United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 07-2102**
	)	**Issued: March 11, 2008**
DEPARTMENT OF VETERANS AFFAIRS, HOUSTON VETERANS ADMINISTRATION MEDICAL CENTER, Houston, TX, 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 August 14, 2007 appellant filed a timely appeal from an April 20, 2007 merit decision by a hearing representative of the Office of Workers' Compensation Programs who affirmed a schedule award for three percent impairment to appellant's right upper extremity. 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 had more than three percent permanent impairment of the right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

On May 31, 2005 appellant, then a 43-year-old medical support assistant, sustained injury to her right hand and wrist pain when a patient twisted it in an escape attempt. She stopped work on June 6, 2005 and returned to limited duty on September 6, 2005. The Office accepted appellant's claim for right wrist sprain/strain and paid appropriate compensation.

On June 8, 2005 Dr. Steven D. Thompson, a Board-certified orthopedic surgeon, reported that appellant was assaulted at work by a psychiatric patient and sustained swelling and tenderness in her right wrist. He noted that x-ray testing was normal and diagnosed probable wrist strain. A July 6, 2005 magnetic resonance imaging (MRI) scan report read by Dr. Richard Orie, a radiologist, revealed right wrist strain and/or mild partial tear of the ulnar attachment of the triangular fibrocartilage as well as small radiocarpal joint effusion. On July 22, 2005 appellant underwent a triangular fibrocartilage tear and lunotriquetral ligament repair of the right wrist by Dr. Thompson. In an August 10, 2005 note he reported that x-rays showed "good position of the implant for the triangular fibrocartilage repair." On November 2, 2005 Dr. Thompson indicated that, although appellant's implant was in a good position, she experienced some pain and tenderness around her scar and diagnosed probable dorsal wrist synovitis. In a December 5, 2005 note, he stated that appellant's wrist was fully recovered and she could return to full duty as soon as her psychiatrist deemed it advisable. On April 19, 2006 Dr. Thompson reiterated that appellant's wrist was fully recovered and she was physically able to perform full duty.

In a June 5, 2006 report and impairment rating, Dr. Flavia Thomas, an osteopath, noted appellant's complaints of continuing right wrist pain and stiffness. She diagnosed wrist joint pain and sprain and advised that appellant reached maximum medical improvement on April 19, 2006. Pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), fifth edition, Chapter 16,[1] Dr. Thomas rated appellant's right upper extremity impairment based on loss of range of motion. She measured appellant's right wrist flexion at 60 degrees, extension at 58 degrees, ulnar deviation at 18 degrees and radial deviation at 20 degrees. Dr. Thomas noted that section 16.4(g)[2] of the A.M.A., *Guides*, as well as Figures 16-28[3] and 16-31,[4] indicated that appellant had no impairment based on loss of flexion, loss of extension, loss of radial deviation and two percent impairment based on loss of ulnar deviation. She advised that, although loss of strength could represent "an impairing factor," insufficient time had passed to properly rate appellant's impairment on that basis. However, Dr. Thomas stated that appellant's two percent impairment rating for loss of range of motion "does not sufficiently reflect the severity of her condition. [Appellant] had a surgical procedure to her wrist which resulted in the use of an implant. This implant causes discomfort and is visible under the skin." Dr. Thomas recommended an additional one percent impairment based on appellant's surgically placed implant. Using the Combined Values Chart on page 604 of the A.M.A., *Guides*,[5] she calculated that appellant had three percent impairment of the right arm.

[1] A.M.A., *Guides* 433-521 (5th ed. 2000).

[2] *Id.* at 466-470.

[3] *Id.* at 467, Figure 16-28.

[4] *Id.* at 469, Figure 16-31.

[5] *Id.* at 604-05.

On July 14, 2006 appellant claimed a schedule award.

On August 18, 2006 the Office medical adviser indicated that he reviewed the medical record. He noted the range of motion measurements of Dr. Thomas and their corresponding impairment rating values pursuant to the A.M.A., *Guides.* The Office medical adviser concurred that appellant had two percent impairment for loss of range of motion and one percent impairment for "ongoing pain" in the wrist, corresponding to his estimates and Chapter 18, page 573 of the A.M.A., *Guides*.[6]

On October 5, 2006 the Office granted appellant a schedule award for three percent impairment of the right upper extremity.

On October 11, 2006 appellant requested an oral hearing, which was held on February 8, 2007.

Appellant also provided a November 10, 2006 impairment rating from Dr. Roger Kevin Pringle, a chiropractor, who noted that appellant had restricted and painful right wrist range of motion and explained that, although she was able to work, she had to modify many of her job duties and activities of daily living to accommodate her right wrist and hand condition. Dr. Pringle measured appellant's active range of motion of the right wrist at "20, 20 and 15 degrees," her flexion at "5, 10 and 5 degrees" ulnar deviation at "10, 10 and 15 degrees" and radial deviation at "5, 5, and 5 degrees." He stated that he used the A.M.A., *Guides*, Figures 16-28[7] and 16-31,[8] to determine that appellant had 21 percent permanent impairment of the right upper extremity.

