United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 07-1208**
	)	**Issued: February 14, 2008**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 29, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated October 24, 2006. 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 sustained any permanent impairment to a scheduled member of her body causally related to her accepted bilateral carpal tunnel syndrome, thereby entitling her to a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

Appellant, a 42-year-old tax examiner, filed a Form CA-2 claim for benefits on July 12, 1994 and March 9, 1998, alleging that she developed a condition in her left wrist causally related to factors of her employment. The Office accepted her claim for bilateral carpal tunnel syndrome and authorized carpal tunnel release surgery for both her left and right wrists.

In a November 1, 2001 report, Dr. Nicholas P. Diamond, an osteopath, found that appellant had a 46 percent left upper extremity impairment and a 45 percent right upper extremity impairment. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*) he calculated a two percent loss of range of motion in the left wrist based on a one percent deficit from dorsiflexion and palmar flexion pursuant to Figure 16-28, page 467 of the A.M.A., *Guides*; a 20 percent left grip strength deficit pursuant to Tables 16-32 and 16-34 at page 509 of the A.M.A., *Guides*; and a 31 percent left median nerve deficit pursuant to Table 16-10 at page 482 and Table 16-15 at page 492 of the A.M.A., *Guides*, for a total of 46 percent left upper extremity impairment. Regarding the right upper extremity, Dr. Diamond found a 31 percent impairment based on sensory deficit of the right median nerve under Tables 16-10 at page 482 of the A.M.A., *Guides*; and a 20 percent left grip strength deficit pursuant to Tables 16-32 and 16-34 at page 509 of the A.M.A., *Guides*, for a total of 45 percent right upper extremity impairment.

On March 18, 2002 appellant's attorney requested a schedule award based on loss of use of her right and left upper extremities.

The Office referred appellant for a second opinion examination with Dr. Anthony Salem, Board-certified in orthopedic surgery. In a report dated June 10, 2004, Dr. Salem listed findings on examination and reviewed the medical history and the statement of accepted facts. He expressed his disagreement with Dr. Diamond's findings and diagnoses. Dr. Salem stated that appellant had no impairment in either of her wrists and found that she had reached maximum medical improvement.

The Office found that there was a conflict in the medical evidence between Dr. Diamond and Dr. Salem regarding whether appellant had sustained any permanent impairment due to her work-related bilateral carpal tunnel syndrome. It referred appellant for an impartial medical examination with Dr. Noubar Didizian, Board-certified in orthopedic surgery. In a March 2, 2005 report, Dr. Didizian found that appellant had no permanent impairment under the A.M.A., *Guides*. He noted that appellant underwent surgical procedures for the right wrist in 1993 and 1994 and had residual complaints in the right wrist and right hand. Regarding the left wrist, Dr. Didizian stated:

> "As far as the left wrist and carpal tunnel are concerned, the following is a summary of my evaluation: The range of motion had normal extension, flexion and ulnar and radial deviation. The range of motion of the fingers was normal and she was able to touch the distal palmar crease.
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> "The provocative tests of the wrists showed no evidence of ligamentous instability. There was no evidence of synovitis, tenosynovitis or inflammatory process in the wrists or fingers. The pinch grip, right to left, was 9/8, which does not result in any kind of value for impairment. The power grip in the left hand was stronger than the right hand indicating no impairment. As far as subjective complaints related to the left wrist, [appellant] did not have any pain at rest. She had no specific complaint of pain in the left wrist itself.

"The two[-]point discrimination was under four millimeters, indicating normal sensation to the fingertips. It is my medical opinion that this patient has reached maximum medical improvement as far as the hands and wrists are concerned. There is no applicable permanent impairment in this patient based on the values stated above that could be applied to the A.M.A., *Guides*."

By decision dated August 4, 2005, the Office denied appellant's claim for a schedule award. The Office found that Dr. Didizian's referee medical opinion represented the weight of the medical evidence.

By letter dated August 12, 2005, appellant's attorney requested an oral hearing, which was held on December 16, 2005.

By decision dated January 31, 2006, an Office hearing representative affirmed the August 4, 2005 decision.

In a January 25, 2006 report, received by the Office on February 7, 2006, Dr. Diamond stated:

"It should be noted at this time that, although two-point discrimination was normal, according to Dr. Didizian on his evaluation of March 2, 2005, that it does not eliminate a sensory deficit. As one can have Grade 4 sensory deficit, which indicates a distorted superficial tactile sensibility, diminished light touch, with or without minimal abnormal sensations or pain that is forgotten during activity. This according to Table 16-10, page 482 of the A.M.A., *Guides*. Also, the fact that 'sensory deficit was intact for any cervical root involvement,' according to Dr. Didizian, does not indicate that the patient did not have a distal compression causing sensory deficit as is the case for carpal tunnel syndrome.

"In conclusion, I would state that the patient's impairment rating should read as follows:

> According to my report of November 1, 2001, there was a range of motion deficit of the left wrist dorsiflexion found at one percent, and for range of motion deficit of the left wrist dorsiflexion found at one percent, and for range of motion deficit of the left wrist palmer flexion at one percent, totaling two percent. For [G]rade 4 sensory deficit of the left median nerve is 31 percent, bringing [the] total combined left upper extremity at 32 percent.

"For the right sensory deficit of the median nerve at 31 percent, giving a total right upper extremity impairment of 31 percent. Please note that I arrived at the [G]rade 4 sensory deficit since in my evaluation of November 13, 2001, [appellant] had decreased sensation to light touch and pinprick in the median distribution."

By letter dated May 23, 2006, appellant's attorney requested reconsideration.

