United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 07-2181**
	)	**Issued: February 14, 2008**
U.S. POSTAL SERVICE, BILLINGS PROCESSING & DISTRIBUTION CENTER, Billings, MT, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 24, 2007 appellant filed a timely appeal from an August 14, 2007 merit decision of the Office of Workers' Compensation Programs that granted him a schedule award for one percent permanent impairment of each arm. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he had greater than one percent permanent impairment of the right arm and one percent permanent impairment of the left arm, for which he received a schedule award.

FACTUAL HISTORY

On February 26, 2005 appellant, then a 55-year-old clerk, filed an occupational disease claim stating that he developed bilateral carpal tunnel syndrome in the performance of duty. He did not initially stop work. In an April 18, 2005 note, Dr. Jeffrey N. Hansen, a Board-certified

hand surgeon and orthopedic surgeon, diagnosed carpal tunnel syndrome. After appropriate development, the Office accepted appellant's claim for bilateral carpal tunnel syndrome. On September 12, 2005 the Office approved bilateral wrist endoscopies.

Appellant underwent a right endoscopic carpal tunnel release on October 4, 2005. Dr. Hansen performed the procedure and recorded preoperative and postoperative diagnoses of symptomatic carpal tunnel syndrome. On December 5, 2005 he performed a left endoscopic carpal tunnel release and recorded preoperative and postoperative diagnoses of left carpal tunnel syndrome. In a December 14, 2005 report, Dr. Hansen noted that appellant was recovering well from his surgery and his "preoperative symptoms have abated completely." On February 8, 2006 Dr. Mark S. Hegyes, a family practitioner practicing with Dr. Hansen, advised that appellant was ready to return to full duty without restrictions.

On April 12, 2006 appellant claimed a schedule award.

In a June 30, 2006 impairment rating, Dr. Hansen concluded that appellant had five percent permanent impairment of the right arm and five percent permanent impairment of the left arm. He based his impairment rating on "the obligate loss of pinch and grip strength that happens from transecting the transverse carpal ligament." Dr. Hansen noted that he used the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), fifth edition[1] Table 16-15 on page 492[2] in calculating appellant's impairment. In a June 23, 2006 work capacity evaluation he advised that appellant had reached maximum medical improvement and could perform his regular job.

In an August 26, 2006 report, an Office medical adviser reviewed the record and Dr. Hansen's impairment rating and concluded that the rating was incomplete because the doctor did not provide a full narrative explanation of his calculations and conclusions. He explained that Dr. Hansen must address appellant's ongoing symptoms "as well as measurements of two point discrimination, use of Tables 16-10a[3] and 16-11a[4] with grading of both sensor and motor deficits as appropriate." The medical adviser also noted that the A.M.A., *Guides* do not provide for additional impairment ratings for loss of grip and pinch strength.

In a January 26, 2007 report, Dr. Hansen noted that appellant had reached maximum medical improvement on April 12, 2006 and had "a minimum of symptoms" since returning to work. He stated that appellant had Grade 4 sensory disturbance and pain residual, which he noted was typical following a successful bilateral carpal tunnel release. Using Table 16-10 on page 482 of the A.M.A., *Guides*,[5] Dr. Hansen explained that the upper extremity impairment resulting from peripheral nerve disorders ranged from one to 25 percent of "the allowable

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

[2] *Id.* at 492, Table 16-15.

[3] *Id.* at 482, Table 16-10.

[4] *Id.* at 484, Table 16-11.

[5] *Supra* note 3.

impairment for the median nerve." He stated that Table 16-15 on page 492 of the A.M.A., *Guides*[6] indicated that sensory deficit or pain allowed for up to 39 percent impairment of the upper extremity. Dr. Hansen explained that appellant's impairment was in the middle range of Grade 4 and detailed: "Multiplying 39 percent by something in the middle of the range of one to 25 percent, which I choose to be 13 percent, gives us a 5 percent impairment of the upper extremity due to sensory deficit or pain." He also noted that appellant had "some motor deficit and the appropriate rating is obtained." Dr. Hansen concluded that appellant had five percent impairment of the right upper extremity and five percent impairment of the left upper extremity.

The Office medical adviser reviewed Dr. Hansen's January 26, 2007 impairment rating and provided a February 23, 2007 response. He stated that the impairment rating was based on loss of pinch and grip strength yet referred to Table 16-15 on page 492 of the A.M.A., *Guides*.[7] The Office medical adviser stated that if Dr. Hansen intended to recommend an impairment rating based on loss of strength, he must utilize one of the impairment rating methods described in section 16.8 of the A.M.A., *Guides*[8] and provide the results of dynamometer testing.

