United States Department of Labor
Employees' Compensation Appeals Board

E.N., Appellant	)	
and	)	**Docket No. 08-807**
	)	**Issued: September 22, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Lehigh Valley, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 23, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated January 10, 2008. 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 met her burden of proof to establish that she sustained more than a 25 percent permanent impairment of her right arm, for which she received a schedule award.

FACTUAL HISTORY

This case has twice previously been on appeal before the Board. In a July 21, 2006 decision, the Board found that the case was not in posture for decision.[1] The Board found that Dr. Salem, a second opinion physician, did not explain how he arrived at his impairment rating. The Board remanded the case to the Office to further develop the medical evidence to obtain an

[1] Docket No. 06-628 (issued July 21, 2006).

opinion in conformance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as to whether appellant had more than two percent impairment to the right arm. In a July 16, 2007 decision, the Board found that the case was not in posture for decision.[2] The Board found that the schedule award was premised on ratings not adequately explained by Dr. Richard J. Mandel, a Board-certified orthopedic surgeon and second opinion physician. Although the Board noted the rating of four percent for decreased motion was properly calculated, both physicians provided findings on grip strength. The Board remanded the case to the Office to further develop the medical evidence on the issue of impairment to appellant's upper extremity. The facts and the history contained in the prior appeals are incorporated by reference.

On December 3, 2007 the Office requested that the Office medical adviser provide an opinion regarding whether appellant had greater than 25 percent impairment of the right arm.[3] In a report dated December 17, 2007, the Office medical adviser explained that he provided an award for loss of strength with the full knowledge that it typically was not recommended based upon page 508 of the A.M.A., *Guides*, section 16.88, *Principles of Strength Evaluation.* He explained that the A.M.A., *Guides,* provided that loss of strength could be rated separately if such a deficit could not be evaluated accurately by other rating methods. The Office medical adviser explained that appellant underwent five surgical procedures. He advised that the structural loss of the carpal ligamentous structures of the wrist indicated that biomechanical weakness would be anticipated. The Office medical adviser noted that, although the A.M.A., *Guides* provide that "[d]ecreased strength cannot be rated in the presence of decreased motion and painful conditions," appellant had decreased motion and painful condition. He explained that the five operations to the wrist interrupted the lunate-triangular structures and appellant required a tendon weave to reconstruct it. The Office medical adviser referred to the example on page 508 of the A.M.A., *Guides* which indicated that a weakness calculation for loss of strength would be justified due to a severe muscle tear which healed and left a palpable muscle defect. He indicated that in appellant's case "the lunate-triangular ligament structures were ruptured and they did leave a palpable or otherwise identifiable defect that required ligamentous reconstruction." The Office medical adviser opined that "this would result in weakness irrespective of decreased range of motion and pain." He indicated that this would qualify for the "weakness calculation because the decreased strength cannot be rated with other rating methods." The Office medical adviser opined that "the severe injury and multiple operative procedures resulted in circumstances that were similar to the example given on page 508 where there was loss of strength due to severe muscle tear that healed with a palpable muscle defect." He also indicated that a 4 percent rating for decreased wrist motion would be inadequate and opined that appellant had 25 percent impairment of the right arm.

By decision dated January 10, 2008, the Office found that appellant did not have more than 25 percent permanent impairment of her right arm, for which she received a schedule award.

[2] Docket No. 07-605 (issued July 16, 2007).

[3] On August 29, 2007 the Office requested that Dr. Mandel provide an addendum to his report. In particular, it requested that he explain why grip strength findings were appropriate in light of the restrictions set forth in the A.M.A., *Guides.* On October 31, 2007 the Office noted that Dr. Mandel had not responded.

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 Act's implementing regulation has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule award losses.[7]

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*.[8] 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.

Regarding loss of strength, the A.M.A., *Guides* states in relevant part:

> 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. An example of this situation would be loss of strength due to a severe muscle tear that healed leaving a palpable muscle defect. If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength could be combined with the other impairments, only if based on unrelated etiologic or pathomechanical causes. Otherwise, the impairment ratings based on objective anatomic findings take precedence. Decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (*e.g.*, thumb amputation) that prevent effective application of maximal force in the region being evaluated.[9]

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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] 20 C.F.R. § 10.404.

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

[9] A.M.A., *Guides* 508.

ANALYSIS

The Board notes that the range of motion findings provided by the Office medical adviser of three percent for dorsiflexion and four percent for radial and ulnar flexion were properly calculated in accordance with the A.M.A., *Guides*. The case was remanded to the Office for an explanation regarding the 20 percent finding based on loss of grip strength.

In a report dated December 17, 2007, the Office medical adviser reviewed appellant's history of injury and treatment and the case record. He referred to section 16.8a, *Principles*, in the Strength Evaluation subchapter, and explained that appellant's situation would fall into the category of rare cases in which an individual would be entitled to a separate rating for loss of strength that was not considered adequately by other methods.[10] The Office medical adviser referred to the example on page 508[11] which indicated that a weakness calculation for loss of strength would be justified due to a severe muscle tear which healed and left a palpable muscle defect. He noted that appellant had five surgical procedures and sustained loss of the carpal ligamentous structures of the wrist which would cause biomechanical weakness. The operations interrupted the lunate-triangular structures and a tendon weave was performed on appellant. The Office medical adviser stated that "the lunate-triangular ligament structures were ruptured, and that they left a palpable or otherwise identifiable defect that required ligamentous reconstruction." He opined that "this would result in weakness irrespective of decreased range of motion and pain." The Office medical adviser advised that this would qualify for the "weakness calculation because the decreased strength cannot be rated with other rating methods." He explained that "the severe injury and multiple operative procedures resulted in circumstances that were similar to the example given on page 508 where there was loss of strength due to severe muscle tear that healed with a palpable muscle defect." The Office medical adviser noted that a finding of four percent for decreased wrist motion alone would be an inadequate award and that appellant should receive 25 percent impairment of the right arm. The Board finds that the Office medical adviser's rating for grip strength falls into the rare category contemplated by section 16.8a of the A.M.A., *Guides*. Therefore, appellant is entitled to have the grip findings included in her rating. The medical evidence establishes that she has 25 percent impairment of the upper extremity for which she received a schedule award.

CONCLUSION

The Board finds that appellant has no more than a 25 percent permanent impairment of her right upper extremity, for which she received a schedule award.

[10] *Id.*

[11] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 10, 2008 is affirmed.

Issued: September 22, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board