United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 07-2088**
	)	**Issued: February 22, 2008**
DEPARTMENT OF THE ARMY,	)	
Aberdeen, MD, Employer	)	

Appearances:
Jeffery P. Zeelander, 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 August 9, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated July 25, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUES

The issue on appeal is whether appellant met her burden of proof to establish that she sustained more than a three percent permanent impairment of her right arm and a three percent permanent impairment of her left arm, for which she received schedule award.

FACTUAL HISTORY

This case has previously been on appeal before the Board.[1] In an April 1, 2005 decision, the Board found that the Office did not meet its burden to terminate appellant's compensation effective November 21, 2003 on the grounds that she refused an offer of suitable work. The facts and history contained in the prior appeal are incorporated by reference.

[1] Docket No. 04-2037 (issued April 1, 2005).

By letter dated December 13, 2005, appellant claimed a schedule award. In an October 20, 2005 report, Dr. Donald I. Saltzman, a Board-certified orthopedic surgeon, reviewed appellant's history of injury and treatment and utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). Dr. Saltzman advised that appellant had bilateral carpal tunnel syndrome that was accepted by the Office. He noted that surgery was suggested, but that appellant had not elected to undergo the procedure. Dr. Saltzman conducted a physical examination of the right wrist and indicated that she had a negative Tinel's sign and a "questionably positive Phalen's sign." Appellant had no intrinsic atrophy, slight weakness in grip, no specific weakness in oppositional pinch and no evidence of atrophy in the thenar eminence. Dr. Saltzman related that appellant complained of tingling in the thumb and index fingers, but advised that there was no specific sensory deficit. He indicated that the left wrist had similar findings. Dr. Saltzman stated that appellant had dorsiflexion of 70 degrees and flexion of 70 degrees in both wrists, full radial and ulnar deviation and full pronation and supination without any restriction. He reviewed an electromyography (EMG) scan from 2001 and advised that they revealed mild sensory slowing in the median nerve. Dr. Saltzman referred to Table 16-15,[2] Table 16-10[3] and Table 16-11.[4] He noted that appellant had tingling, mainly in the thumb and index finger and appointed a Grade 4 for sensory or pain according to Table 16-10. Dr. Saltzman noted that this would yield seven percent impairment for each arm as the findings were similar. He indicated that, for motor deficit, appellant had subjective weakness in grip strength but no obvious atrophy. Dr. Saltzman opined that this would result in 2.5 percent arm impairment when combined with Table 16-11 and Table 16-15. He advised that 2.5 percent combined with 7 percent would result in 9.5 percent impairment of both the right and left upper extremities.

On March 13, 2006 the Office advised appellant that additional information was needed to determine her entitlement to compensation. The Office also indicated that current EMG studies were needed to evaluate appellant's claim for a schedule award.

An October 13, 2006 nerve conduction study and EMG read by Dr. Salim Mansoor, a Board-certified physiatrist, revealed a delay of the distal motor latency for the median nerve at the wrist bilaterally, 4.3 milliseconds for the right and 4.2 milliseconds for the left as compared to the upper range of normal of 4.0 milliseconds. He indicated that there was a delay of the sensory latency for the median nerve at the wrist bilaterally of 3.9 milliseconds bilaterally, as compared to the upper range of normal of 3.2 milliseconds. Dr. Mansoor concluded that the EMG of both upper extremities was within normal limits. He opined that appellant had moderate bilateral carpal tunnel syndrome with no signs of denervation. In an October 26, 2006 report, Dr. David Dorin, a Board-certified orthopedic surgeon, reviewed Dr. Mansoor's EMG findings and noted appellant's history of injury and treatment. He conducted an examination of the hands and determined that appellant had satisfactory range of motion, a positive Tinel's test on the volar aspect of the wrist, an exacerbation of the numbness and dysesthesia to the median nerve with innervated digits in the thumb, index and the long finger.

[2] A.M.A., *Guides* 492.

[3] *Id*. at 482.

[4] *Id*. at 484.

In a January 20, 2007 report, the Office medical adviser reviewed the medical record. He explained that, while Dr. Saltzman had utilized the appropriate tables in the A.M.A., *Guides,* he would amend the impairment rating based on the dearth of objective findings. The Office medical adviser noted that there should be no motor loss in the median nerve and that there were no motor findings, either on examination or by EMG. The sensory deficit was corroborated by a mildly positive nerve conduction test. The Office medical adviser referred to Table 16-10[5] rate sensory deficit at 10 percent to the affected nerve. He noted that the affected part of the median nerve included the index finger and thumb. The Office medical adviser referred to Tab1e 16-15[6] and indicated that a complete sensory loss to those areas would equal 27 percent for the upper extremity. He opined that appellant's deficit should be calculated to 2.7 percent for each affected extremity. The Office medical adviser opined that appellant reached maximum medical improvement on October 27, 2003 the date that she was released to return to work.

