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

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| **W.D., Appellant** | ) | |
| **and** | ) | **Docket No. 07-1119** |
| | ) | **Issued: January 25, 2008** |
| **U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, 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
MICHAEL E. GROOM, Alternate Judge

### *JURISDICTION*

On March 19, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated October 19, 2006 which denied modification of an August 29, 2005 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

### *ISSUE*

The issue is whether appellant has more than a five percent permanent impairment of his left and right upper extremities, for which he received schedule awards.

### *FACTUAL HISTORY*

This case has previously been on appeal before the Board.[1] In an April 10, 2003 decision, the Board found that appellant did not have more than a 22 percent impairment of his

[1] Docket No. 03-92 (issued April 10, 2003).

right leg for which he received a schedule award.[2] The facts and history contained in the prior appeal are incorporated by reference.

On March 7, 2002 appellant, then a 55-year-old letter carrier filed an occupational disease claim alleging that his duties caused him to sustain hand injuries. The Office accepted his claim for bilateral carpal tunnel syndrome (CTS). Appellant received appropriate compensation benefits. He underwent a right carpal tunnel release on July 1, 2002 and a left carpal tunnel release on August 12, 2002.[3]

On May 18, 2005 appellant requested a schedule award. In a May 10, 2005 report, Dr. Harold M. Stokes, Board-certified in hand and orthopedic surgery, advised that appellant had reached maximum medical improvement. He indicated that appellant complained of numbness and tingling in both hands and diagnostic studies revealed persisting conduction delays of the median nerves bilaterally. Dr. Stokes opined that appellant had an impairment of 15 percent to each hand based on his symptoms and objective conduction delays or to 13.5 percent of each upper extremity or 8 percent of the whole person.

In a June 16, 2005 report, an Office medical adviser stated that the information contained in Dr. Stokes report was insufficient for a schedule award determination. He explained that there were no descriptions of any abnormalities that would allow him to rate an impairment.

In a July 8, 2005 report, Dr. Stokes advised that appellant reached maximum medical improvement on January 17, 2005. He noted ongoing complaints of numbness and tingling in the fingers of both hands. Appellant also had complaints of pain in both wrists and hands and conduction delays in his median nerves. He confirmed that appellant's numbness and tingling was supported by diagnostic studies. Dr. Stokes advised that appellant had complaints of pain which were difficult if not impossible to document objectively. In an August 1, 2005 report, he noted that appellant was experiencing ant-like crawling sensations on the radial aspect of his left wrist and forearm radiating proximally across the elbow up to his shoulder. Dr. Stokes did not believe that these complaints were related to the median nerve problems in his left hand and that there were no changes from the standpoint of his carpal tunnel.

In an August 6, 2005 report, the Office medical adviser utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He noted that the reports of Dr. Stokes did not establish objective sensory or motor deficits resulting from bilateral CTS. In the absence of nerve deficits, appellant did not have 13.5 percent impairment to each upper extremity. The Office medical adviser referred to page 495 of the A.M.A., *Guides* which addressed impairment due to CTS. He noted that a maximum of five percent impairment was provided for cases where residual nerve conduction abnormalities were present. The Office medical adviser opined that appellant had five percent impairment to both the left and right arms under this provision of the A.M.A., *Guides*.

[2] In this case, the Office accepted appellant's claim for bilateral ankle sprain and bilateral ankle osteoarthrosis. File No. 160221344. It also authorized left ankle surgery on August 16, 2005.

[3] The record reflects that appellant's ankle claims were combined with his wrist claims under master File No. 160221344.

On August 29, 2005 the Office granted appellant schedule awards for a five percent permanent impairment of the left and right arms. The awards covered a period of 31.2 weeks from January 17 to August 23, 2005.

On January 16, 2006 appellant requested reconsideration and submitted additional evidence. In a November 4, 2005 operative report, Dr. Thomas Lyons, a Board-certified orthopedic surgeon and treating physician, performed a right ankle arthroscopy. He opined that appellant was unable to work. Appellant also submitted follow-up reports from Dr. Lyons pertaining to his right ankle arthroscopy and a February 13, 2006 impairment rating for his left lower extremity.

By decision dated February 28, 2006, the Office denied modification of August 29, 2005 schedule award.

In a March 28, 2006 report, Dr. Gonzalo I. Hidalgo, a Board-certified neurologist, diagnosed bilateral hand pain and a history of carpal tunnel release. He recommended additional treatment. In an April 17, 2006 report, Dr. Lyons stated that he was in agreement with the work tolerance levels indicated in appellant's functional capacity evaluation.

In a May 4, 2006 report, Dr. Hidalgo repeated his diagnosis of bilateral hand pain. On that date, he reviewed nerve conduction studies of the bilateral median and ulnar nerves and advised that they were within normal limits. Dr. Hidalgo indicated that the sensory nerve conduction of the bilateral nerves was normal and that the bilateral median nerves showed normal latencies with mildly slow conduction velocities. In a May 19, 2006 work capacity evaluation, he opined that appellant was unable to perform his usual job duties and had permanent restrictions pertaining to his ankle.

