United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
	)	**Docket No. 08-1328**
and	)	**Issued: November 5, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 2, 2008 appellant filed a timely appeal from an August 1, 2007 decision of the Office of Workers' Compensation Programs, adjudicating his schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than 10 percent permanent impairment of each upper extremity for which he received a schedule award.

FACTUAL HISTORY

On April 17, 1990 appellant, then a 32-year-old letter sorting machine operator, filed an occupational disease claim alleging that he developed bilateral carpal tunnel syndrome due to repetitive motions involved in his job. The Office accepted his claim for bilateral carpal tunnel syndrome. On December 17, 1990 appellant underwent surgery consisting of a left carpal tunnel release. On February 7, 1991 he underwent a right carpal tunnel release. Appellant subsequently filed a claim for a schedule award.

In a September 29, 2005 report, Dr. Nicholas Diamond, an osteopathic physician specializing in pain management, reviewed appellant's medical history and provided findings on physical examination. He stated that appellant had daily, constant right and left wrist pain and stiffness, intermittent numbness, tingling and occasional swelling. Appellant experienced difficulty lifting, grasping objects and pushing. He experienced difficulty with certain activities such as performing sports and driving a motor vehicle. Appellant had decreased grip strength and clumsiness bilaterally. His right wrist pain level was 6 to 7 on a scale of 0 to 10 and 6 to 8 in the left wrist. Dr. Diamond stated:

> "Examination of the right hand and wrist reveals … palmar and dorsal tenderness … Tinel sign is positive … Phalen sign is positive…. Range of motion reveals dorsiflexion [extension] of … 75 degrees, palmar flexion of … 75 degrees, radial deviation of … 20 degrees and ulnar deviation of … 35 degrees. All ranges of motion were carried through with pain at the extremes….
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> "Examination of the left wrist and hand reveals … palmar and dorsal tenderness … Tinel sign is positive … Phalen sign is positive….
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> "Sensory examination reveals a decreased sensation to pin prick/light touch over the median nerve distribution in both right and left hand….
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> "Two-point discrimination is three mm [millimeters] on the right and … left."
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> "Grip strength testing performed via Jamar Hand Dynamometer at Level III reveals 12 kg [kilograms] of force strength on the right versus 8.5 kg of force strength on the left.
>
> "Pinch key testing reveals 2.5 kg in the right hand versus 2 kg in the left hand."
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> "The following is a rating of [appellant's] impairment on the basis of [the A[merican] M[edical] A[ssociation], *G*[*uides to the Evaluation of Permanent Impairment*], Fifth Edition:
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> "For the grade 2 sensory deficit right median nerve [equals] 31 percent
> "For the right lateral pinch deficit [equals] 30 percent
> "Combined total right upper extremity [equals] 52 percent
>
> "For the grade 2 sensory deficit left median nerve [equals] 31 percent
> "For the left lateral pinch deficit [equals] 30 percent
> "Combined total left upper extremity [equals] 52 percent."

Dr. Diamond referenced Table 16-10 at page 482 of the A.M.A., *Guides* regarding sensory deficit and Tables 16-33 and 16-34 at page 509 regarding pinch deficit.

By decision dated March 20, 2006, the Office denied appellant's schedule award claim on the grounds that the medical evidence was insufficient to establish his bilateral upper

extremity impairment. On November 15, 2006 an Office hearing representative set aside the March 20, 2006 decision and remanded the case for further development of the medical evidence.

On December 13, 2006 the Office asked Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and district medical adviser, to review Dr. Diamond's report and determine appellant's impairment. On December 28, 2006 Dr. Berman stated that appellant had 10 percent impairment of each upper extremity based on the report of Dr. Diamond. He stated:

> "[Appellant's] primary complaint at the present time is left [and] right wrist pain with … paresthesia ... Dr. Diamond indicates his examination … shows positive Tinel's sign and carpal tunnel compression test and positive Phalen's test. There appears to be normal range of motion…."
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> ***
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> "Sensory exam[ination] has decreased over the median nerve distribution of the right and left hands. However, the two-point discrimination is normal at three mm....
>
> "Dr. Diamond recommended a schedule award that utilizes Grade 2 sensory deficit for the median nerve based upon the [A.M.A., *Guides*, page 482, Table 16-10…. This is not appropriate since the two-point discrimination was only three mm indicating that the Grade 2 would be an incorrect use of Table 16-10 … because Grade 2 states: 'decreased superficial cutaneous pain and tactile sensibility, (decreased protective sensibility), with abnormal sensations of moderate pain, that may prevent some activities.'
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> "Grade 4 should be utilized which states: 'distorted superficial tactile sensibility (diminished light touch) with or without minimal abnormal sensations or pain that is forgotten during activity.'
>
> "… Dr. Diamond recommends that weakness of pinch be utilized for the [schedule award] calculation …. However, the principles as articulated on page 507 and 508, section 16-8 … do not permit this strength calculation to be utilized….
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> "On page 508, 16-8a principles, it states: 'In a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the [A.M.A.], *Guides*, the loss of strength may be rated separately' … Decreased strength *cannot*[1] be rated in the presence of decreased motion, painful conditions, deformities or absence of parts.'

[1] Emphasis in the A.M.A, *Guides* at page 508.

