United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 07-1860**
	)	**Issued: March 10, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Munster, IN, Employer	)	

Appearances:
Appellant, pro se
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 July 6, 2007 appellant filed a timely appeal from a June 1, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed a January 22, 2007 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award.

ISSUE

The issue is whether appellant has more than a two percent right upper extremity impairment and a two percent left upper extremity impairment, for which she received schedule awards.

FACTUAL HISTORY

On August 10, 1999 appellant, then a 41-year-old letter carrier, filed an occupational disease claim. She alleged that on July 14, 1999 she first realized the numbness and burning sensation in her hands was employment related.[1] The Office accepted the claim for bilateral

[1] This was assigned claim file number 09-0456581.

carpal tunnel syndrome. In a second claim, also filed a August 10, 1999, appellant alleged that on August 9, 1999 she first realized her left thumb condition was employment related.[2] The Office accepted this claim for left thumb tendinitis. On June 30, 2001 appellant filed an occupational disease claim alleging that on December 19, 2000 she first realized her bilateral carpal tunnel condition had been aggravated by her employment.[3] The Office accepted the claim for bilateral carpal tunnel syndrome on August 29, 2001.

On December 12, 2003 appellant filed an occupational disease claim alleging that on November 30, 2003 she first realized her bilateral carpal tunnel condition was employment related.[4] The Office accepted her claim for exacerbation of bilateral carpal tunnel. The Office paid appropriate compensation and authorized carpal tunnel surgery, which was performed on April 28 and June 16, 2005.

On April 18, 2006 appellant filed a claim for a schedule award.

On June 13, 2006 the Office referred appellant to Dr. Richard H. Sidell, Jr., Board-certified orthopedic surgeon, for an evaluation to determine the extent of her work-related impairment. In a report dated July 14, 2006, Dr. Sidell reviewed the history of injury and medical treatment. Appellant related that her carpal tunnel condition improved following surgery, but she still experienced some residual minimal symptoms. Dr. Sidell noted no electromyography (EMG) studies were available for review as none were performed following her surgery. On examination, he noted no muscle atrophy, full range of motion in the hands and wrists and a "minimally positive Tinel's [s]ign at the right carpal area and a minimally positive wrist compression test." Dr. Sidell also found "normal sensation to pinprick, vibratory sensation and two-point discrimination," a negative bilateral Finkelstein test and "no tenderness over the 1st dorsal compartment bilaterally." He reported minimal residual bilateral carpal tunnel symptoms following her carpal tunnel surgery. Dr. Sidell opined that appellant had reached maximum medical improvement. He stated:

> "The [American Medical Association,] *Guides to* [*the Evaluation of Permanent*] *Impairment* calls for ratings not to exceed [five] percent of the upper extremity. I would recommend allowing [two] percent impairment of the right upper extremity and [two] percent of the left upper extremity for a combined total of four percent ([four] percent) of the upper extremity using the [C]ombined [V]alues [C]hart on [p]age 604."

[2] This was assigned claim file number 09-0456582. On July 26, 2000 the Office combined claim file numbers 09-0456581 and 09-0456582 with 09-0456581 as the master claim file number.

[3] This was assigned claim number file 09-2010955. On May 22, 2006 the Office combined this claim file number with 09-0456581. The master claim file number was listed as 09-0456581.

[4] This was assigned claim file number 09-2041536. On May 22, 2006 the Office doubled this claim number with claim file number 09-0456581. Claim file number 09-0456581 was the master file number.

In an August 30, 2006 report, an Office medical adviser noted his review of Dr. Sidell's July 14, 2006 report and found that appellant met the criteria found in scenario two on page 495[5] of the A.M.A., *Guides*.[6] He rated a two percent permanent impairment to each upper extremity, resulting from the normal sensibility and residual carpal tunnel syndrome.

On January 22, 2007 appellant received a schedule award for a two percent permanent impairment to both her right and left arms. The period of the award was for 12.48 weeks and ran from July 14, 2006, the date of maximum medical improvement, to October 9, 2006.

On February 5, 2007 appellant requested review of the written record by an Office hearing representative.[7]

By decision dated June 1, 2007, an Office hearing representative affirmed the January 27, 2007 schedule award determination.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[8] and its implementing regulations[9] sets 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.[10]

The A.M.A., *Guides* evaluates the permanent impairment caused by carpal tunnel syndrome by determining whether such a condition falls within one of three categories discussed in section 16.5d.[11] Under the first category, if there are positive clinical findings of median nerve dysfunction and an electrical conduction delay, the condition is rated under the standards found earlier in Chapter 16 for evaluating sensory or motor deficits due to peripheral nerve disorders. Under the second category, if there is normal sensibility (evaluated by two-point discrimination and Semmes-Weinstein monofilament testing) and normal opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles,

[5] The Office medical adviser noted the page as 459, is appears to be a typographical error.

[6] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[7] Appellant also requested an updated impairment rating for her left knee. However, as the Office has not issued a final decision on this issue, it is not before the Board on this appeal. *See* 20 C.F.R. § 501.2(c).

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

[10] *Id.*; *see Billy B. Scoles*, 57 ECAB ___ (Docket No. 05-1696, issued December 7, 2005).

[11] *See* A.M.A., *Guides* 495.

an impairment rating not to exceed five percent of the upper extremity may be justified. Under the third category, if there is normal sensibility, opposition strength and nerve conduction studies, there is no objective basis for an impairment rating.[12]

ANALYSIS

The Office accepted appellant's claim for left thumb tendinitis, bilateral carpal tunnel syndrome and bilateral carpal tunnel release. The Office granted her a schedule award for two percent impairment of the right upper extremity and a two percent impairment of the left upper extremity.

As noted, Office procedures[13] 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.[14] Regarding carpal tunnel syndrome, section 16.5d of the A.M.A., *Guides* evaluates the permanent impairment caused by this condition by determining whether such a condition falls within one of three categories. The Board has noted that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory impairments only.[15] Thus, Dr. Sidell and the Office medical adviser properly did not include an impairment rating for pain.

Dr. Sidell and the Office medical adviser agreed that appellant has two percent impairment to both her left and right extremities. He classified appellant under scenario number two of section 16.5d, noting that she had normal sensibility, normal opposition strength and minimal residual symptoms following her carpal tunnel release with significant post surgery improvement.[16] The Office medical adviser agreed with Dr. Sidell's impairment rating. Both Dr. Sidell and the Office medical adviser properly applied the A.M.A., *Guides* in reaching this determination. The A.M.A., *Guides* state that, when normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles, a residual carpal tunnel syndrome is still present, an impairment rating is not to exceed five percent of the upper extremity.[17] Dr. Sidell, an examining physician, determined that, based on appellant's medical findings, she had a two percent impairment to the left upper extremity and a two percent impairment to the right upper extremity. The Board finds that both physicians properly applied the A.M.A., *Guides*. The Board notes that there is no other medical evidence of record which establishes greater impairment to appellant's upper extremities. The Board, therefore, finds that the report of Dr. Sidell and the Office medical adviser establishes that appellant has no greater than the two percent impairment awarded for each upper extremity.

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[12] *Id.*

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

[14] *Supra* note 6.

[15] *Robert V. Disalvatore*, 54 ECAB 351 (2003).

[16] *Id.*

[17] *See* A.M.A., *Guides* 495.

CONCLUSION

The Board finds that appellant has failed to establish that she has more than two percent impairment to for each upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2007 is affirmed.

Issued: March 10, 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