By decision dated April 20, 2007, the hearing representative affirmed the schedule award for three percent impairment of the right upper extremity. She noted that appellant provided a new report and impairment rating from Dr. Pringle but, as a chiropractor, his report did not constitute competent medical evidence on the issue of appellant's permanent impairment for schedule award purposes.

LEGAL PRECEDENT

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

[6] *Id.* at 573.

[7] *Id*. at 467, Figure 16-28.

[8] *Id.* at 469, Figure 16-31.

[9] 5 U.S.C. § 8107.

[10] 20 C.F.R. § 10.404 (1999).

may be uniform standards applicable to all claimants. The A.M.A, *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[11]

ANALYSIS

The Board finds that appellant did not meet her burden of proof in establishing that she was entitled to a schedule award for greater than three percent permanent impairment of the right upper extremity. In support of her schedule award claim, she provided a June 5, 2006 report and impairment rating from Dr. Thomas, who determined that she had three percent impairment based on loss of range of motion and pain at her surgical implant site. Dr. Thomas measured appellant's wrist range of motion as follows: 60 degrees of flexion, 58 degrees of extension, 18 degrees of ulnar deviation and 20 degrees of radial deviation. Pursuant to Figure 16-28 on page 467 of the A.M.A., *Guides*,[12] 60 degrees of wrist flexion translates to zero percent impairment and 58 degrees of extension also corresponds to zero percent impairment. Figure 16-31 on page 469 of the A.M.A., *Guides*[13] indicates that 18 degrees of ulnar deviation corresponds to two percent impairment and 20 degrees of radial deviation translates to zero percent impairment. Therefore, the Board finds that Dr. Thomas correctly measured appellant's total impairment based on loss of range of motion at two percent. She concluded, however, that an impairment rating based solely on appellant's loss of range of motion was inadequate because appellant reported continuing discomfort after receiving a surgical implant. Therefore, Dr. Thomas without referencing the A.M.A., *Guides*, recommended that the Office award an additional one percent impairment for pain. As she did not explain how one percent impairment for pain was in conformance with the A.M.A., *Guides*, her report does not establish entitlement to impairment for such pain.

The Office referred the record and Dr. Thomas' impairment rating to its medical adviser, who concurred with her assessment of appellant's impairment. The Office medical adviser noted that Dr. Thomas correctly found that appellant had two percent impairment based on loss of range of motion. Because appellant had continuing pain from her surgical implant, he agreed that she should be entitled to an additional one percent impairment for pain based on Chapter 18 at page 573 of the A.M.A., *Guides*.[14] Chapter 18 states that impairment ratings should be based on the objective body system impairment rating if such a rating "appears to adequately encompass the pain experienced by the individual due to his or her medical condition."[15] However, if appellant's pain appears to slightly increase the "burden of his or her condition," Chapter 18 provides that an examiner may award up to three percent additional impairment.[16] The Board has held that examiners should not use Chapter 18 to rate pain-related impairments

[11] *See id.; Linda R. Sherman*, 56 ECAB 127 (2004).

[12] A.M.A., *Guides* 467, Figure 16-28.

[13] *Id.* at 469, Figure 16-31.

[14] *Id.* at 573.

[15] *Id.*

[16] *Id.*

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*.[17] The medical adviser did not explain why appellant's impairment could not be adequately rated using other impairment rating methods, particularly Chapter 16, which addresses upper extremity impairments. He did not explain why appellant was entitled to one percent impairment for pain, making only a general referents page 573 of the A.M.A., *Guides.* The Board finds that the medical adviser did not provide sufficient explanation for rating appellant's impairment due to pain under Chapter 18 of the A. M.A., *Guides*..

Appellant also provided a report from Dr. Pringle, who opined that she had 21 percent impairment of the right upper extremity. However, Dr. Pringle is a chiropractor and therefore he may only be considered a "physician" in certain limited circumstances. Under the Act, the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[18] Dr. Pringle's report did not diagnose any spinal subluxation as demonstrated by x-ray nor did he treat her by manual manipulation of the spine. Accordingly, he is not a physician pursuant to the Act and his impairment rating is not competent medical evidence. The Board has held that, even under the circumstances where a chiropractor is recognized as a physician under the Act, the chiropractor is not considered a physician in diagnosing or evaluating disorders of the extremities for purposes of determining a schedule award, although those disorders may originate in the spine.[19] Therefore, Dr. Pringle's impairment rating not probative.

Consequently, the medical evidence does not establish permanent impairment greater than the three percent awarded by the Office.

CONCLUSION

The Board finds that appellant has not established that she has more than three percent permanent impairment of the right arm for which she received a schedule award.

[17] *Linda Beale*, 57 ECAB __ (Docket No. 05-1536, issued February 15, 2006), *citing* FECA Bulletin No. 01-01 (issued January 31, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards,* Chapter 3.700, Exhibit 4 (June 2003); A.M.A., *Guides,* Chapter 18.3(b); *see also A.G.*, 58 ECAB __ (Docket No. 07-677, issued June 21, 2007).

[18] 5 U.S.C. § 8101(2) (1993); *Isabelle Mitchell*, 55 ECAB 623 (2001).

[19] *George E. Williams*, 44 ECAB 530 (1993).

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2007 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: March 11, 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