By decision dated July 25, 2007, the Office granted appellant a schedule award for three percent permanent impairment of both the and left right upper extremity and three percent permanent impairment of the left upper extremity.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[7] and its implementing regulations[8] 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 regulations as the appropriate standard for evaluating schedule losses.[9]

Office procedures[10] specifically 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.[11]

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[5] *Id*. at 482.

[6] *Id.* at 492.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

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

[10] See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808 (August 2002) (March 1995).

[11] A.M.A., *Guides* 495; *Joseph Lawrence, Jr*., 53 ECAB 331 (2002).

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

"If, after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesia 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 CTS [computerized tomography scan] is rated according to the sensory and/or motor deficits as described earlier.
>
> (2) Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [electromyogram] testing of the thenar muscles: a residual CTS 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."[12]

ANALYSIS -- ISSUE 1

The Board notes that appellant did not undergo surgery to relieve the symptoms of her accepted carpal tunnel syndrome. The October 20, 2005 report of Dr. Saltzman provided an impairment rating of 9.5 percent impairment of both the right and left upper extremities. However when he applied the A.M.A., *Guides*, he relied upon a four-year-old EMG scan from 2001. The A.M.A., *Guides* specifically require both positive clinical findings of medical nerve dysfunction and electrical conduction delays, prior to evaluating impairment due to carpal tunnel syndrome.[13] Therefore, the impairment rating Dr. Saltzman provided was not based on current objective findings. The Board further notes that he provided findings for decreased grip; however section 16.5d of the A.M.A., *Guides* provides that in rating compression neuropathies, additional impairment values are not given for decreased grip strength.[14]

Dr. Mansoor obtained a current EMG. On January 20, 2007 the Office properly referred the medical evidence for review by an Office medical adviser. The medical adviser indicated that, while Dr. Saltzman had utilized the appropriate tables in the A.M.A., *Guides*, appellant's impairment rating shall be based on the more current objective findings of the October 13, 2006 EMG. He explained that appellant had no motor loss in the median nerve and that there were no motor findings, either on examination or by EMG. The medical adviser rated the extent of

[12] *Id*.

[13] *Id*. at 493, 495.

[14] *Id*. at 494.

permanent impairment due to sensory loss under Chapter 16. Applying Table 16-15,[15] he noted that the A.M.A., *Guides*, provide a maximum impairment value of 27 percent for sensory loss of the median nerve below the forearm affecting the thumb and index finger. The medical adviser referred to Table 16-10[16] and utilized a Grade 4 for sensory loss, to allow a 10 percent sensory deficit (27 percent times 10 percent) or a total 2.7 percent impairment due to pain. The Board notes that, according to Table 16-10, a Grade 4 would encompass a range of 1 to 25 percent for sensory deficit. As the Office medical adviser utilized the findings of Dr. Saltzman and the more current EMG by Dr. Mansoor which showed a mildly positive nerve conduction test, the selection of the Grade 4 deficit was proper. He noted that his review differed with that of Dr. Saltzman due to the "dearth of objective findings." The medical adviser explained that appellant had no motor loss as related in the EMG findings of Dr. Mansoor. He concluded that appellant had a 2.7 percent total impairment of each upper extremity. The Office medical adviser then rounded the 2.7 percent up to 3 percent[17] and determined that appellant reached maximum medical improvement on October 27, 2003, the date she was released to return to work.

The Board finds that appellant has not established more than three percent impairment of the right upper extremity and three percent of the left upper extremity. On appeal, counsel contends that she has greater impairment based on the findings provided by Dr. Saltzman. However, as noted Dr. Saltzman's impairment rating was based, in part, on a four-year-old EMG. Appellant has not submitted any other medical evidence conforming with the A.M.A., *Guides* establishing that she has greater impairment of her upper extremities.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he has greater than the three percent impairment of the right upper extremity and three percent impairment of the left upper extremity, for which she received a schedule award.

[15] *Id*. at 492.

[16] *Id*. at 482.

[17] *See Marco A. Padilla*, 51 ECAB 202 (1999); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter, 3.700.3.b. (October 1990) (the policy of the Office is to round the calculated percentage of impairment to the nearest whole point).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 25, 2007 is affirmed.

Issued: February 22, 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