On March 5, 2007 Dr. Hansen advised that he did not rate appellant's impairment based on loss of strength and did not suggest that Table 16-15[9] addressed grip or pinch strength. He explained that appellant's impairment rating, which he again calculated at five percent of each arm, was a "typical impairment rating based on sensory deficit and pain." Dr. Hansen concluded that appellant's impairment rating was "based on numbness and pain, as referred to in Table 16-15, page 492."[10]

On June 1, 2007 the Office medical adviser stated that Dr. Hansen's March 5, 2007 response did not address the requested information. Dr. Hansen recommended that the Office refer appellant for a second opinion examination to determine the degree of his permanent partial impairment due to his accepted carpal tunnel syndrome.

Appellant provided a May 7, 2007 report from Dr. Hansen, who concluded that appellant's impairment was now in the middle range of Grade 3 impairment for sensory deficit and pain, a "higher rating than we had suggested previously." Dr. Hansen stated that he used Table 16-10 on page 482 of the A.M.A., *Guides*[11] to determine appellant's sensory deficit and pain grade and rated his impairment to the median nerve of the wrist based on Table 16-15 on

[6] *Supra* note 2.

[7] *Id.*

[8] *Id.* at 507-11.

[9] *Supra* note 2.

[10] *Id.*

[11] *Supra* note 3.

page 492.[12] He concluded: "If we use the mid range of [appellant's] described symptomatology, which is 40 percent multiplied by 39, we end up with a 16.9 percent or rounded off to 17 percent impairment of the upper extremity." Dr. Hansen explained that appellant's levels of sensory deficit and pain were mild to moderate, did not severely interfere with his daily living activities and were a typical result of successful carpal tunnel release surgery.

On July 2, 2007 the Office referred appellant, along with a statement of accepted facts, to Dr. Allen M. Weinert, a Board-certified physiatrist, for a second opinion examination to determine his level of permanent partial impairment for schedule award purposes.

In a July 31, 2007 report, Dr. Weinert noted appellant's complaints of numbness and weakness as well as pain in the palm and thenar regions of each hand radiating into his wrists. He noted that appellant reported that certain physical activities, including gripping and pushing heavy items, aggravated his pain. Upon physical examination, Dr. Weinert found that appellant had full range of motion in both arms. He diagnosed status post bilateral endoscopic carpal tunnel releases with residual thenar region pain and complaints of intermittent hand numbness and decreased grip strength and advised that appellant had reached maximum medical improvement. Dr. Weinert concluded that appellant had one percent impairment of the right upper extremity and one percent impairment of the left upper extremity based on Table 18-3[13] and Chapter 18[14] of the A.M.A., *Guides,* due to his "class one or mild pain disorder."

On August 3, 2007 the Office medical adviser concurred with Dr. Weinert's assessment and impairment rating. He stated that the impairment rating was consistent with the A.M.A., *Guides* and "appears to reflect the clinical presentation, signs, symptoms and accepted diagnoses." Accordingly, the medical adviser recommended that the Office grant appellant a schedule award for one percent impairment of the right upper extremity and one percent impairment of the left upper extremity.

On August 14, 2007 the Office granted appellant a schedule award for one percent permanent impairment of the right upper extremity and one percent permanent impairment of the left upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[15] and its implementing regulations[16] set forth the number of weeks of compensation payable to employees

[12] *Supra* note 2. The Board notes that Dr. Hansen stated that he referred to Table 16-5 on page 492 of the A.M.A., *Guides.* As Table 16-5 is on page 447 of the A.M.A., *Guides* and as the calculations referenced by Dr. Hansen are found in Table 16-15 on page 492, the Board concludes that this was an inadvertent typographical error.

[13] *Id.* at 575, Table 18-3.

[14] *Id.* at 565-91.

[15] 5 U.S.C. § 8107.

[16] 20 C.F.R. § 10.404 (1999).

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.[17]

ANALYSIS

The Board finds that appellant did not meet his burden of proof in establishing that he had more than one percent impairment of the right upper extremity and one percent impairment of the left upper extremity, for which he received a schedule award. The Office based its schedule award determination on Dr. Weinert's second opinion report, with which the medical adviser concurred. Dr. Weinert found that appellant had full and complete range of motion of both upper extremities but nonetheless recommended that the Office grant a schedule award for one percent impairment of the right upper extremity and one percent impairment of the left upper extremity due to mild pain disorder based on Table 18-3 on page 575 of the A.M.A., *Guides*.[18] The A.M.A., *Guides* specifically provide that "examiners should not use [Chapter 18] to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the A.M.A., *Guides*."[19] The Board has also recognized that physicians should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.[20] The Board notes that Dr. Weinert did not explain why appellant's impairment could not be adequately rated on the basis of the body and organ impairment rating systems detailed in other chapters of the A.M.A., *Guides*. Dr. Weinert's report does not establish that appellant was entitled to a schedule award for more than one percent impairment of the right upper extremity and one percent impairment of the left upper extremity.