"[I]t is my recommendation that the schedule award be calculated … using [the A.M.A., *Guides*…, page 492, Table 16-15 … median nerve below mid-forearm, maximum sensory deficit for pain [equals] 39 percent.

"Utilizing page 482, Table 16-10 … Grade 4 [equals] 25 [percent]. Twenty five percent [times] 39 percent [equals] 9.75 or rounded to 10 percent."[2]

By decision dated February 1, 2007, the Office granted appellant a schedule award for 10 percent impairment for each upper extremity from September 29, 2005 to December 9, 2006, or 436.8 days.[3]

Appellant requested an oral hearing that was held on June 12, 2007. By decision dated October 3, 2007, the Office affirmed the February 1, 2007 decision.

LEGAL PRECEDENT

Section 8107 of the Act[4] 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 A.M.A., *Guides*.[5]

The fifth edition of the A.M.A., *Guides*, regarding impairment due to carpal tunnel syndrome, provides:

> "If, after an *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias 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 [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described [in Tables 16-10a and 16-11a].

[2] *See* Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

[3] The Act provides for 312 weeks of compensation for 100 percent loss or loss of use of the upper extremity. Section 8107(c)(10). Multiplying 312 weeks by 10 percent equals 31.20 weeks of compensation for each of appellant's upper extremities (62.40 weeks total). The 436.8 days of compensation awarded by the Office equals 62.40 weeks.

[4] 5 U.S.C. § 8107.

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

2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present and an impairment rating not to exceed five percent of the upper extremity may be justified.

3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating."[6]

The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.[7]

ANALYSIS

The Board finds that this case is not in posture for a decision.

In this case, Dr. Diamond found that the first carpal tunnel scenario applied to appellant's condition. He stated that appellant had daily, constant right and left wrist pain and stiffness, intermittent numbness and tingling and occasional swelling. Appellant described his right wrist pain level as 6 to 7 on a scale of 0 to 10 and 6 to 8 in the left wrist. He experienced difficulty with certain activities such as performing sports and driving a motor vehicle. Using the fifth edition of the A.M.A., *Guides,* Dr. Diamond rated appellant's sensory deficit as Grade 2,[8] 80 percent maximum, from Table 16-10 at page 482, and multiplied 80 percent by the maximum median nerve sensory impairment, at the midforearm, 39 percent, which resulted in 31.2 percent, rounded to 31 percent impairment for sensory deficit. Lateral pinch strength testing revealed 2.5 kg in the right hand and 2 kg in the left hand which constituted 30 percent impairment according to Tables 16-33 and 16-34 at page 509. Dr. Diamond combined the 31 percent sensory deficit with 30 percent for lateral pinch deficit, resulting in 52 percent combined impairment of each upper extremity, according to the Combined Values Chart at page 604 of the A.M.A., *Guides.*

Dr. Berman found that appellant had 10 percent impairment of each upper extremity for a Grade 4 sensory deficit, based on Table 16-10 at page 482 and Table 16-15 at page 492 of the A.M.A., *Guides*. He based his opinion on the fact that appellant had two-point discrimination of three mm, which is normal according to Table 16-5 at page 446 of the A.M.A., *Guides*. However, the A.M.A., *Guides* provides in the text at page 482 that "in conditions such as … compression neuropathy, normal two-point discrimination does not exclude the presence of abnormal light touch/deep pressure thresholds and abnormal conduction studies." Dr. Berman

[6] A.M.A., *Guides* 495.

[7] *Kimberly M. Held*, 56 ECAB 670 (2005).

[8] Grade 2 sensory deficit or pain is described as "[d]ecreased superficial cutaneous pain and tactile sensibility (decreased protective sensibility), with abnormal sensations or moderate pain, that may prevent some activities." A.M.A., *Guides* 482, Table 16-10.

also based his opinion on the Grade 4 sensory deficit description in Table 16-10 at page 482.[9] Regarding pinch strength deficit, he noted that Dr. Diamond found that appellant had 30 percent impairment due to lateral pinch strength deficits. However, motor deficit due to carpal tunnel syndrome is rated using the same procedures at page 495 as for rating sensory deficit. Further, the A.M.A., *Guides* provides that, "In compression neuropathies, additional impairment values are not given for decreased grip strength.[10] Therefore, appellant is not entitled to impairment for pinch strength deficit.

The Board finds that there is a conflict between Dr. Diamond and Dr. Berman as to the grade of sensory deficit or pain in Table 16-10 that is appropriate to use in rating appellant's upper extremity impairment. Section 8123(a) of the Act provides that, 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.[11] The Board finds that this case must be remanded for resolution of the conflict by an impartial medical specialist.

CONCLUSION

The Board finds that there is a conflict in the medical opinion evidence between Dr. Diamond and Dr. Berman, necessitating referral to an impartial medical specialist. After such further development as the Office deems necessary, it should issue an appropriate decision.

[9] Grade 4 sensory deficit or pain is described as "[d]istorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity. A.M.A., *Guides* 482, Table 16-10.

[10] A.M.A., *Guides* 494.

[11] 5 U.S.C. § 8123(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 1, 2007 is set aside and the case is remanded for further action consistent with this decision.

Issued: November 5, 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