By letter dated September 22, 2006, the Office asked Dr. Didizian to review Dr. Diamond's January 25, 2006 report and address whether he preformed sensory tests such as light touch during his March 2, 2005 evaluation and, if so, whether he found any sensory deficit.

In an October 5, 2006 report, Dr. Didizian stated:

> "The following is an addendum to my original report of March 2, 2005 on appellant.
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> "Today, per your letter of September 22, 2006, you are asking me whether I performed a sensory examination on [appellant] when I evaluated her on March 2, 2005. You were also kind enough to provide me with a report of Dr. Diamond as well as a copy of Table 16-10 from the A.M.A., *Guides*.
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> "On page 4 of my original report of March 2, 2005, paragraph 3, I indicate [that] the motor, sensory and reflex systems in the upper extremities were intact for any cervical root involvement. The sensory examination was performed all the way from the neck down to the hand. I use a pinwheel to perform the sensory examination in addition to touch. I also performed the two-point discrimination test, which is the more sophisticated test for specific nerves at the fingertips.
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> "Based on the description on Table 16-10, Grade 5, indicates no loss of sensibility, abnormal sensation or pain resulting in zero percent sensory deficit. In my opinion, this is where the patient belongs based on my examination, which was extensive."

By decision dated October 24, 2006, the Office denied modification of the January 31, 2006 decision. The Office found that Dr. Diamond's January 25, 2006 report did not contain sufficient probative value to disturb the Office's finding that Dr. Didizian's March 2005 referee opinion finding that appellant had no permanent impairment of the left and right upper extremities due to her accepted bilateral carpal tunnel syndrome represented the weight of the medical evidence. The Office further indicated that Dr. Didizian's supplemental October 5, 2006 report was sufficient to resolve the question raised by Dr. Diamond regarding whether appellant sustained any sensory deficit resulting in any permanent impairment.

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

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

[2] 5 U.S.C. § 8107(c)(19).

adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.[3]

ANALYSIS

In this case, the Office determined that a conflict in medical opinion arose between Dr. Diamond, appellant's treating physician, and Dr. Salem, the second opinion physician, regarding whether she sustained any permanent impairment of either the left and right upper extremity due to her accepted bilateral carpal tunnel syndrome. The Office referred appellant to Dr. Didizian, the impartial examiner, who determined that appellant had no permanent impairment applicable to the A.M.A., *Guides*. The Office found that appellant was not entitled to a schedule award, noting that Dr. Didizian's opinion represented the weight of the medical evidence.[4] Appellant submitted Dr. Diamond's January 25, 2006 report, which reiterated the findings made in his November 2001 report. Dr. Diamond took issue with Dr. Didizian regarding whether appellant had any sensory deficit. He noted that, although Dr. Didizian stated that appellant had a normal two-point discrimination in his March 2005 report, this finding did not eliminate the possibility that she had sustained a sensory deficit. Dr. Diamond advised that under Table 16-10, page 482 of the A.M.A., *Guides*, a person can have Grade 4 sensory deficit, which indicates a distorted superficial tactile sensibility, diminished light touch, with or without minimal abnormal sensations or pain that is forgotten during activity. He stated that the fact that Dr. Didizian found that sensory deficit was intact for any cervical root involvement did not establish that appellant did not have distal compression causing sensory deficit as is the case for carpal tunnel syndrome. When asked by the Office to comment on Dr. Diamond's January 2006 report, Dr. Didizian stated that he had performed a sensory examination as indicated at page four of his March 2005 report. The motor, sensory and reflex systems in the upper extremities were intact for any cervical root involvement. Dr. Didizian had performed a sensory examination from the neck down to the hand, using the two-point discrimination test, which is the more sophisticated test for specific nerves at the fingertips, a pinwheel, in addition to examining appellant by touch. He concluded that, pursuant to the description at Table 16-10 of the A.M.A., *Guides* under Grade 5, appellant had no loss of sensibility, abnormal sensation or pain, which resulted in no sensory deficit.

The Board finds that the Office properly relied on Dr. Didizian's opinion, which was in conformance with the applicable standards of the A.M.A., *Guides*. Dr. Diamond restated one side of the conflict in the medical evidence which was resolved by Dr. Didizian. While he raised the specific question of whether Dr. Didizian's examination was sufficient to rule out a finding of sensory deficit, the October 2006 addendum report of the impartial medical specialist sufficiently resolved this issue in accordance with Table 16-10 at page 482 of the A.M.A., *Guides*. Dr. Diamond's report was not sufficient to negate the Office's finding that Dr. Didizian's referee report represented the weight of the medical evidence. Further, his report is of diminished probative value for the additional reason that he has not examined appellant since his November 2001 report. His most recent medical report, written in January 2006, does

[3] 20 C.F.R. § 10.404.

[4] It is well established that the opinion of an impartial medical specialist is to be given special weight. *See Anna M. Delaney*, 53 ECAB 384 (2002).

not provide any current depiction of appellant's condition and therefore does not provide adequate medical rationale in support of her opinion that appellant is entitled to a schedule award for permanent impairment based on her bilateral carpal tunnel syndrome.[5] The Board will affirm the hearing representative's October 24, 2006 decision.

The Board finds that appellant has no impairment of her left or right upper extremities. For this reason, she is not entitled to a schedule award.

CONCLUSION

The Board finds that appellant has not sustained any permanent impairment to a scheduled member of her body causally related to her accepted bilateral carpal tunnel condition, thereby entitling her to a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 14, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

[5] *William C. Thomas*, 45 ECAB 591 (1994).