In support of his schedule award claim, appellant provided several reports from Dr. Hansen, who based his impairment ratings on appellant's complaints of sensory deficit and pain. In Dr. Hansen's June 30, 2006 report, he calculated appellant's impairment at five percent of the right upper extremity and five percent of the left upper extremity based on Table 16-15 on page 492 of the A.M.A., *Guides*.[21] Table 16-15 concerns upper extremity impairment due to

[17] *See id.*

[18] A.M.A., *Guides* 575, Table 18-3.

[19] *Id.* at 571; *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); *Linda Beale*, 57 ECAB __ (Docket No. 05-1536, issued February 15, 2006).

[20] *See Frantz Ghassan*, 57 ECAB __ (Docket No. 05-1947, issued February 2, 2006) (appellant's physician improperly attributed three percent left leg impairment to Chapter 18 of the A.M.A., *Guides* but the physician did not explain why this pain-related impairment could not be adequately rated by applying Chapter 17 of the A.M.A., *Guides*).

[21] A.M.A., *Guides* 492, Table 16-15.

sensory or motor deficits.[22] However, Dr. Hansen did not explain how he arrived at his recommended impairment rating or upon which nerve he based his calculations. Table 16-15 identifies impairment values for numerous peripheral nerves,[23] but he did not provide details explaining how he applied the table. Dr. Hansen also indicated that "successful carpal tunnel release" yielded an upper extremity impairment value of five percent, based on "the obligate loss of pinch and grip strength that happens from transecting the transverse carpal ligament," but did not describe how Table 16-15, which applies to sensory deficit, involved loss of pinch or grip strength.

Following the Office medical adviser's review of the file, Dr. Hansen provided a January 26, 2007 report and impairment rating, reiterating his previous findings. He stated that appellant had Grade 4 sensory deficit or pain pursuant to Table 16-10 of the A.M.A., *Guides* and calculated five percent impairment based on Tables 16-10 and 16-15. Dr. Hansen identified the median nerve as the applicable nerve and multiplied its total allowable impairment of 39 percent by 13 percent, a variable he found to be approximately the middle of the range of impairment for Grade 4 sensory deficit. He also noted that appellant had "some motor deficit" but did not provide further details or consider motor deficit in his impairment rating. The Board finds that Dr. Hansen did not provide a full and detailed explanation in support of his conclusions. Dr. Hansen did not discuss his physical examination findings or describe how he came to conclude that appellant had midlevel Grade 4 sensory deficit. He also did not fully explain why he chose 13 percent as the specific variable with which to multiply the range of possible impairment of the median nerve and did not provide discussion or explanation supporting his impairment rating. Dr. Hansen also did not discuss appellant's motor deficit, if any or explain why he did not utilize that impairment rating method to determine appellant's permanent partial impairment.

Following an additional review by the Office medical adviser, Dr. Hansen provided a third report on March 5, 2007. Dr. Hansen indicated that he had not characterized Table 16-15 as relating to loss of strength and reiterated that appellant's rating of five percent impairment for the right upper extremity and five percent impairment for the left upper extremity was "a typical impairment rating based on sensory deficit and pain." He did not, however, provide additional explanation or discussion detailing his physical examination findings or supporting his conclusions concerning appellant's level of physical impairment. Finally, appellant provided a May 7, 2007 report from Dr. Hansen, who opined that appellant's impairment for sensory deficit and pain had increased to Grade 3. Although Dr. Hansen again noted that he applied the A.M.A., *Guides*, Tables 16-10[24] and 16-15,[25] he did not detail the results of his physical examination or explain his reasons for concluding that appellant's pain syndrome had worsened and did not discuss the specific measures he used in calculating appellant's new impairment rating. Accordingly, the Board finds that Dr. Hansen did not provide sufficient explanation or

[22] *Id.*

[23] *Id.*

[24] *Supra* note 3.

[25] *Id.* at 592, Table 16-15.

rationale to establish that appellant was entitled to a schedule award for more than one percent impairment of the right upper extremity and one percent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he was entitled to a schedule award for greater than one percent permanent impairment of the right upper extremity and one percent permanent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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