On August 2, 2006 the Office referred appellant, together with a statement of accepted facts and the medical record to Dr. John P. Sandifer, a Board-certified orthopedic surgeon, for a second opinion examination.

In a July 21, 2006 report, Dr. Lyons noted that radiographs of the hand and wrist bilaterally were normal and recommended electrodiagnostic studies of the bilateral upper extremities.

In a report dated August 22, 2006, Dr. Sandifer noted that appellant was post CTS surgery with continued pain, numbness and median nerve neuropathy bilaterally. He conducted an examination of the cervical spine and indicated that appellant had full range of motion. Dr. Sandifer also indicated that appellant had a normal neurological examination of both upper extremities with the exception of decreased sensation in the thumb and index fingers bilaterally. He noted that appellant had a positive Tinel's and positive Phalen's tests on both wrists. Dr. Sandifer also provided grip measurements. He noted that appellant's current problems were related to his work injuries and that he could not return to his former position as a letter carrier. Dr. Sandifer provided restrictions and opined that appellant had reached maximum medical improvement.

By decision dated October 19, 2006, the Office denied modification of its February 28, 2006 decision.

## ***LEGAL PRECEDENT***

Section 8107 of the Federal Employees' Compensation Act[4] sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[5] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[6] The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[7]

The fifth edition of the A.M.A., *Guides*, regarding CTS, provides that 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 is rated according to the sensory and/or motor deficits; (2) normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal 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; and (3) normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies, in which case there is no objective basis for an impairment rating.[8]

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[9] However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.

## ***ANALYSIS***

The Office accepted that appellant sustained bilateral CTS, for which he underwent carpal tunnel release surgery on both wrists.

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[4] 5 U.S.C. §§ 8101-8193.

[5] 5 U.S.C. § 8107.

[6] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[7] A.M.A., *Guides* (5th ed. 2001); 20 C.F.R. § 10.404.

[8] *Silvester DeLuca*, 53 ECAB 500 (2002).

[9] *See William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

In a May 10, 2005 report, Dr. Stokes opined that appellant had reached maximum medical improvement. He indicated that appellant had complaints of numbness and tingling in both hands and that he had conduction delays of the median nerves bilaterally. Dr. Stokes opined that appellant had impairment of 15 percent to each hand or 13.5 percent to each upper extremity. However, he did not explain how he arrived at this impairment rating in accordance with the relevant standards of the A.M.A., *Guides*.[10] Dr. Stokes failed to refer to any tables or charts in the A.M.A., *Guides* or to provide his calculations in support of his determination. His report is of diminished probative value in determining the extent of appellant's permanent impairment. On July 8 and August 1 2005 Dr. Stokes indicated that appellant reached maximum medical improvement on January 17, 2005. He noted that appellant had ongoing complaints of numbness and tingling in the fingers of both hands, with conduction delays in his median nerves. Appellant experienced ant-like crawling sensations on the radial aspect of his left wrist and forearm radiating proximally across the elbow up to his shoulder. However, Dr. Stokes did not provide an opinion on the extent of permanent impairment.[11] His reports are of diminished probative values in determining the extent of appellant's permanent impairment.

In an August 6, 2005 report, the Office medical adviser noted that Dr. Stokes did not provide any objective sensory or motor deficits resulting from the accepted bilateral CTS. For this reason, he disagreed with the 13.5 percent impairment rate for each upper extremity allowed by Dr. Stokes. The Office medical adviser referred to page 495 of the A.M.A., *Guides* to determine that appellant had a maximum of five percent impairment of upper extremity for residual nerve conduction abnormalities. The Office medical adviser determined that there were positive clinical findings of median nerve dysfunction and electrical conduction delay which warranted the five percent rating was warranted under the A.M.A., *Guides*. The Board finds that the impairment rating provided by the Office medical adviser conforms with the A.M.A., *Guides* and constitutes the weight of medical opinion.

Dr. Sandifer examined appellant on August 22, 2006 and noted that he had a normal neurological examination of both upper extremities with the exception of decreased sensation in the thumb and index fingers bilaterally. However, he did not provide any opinion regarding the extent of appellant's impairment other than to note, an otherwise normal examination. This report does not support a greater impairment rating.

Additionally, the record contains reports from physical therapists and nurses. However, health care providers such as nurses and physical therapists are not physicians under the Act. Thus, they are not competent to provide medical opinion.[12]

[10] *See Tonya R. Bell,* 43 ECAB 845, 849 (1992).

[11] *Id.*

[12] *See Jan A. White,* 34 ECAB 515, 518 (1983).

## ***CONCLUSION***

The Board finds that appellant has not established that he has more than five percent impairment to his left and right upper extremities.[13]

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 19, 2006 is affirmed.

Issued: January 25, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[13] On appeal, appellant asserts that he is entitled to a greater schedule award for his right leg due to right ankle surgery. However, the Board has no jurisdiction over right leg impairment as the Office has not issued a decision on this matter within one year prior to the filing of this appeal. *See* 20 C.F.R. §§ 501.2(c), 501.3(d).