

**United States Department of Labor
Employees' Compensation Appeals Board**

R.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Southeastern, PA, Employer**

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**Docket No. 07-2323
Issued: February 21, 2008**

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 September 12, 2007 appellant filed a timely appeal from the October 26, 2006 and April 3, 2007 merit decisions of the Office of Workers' Compensation Programs, which denied an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant has more than a 25 percent impairment of the right upper extremity or more than a 16 percent permanent impairment of the left upper extremity.

FACTUAL HISTORY

On December 5, 2000 appellant, then a 41-year-old mail handler, filed a claim alleging that her bilateral carpal tunnel syndrome was a result of repetitively unsleeving and moving trays in the performance of duty. The Office accepted her claim for bilateral carpal tunnel syndrome and authorized surgical releases on March 9 and April 6, 2001.

Appellant filed a claim for a schedule award and submitted a September 26, 2002 report from Dr. Nicholas P. Diamond, an osteopath, who described his clinical findings and found a 45 percent impairment of the right upper extremity and a 52 percent impairment of the left upper extremity due to grip strength deficit and sensory deficit of the median nerve.

An Office medical adviser noted that grip strength is not rated in carpal tunnel cases and questioned Dr. Diamond's finding that decreased sensation to light touch and pinprick was preventing activities. The medical adviser recommended a second opinion and electrodiagnostic studies.

On February 5, 2004 Dr. Tim Lachman, a neurologist and Office referral physician, described his clinical findings and found a 25 percent impairment of the right upper extremity and a 16 percent impairment of the left upper extremity due to sensory deficit of the median nerve.

The Office found a conflict in medical opinion and referred appellant, together with the case file and a statement of accepted facts, to Dr. Stanford S. Feinberg, a Board-certified neurologist, for an impartial medical examination and impairment evaluation. On October 17, 2005 Dr. Feinberg described his clinical findings and the results of an electromyogram (EMG) and nerve conduction study (NCS). He diagnosed carpal tunnel syndrome status post surgery with residual median nerve dysfunction manifested by objective sensory loss to pinprick and abnormal motor conduction. Dr. Feinberg found a 25 percent impairment of the right upper extremity and a 16 percent impairment of the left upper extremity due to sensory deficit of the median nerve. He concurred with Dr. Lachman's findings.

On November 9, 2005 the Office issued a schedule award for a 25 percent impairment of the right upper extremity and a 16 percent impairment of the left. On September 19, 2006 Dr. Feinberg prepared a supplemental report. He reviewed Dr. Diamond's 2002 findings and clarified that his opinion remained unchanged. In a decision dated October 26, 2006, the Office denied additional schedule compensation.

In a decision dated April 3, 2007, an Office hearing representative affirmed the October 26, 2006 decision. The hearing representative found that Dr. Feinberg's opinion represented the weight of the medical evidence and established that appellant was not entitled to an additional schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ 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

¹ 5 U.S.C. § 8107.

American Medical Associations, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.³ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴

ANALYSIS

A conflict arose between Dr. Diamond, appellant's osteopath, and Dr. Lachman, the Office referral neurologist, not simply in their impairment ratings but in their clinical findings. The Office properly referred appellant to Dr. Feinberg, a Board-certified neurologist, for an impartial medical examination and impairment evaluation.

With positive clinical findings of median nerve dysfunction and electrical conduction delays, impairment due to residual carpal tunnel syndrome is rated according to the sensory and motor deficits described in Chapter 16.5b of the A.M.A., *Guides*.⁵ Although median sensory conductions were within the limits of normal at 51 milliseconds, Dr. Feinberg noted diminished pinprick on the distal median distributions bilaterally. He judged the sensory deficit somewhat worse on the right,⁶ grading the deficit at 65 percent compared to 40 percent on the left. Dr. Feinberg multiplied these deficits by the maximum sensory impairment attributable to the median nerve below the midforearm, 39 percent⁷ and determined that appellant had a 25 percent impairment of the right upper extremity and a 16 percent impairment of the left. This is what the Office awarded.

Although his EMG and NCS demonstrated prolongation of the distal median motor latencies at 4.6 milliseconds on the right and 4.5 on the left, Dr. Feinberg's physical examination revealed no motor wasting and 5/5 motor strength in all muscle groups of the hand. He therefore

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

³ 5 U.S.C. § 8123(a).

⁴ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

⁵ A.M.A., *Guides* 495 (Scenario 1).

⁶ Tinel's sign that was questionably positive on the right and negative on the left.

⁷ A.M.A., *Guides* 492 (Table 16-15).

reported no motor loss.⁸ Dr. Diamond reported additional impairment values for loss of grip strength, which the A.M.A., *Guides* prohibits in compression neuropathies.⁹

The Board finds that the opinion of the impartial medical specialist carries special weight and resolves the conflict that arose on the extent of appellant's impairment. Dr. Feinberg properly followed the procedure set forth in the A.M.A., *Guides* for determining impairment due to residual carpal tunnel syndrome. The Board will affirm the Office decisions denying an additional schedule award.

CONCLUSION

The Board finds that appellant has no more than a 25 percent impairment of the right upper extremity and no more than a 16 percent permanent impairment of the left, for which he has received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2007 and October 26, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 21, 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

⁸ In evaluating both sensory and motor impairment, Dr. Feinberg gave greater weight to his findings on physical examination and appellant's complaints, than to the results of the NVC. The A.M.A., *Guides* emphasizes that there is no correlation between the severity of conduction delay and the severity of either symptoms or, more important, impairment rating. *Id.* at 493.

⁹ *Id.* at 494.