related to her accepted bilateral carpal tunnel syndrome.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 19, 2008 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 4, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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