

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

_____)
B.L., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVSEA)
EAST COAST FECA SITE, Philadelphia, PA,)
Employer)

_____)

Docket No. 08-1878
Issued: February 11, 2009

Appearances:

Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 25, 2008 appellant filed a timely appeal from a March 31, 2008 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed an August 6, 2007 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award claim.

ISSUE

The issue is whether appellant has more than 10 percent right upper extremity impairment or 10 percent left upper extremity impairment, for which he received schedule awards.

FACTUAL HISTORY

On April 16, 2001 appellant, then a 46-year-old pipefitter, filed an occupational disease claim for a bilateral upper extremity condition he attributed to his federal employment. The

Office accepted the claim for bilateral carpal tunnel syndrome and authorized bilateral carpal tunnel release surgery, which appellant underwent on August 13 and September 6, 2001.

On December 29, 2006 appellant claimed a schedule award.¹ In an October 17, 2006 impairment rating, Dr. David Weiss, an osteopath, noted that appellant described constant pain and numbness. On sensory examination, he noted a deficit over the C5-6 dermatomes involving the right upper extremity. Dr. Weiss also found that monofilament testing revealed diminished light touch sensibility over the median nerve distribution on both the right and left hand. He indicated that he used Table 16-10 on page 482, Table 16-15 on page 492, and Tables 16-33 and 16-34 on page 509 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) in calculating appellant's impairment. Dr. Weiss found that he had 19 percent right upper extremity impairment and 38 percent left upper extremity impairment. For the right upper extremity, he found 10 percent impairment for a Grade 4 sensory deficit of right median nerve and 10 percent lateral pinch deficit. For the left upper extremity, Dr. Weiss found 31 percent impairment for Grade 4 sensory deficit of left median nerve and 10 percent impairment for lateral pinch deficit. He advised that appellant reached maximum medical improvement on October 17, 2006.

In a January 16, 2007 report, an Office medical adviser reviewed the record and Dr. Weiss' impairment rating and concluded that appellant sustained 10 percent impairment to each upper extremity. He noted that Dr. Weiss utilized lateral pinch deficit as well as decreased sensation over the median nerve. Citing to page 507 and 508 of the A.M.A., *Guides*, the Office medical adviser noted that assessment for strength measurements and manual muscle testing were not afforded a large role in impairment calculations. He found Dr. Weiss' calculations for a 10 percent sensory impairment of the right median nerve were proper under the A.M.A., *Guides*; however, Dr. Weiss' calculation of 31 percent impairment of the left median nerve was in error. The Office medical adviser explained a Grade 4 sensory deficit of the left median nerve multiplied by the 39 percent maximum median nerve sensory deficit under Table 16-15 on page 492 resulted in 10 percent, not 31 percent impairment. He further noted October 17, 2006 was the date of maximum medical improvement.

By decision dated January 24, 2007, the Office granted appellant schedule awards for 10 percent right upper extremity impairment and 10 percent left upper extremity impairment. The awards covered the period October 17, 2006 through December 27, 2007.

Appellant requested an oral hearing, which was held on May 16, 2007. He submitted an amended page 6 from Dr. Weiss' October 17, 2006 report, which indicated that appellant had a Grade 2 rather than a Grade 4 sensory deficit of the left median nerve.² Appellant also submitted evidence pertaining to his eligibility to compensation at the augmented rate for identified eligible dependents.

¹ Appellant initially filed a schedule award on March 4, 2002.

² Appellant also submitted evidence pertaining to his eligibility to compensation at the augmented rate for identified eligible dependents.

By decision dated July 23, 2007, an Office hearing representative remanded the case for further development based on the new evidence from Dr. Weiss.³

On July 29, 2007 the Office medical adviser reviewed Dr. Weiss' amended report and advised that appellant had no greater impairment. He found that appellant had 10 percent sensory deficit of the left upper extremity. The Office medical adviser indicated that a Grade 2 deficit was not justified as Dr. Weiss' sensory examination did not demonstrate any abnormalities and the monofilament testing demonstrated only a slight reduction in sensory findings. Therefore, a Grade 4 deficit was the most appropriate classification. In regard to motor testing, the Office medical adviser stated the medical records demonstrated no thenar atrophy. Citing to section 16.8 on page 508 of the A.M.A., *Guides*, the Office medical adviser advised that neither grip nor pinch strength would be appropriate for evaluation. He noted that Dr. Weiss documented that appellant had constant pain.

By decision dated August 6, 2007, the Office denied appellant's claim for an increased schedule award.

Appellant requested an oral hearing which was held December 19, 2007. By decision dated March 31, 2008, an Office hearing representative affirmed the August 6, 2007 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁴ 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 Office procedures⁶ 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 16-15.⁷ Chapter 16 of the fifth edition of the A.M.A., *Guides* provides

³ The hearing representative also found that appellant's schedule award should be paid at the augmented rate as he had an eligible dependent for compensation purposes.

⁴ 5 U.S.C. § 8107.

⁵ See 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001). See also *Linda Beale*, 57 ECAB 429 (2006).

⁶ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003). See also *Cristeen Falls*, 55 ECAB 420 (2004).

⁷ A.M.A., *Guides* 491, 482, 484, 492, respectively; see *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

the framework for assessing upper extremity impairments.⁸ Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

“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 CTS is rated according to the sensory and/or motor deficits as described earlier.⁹

(2) Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG [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.

(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.”¹⁰ (Emphasis in the original.)

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.¹¹

ANALYSIS

Appellant received a schedule award for 10 percent right upper extremity impairment and 10 percent left upper extremity impairment for his accepted bilateral carpal tunnel conditions. He underwent surgical release. The Office based its award on the January 16 and July 29, 2007 reports of the Office medical adviser, who reviewed the reports of Dr. Weiss.

Dr. Weiss first calculated appellant’s impairment of the right median nerve as 10 percent and 31 percent of the left median nerve based on Table 16-10 page 482 and Table 16-15 page

⁸ A.M.A., *Guides* 433-521.

⁹ Section 16.5b of the A.M.A., *Guides* describes the methods for evaluating upper extremity impairments due to peripheral nerve disorders and provides that the severity of the sensory or pain deficit and motor deficit should be classified according to Tables 16-10a and 16-11a respectively. The impairment is evaluated by multiplying the grade of severity of the sensory or motor deficit by the respective maximum upper extremity value resulting from sensory or motor deficits of each nerve structure involved. When both sensory and motor functions are involved, the impairment values derived for each are combined. *Id.* at 481; *Kimberly M. Held*, 56 ECAB 670 (2005).

¹⁰ A.M.A., *Guides* 495.

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

492 of the A.M.A., *Guides*. Subsequently, he advised that appellant had a Grade 4 sensory deficit in the right upper extremity and, in an amended report, advised that appellant had a Grade 2 sensory deficit in the left upper extremity. Dr. Weiss also provided 10 percent impairment for both the right and left upper extremities for lateral pinch deficit based on Tables 16-33 and 16-34 on page 509 of the A.M.A., *Guides*. The Office medical adviser reviewed Dr. Weiss' reports and found 10 percent impairment of both the right and left arms.

The Board finds that the medical evidence does not establish that appellant has greater than 10 percent impairment of the right upper extremity or 10 percent impairment of the left upper extremity, for which he received schedule awards. Dr. Weiss calculated that appellant had a Grade 4 sensory loss¹² (25 percent deficit) associated with right median nerve distribution which, when multiplied by the 39 percent maximum value for median nerve loss, yielded a 9.75 percent (rounded to 10 percent) impairment for the right arm. The Office medical adviser found, and the Board agrees, that this was an appropriate use of the A.M.A., *Guides*.

Dr. Weiss also found that appellant had a Grade 2 sensory loss (80 percent) associated with left median nerve distribution which, when multiplied by the 39 percent maximum value for median nerve loss, yielded a 31.20 percent (rounded to 31.0 percent) impairment for the right arm. The Office medical adviser disagreed with this calculation as the medical evidence was more consistent with a Grade 4 rather than a Grade 2 classification of sensory deficit or pain.¹³ According to Dr. Weiss' medical records, the sensory examination did not demonstrate any abnormalities and monofilament testing of both upper extremities demonstrated slight reduction in sensation. The Office medical adviser determined that the clinical findings were more consistent with a Grade 4 deficit rather than a Grade 2 sensory deficit or pain for the left median nerve. A Grade 4 sensory loss (25 percent) associated with left median nerve distribution which, when multiplied by the 39 percent maximum value for median nerve loss, yields a 9.75 percent (rounded to 10 percent) impairment for the left arm.¹⁴ The Board notes that Dr. Weiss provided no reasoning or explanation regarding why the sensory deficit to the left median nerve represented Grade 2 rather than Grade 4, as noted in his original report. The Office medical adviser provided sufficient reasoning to explain why the clinical finding supported a Grade 4 deficit.

Dr. Weiss also stated that impairment due to loss of pinch strength was 10 percent impairment for both the right and left upper extremities. However, the Board notes that the A.M.A., *Guides* do not encourage the use of grip or pinch strength as an impairment factor because strength measurements are functional tests influenced by subjective factors that are difficult to control. The A.M.A., *Guides* for the most part is based on anatomic impairment. Only in rare cases should grip strength be used and only when it represents an impairing factor

¹² A.M.A., *Guides* 482, 492, Table 16-10, 16-15.

¹³ Under Table 16-10, a Grade 4 classification of sensory deficit or pain is noted as "distorted superficial tactile sensibility (diminished light touch), without or without minimal abnormal sensations or pain, that is forgotten during activity." A Grade 2 classification of sensory deficit or pain is noted as "decreased superficial cutaneous pain and tactile sensibility (decreased protective sensibility), with abnormal sensations or moderate pain, that may prevent some activities."

¹⁴ See *supra* note 12.

that has not been otherwise considered adequately. The A.M.A., *Guides* state that, otherwise, the impairment ratings based on objective anatomic findings take precedence.¹⁵ Dr. Weiss did not address this section of the A.M.A., *Guides* or explain why grip strength deficit should be considered in rating impairment of either upper extremity.

The Office medical adviser properly applied the provisions of the A.M.A., *Guides* to the clinical findings of Dr. Weiss to rate 10 percent impairment of each arm. There is no other medical evidence of record that establishes any greater impairment pursuant to the A.M.A., *Guides*. The Office properly found that appellant was not entitled to an increased schedule award.

CONCLUSION

The Board finds appellant has no more than 10 percent right upper extremity impairment or 10 percent left upper extremity impairment, for which he received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2008 and August 6, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 11, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁵ See A.M.A., *Guides* 507-08, 16.8 Strength Evaluation, Principles; *Phillip H. Conte*, 56 ECAB 213 (2004). See also *T.A.*, 59 ECAB ____ (Docket No. 07-1836, issued November 20, 2007) (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).