United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 08-1775**
	)	**Issued: July 17, 2009**
U.S. POSTAL SERVICE, REMOTE ENCODING CENTER, West Des Moines, IA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 10, 2008 appellant, through her attorney, filed a timely appeal from the January 14, 2008 decision of an Office of Workers' Compensation Programs' hearing representative who denied an increased schedule award to her upper extremities. Pursuant to C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merit issue of the case.

ISSUE

The issue is whether appellant has established more than five percent impairment to each upper extremity, for which she previously received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board. The facts of this case as set out in the previous Board decisions are hereby incorporated by reference.[1] The relevant facts are set forth below.

Appellant's occupational disease claim was accepted for bilateral carpal tunnel syndrome for which she underwent surgery. She underwent a left carpal tunnel release on November 2, 1995 and a right carpal tunnel release on November 10, 1995. On June 25, 1998 appellant filed a claim for a schedule award. By decision dated August 27, 2002, the Office issued a schedule award for a five percent impairment of the right upper extremity and a five percent impairment of both the left upper extremities. By decision dated March 17, 2003, it reviewed the case on the merits, but denied greater impairment. In a decision dated July 27, 2004, the Board found that appellant did not have more than five percent impairment of each upper extremity.[2]

Additional evidence was submitted by appellant to the Office. In a report dated November 9, 2004, Dr. Jugal Raval, a neurologist, indicated that electrophysiological findings showed evidence of bilateral carpal tunnel syndrome, left side worse than right side.

In a February 14, 2005 opinion, Dr. Samir Wahby, an orthopedic surgeon, noted that he had treated appellant for carpal tunnel syndrome for many years. Appellant had residual bilateral carpal tunnel syndrome and 25 percent hand impairment based on 5 percent impairment of thumbs, 10 percent impairment of index fingers and 10 percent impairment of middle fingers pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), page 495. In an October 23, 2005 report, the Office medical adviser discussed Dr. Wahby's February 14, 2005 report and noted that it contained no findings on examination or history regarding her status on February 14, 2005. Dr. Wahby made only generic comments regarding symptoms in the hands and digits. The medical adviser concluded that the report was insufficient to establish greater impairment.

By decision dated January 11, 2006, the Office found that appellant had not submitted sufficient evidence to warrant modification of the prior schedule award.

Appellant requested reconsideration and provided further medical reports.

On December 30, 2005 Dr. Raval conducted an electromyographic and nerve conduction study (EMG/NCS). The testing showed evidence of moderately severe carpal tunnel syndrome on the left and, on the right, a mild ulnar motor neuropathy at the wrist. Dr. Raval further noted that the EMG examination was negative for denervation.

On September 25, 2006 the Office requested that the Office medical adviser review the record to determine whether appellant had sustained increased impairment. On October 4, 2006

[1] Docket No. 03-1629 (issued July 27, 2004); Docket No. 02-1197 (issued February 3, 2003); and Docket No. 99-2408 (issued November 2, 2001).

[2] Docket No. 03-1629 (issued July 27, 2004).

the Office medical adviser noted that the only new evidence was Dr. Raval's December 30, 2005 report on EMG and NCS studies. He noted that this report did not specifically address impairment or allow for a revision of the previous schedule award.

By decision dated November 7, 2006, the Office denied modification of the schedule award decision.

Appellant requested reconsideration by letter dated October 5, 2007 and forwarded additional medical evidence.

In an August 29, 2007 report, Dr. Raval indicated that the new electrophysiological findings showed evidence of mildly severe carpal tunnel syndrome on both sides. Appellant had a mild sensory neuropathy in the left hand as well as ulnar motor neuropathy on both side.

In a September 12, 2007 report, Dr. Lincoln Wallace, a Board-certified family practitioner, listed his impression as residual bilateral carpal tunnel syndrome. On physical examination, he noted that appellant had approximately 25 percent range of motion in her neck, but good motion of her shoulders, elbows, forearms, wrists, fingers and thumbs. Dr. Wallace noted that the Tinel's sign was positive over both wrists and negative over both elbows. The Phalen's test was positive bilaterally in about 10 seconds. Dr. Wallace observed well-healed scars consistent with her previous carpal tunnel releases. He advised that appellant's diagnostic studies showed evidence of mild carpal tunnel syndrome bilaterally were almost identical to previous studies done in 1995 and 1997, both preoperatively and postoperatively. Dr. Wallace provided injections to both carpal tunnels.

In a December 2, 2007 report, the Office medical adviser noted that the EMG/NCS study of August 29, 2007 was not useful in making an impairment rating. The September 12, 2007 report of Dr. Wallace provided no impairment rating or documentation that would allow a new upper extremity impairment ratings.

In a January 14, 2008 decision, the Office found that the medical evidence was insufficient to establish that appellant had greater impairment of her upper extremities.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[4] set 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

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

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.[5]

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

> "If, after 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 earlier.
> >
> > (2) Normal sensibility and opposition strength and 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 held that, in accordance with the fifth edition of the A.M.A., *Guides*, impairment arising from carpal tunnel syndrome should be rated on motor and sensory deficits only.[7] The A.M.A., *Guides* provide that, in compression neuropathies, additional impairment values are not given for decreased motion in the absence of a complex regional pain syndrome.[8] Carpal tunnel syndrome is an entrapment/compression neuropathy of the median nerve.[9]

ANALYSIS

Appellant previously received a schedule award for a five percent impairment to each upper extremity. Accordingly, the issue is whether she has submitted sufficient medical evidence to establish an increased impairment. The Board noted that the diagnostic studies obtained for Dr. Ravel do not support a greater impairment. Dr. Raval did not make any findings with regard to appellant's impairment for schedule award purposes. Rather, he merely noted that the studies showed residuals of the accepted conditions. The Office medical adviser reviewed

[5] *See id.; Jacqueline Harris*, 54 ECAB 139 (2002).

[6] A.M.A., *Guides* 495, *Silvester DeLuca*, 53 ECAB 500 (2002).

[7] *Id.* at 494; *Robert V. Disalvatore*, 54 ECAB 351 (2003).

[8] *Id.* at 494, *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); *Kimberly M. Held*, 56 ECAB 670 (2005).

[9] *Id.* at 492.

Dr. Raval's reports and commented that the tests did not merit a finding of greater impairment. Similarly, Dr. Wallace did not provide any findings with regard to the A.M.A., *Guides*. The Office medical adviser concluded that there was no evidence to support increase in appellant's impairment rating. Dr. Wahby's opinion is largely repetitive of earlier reports that had already been considered by the Office. His contention that appellant had 25 percent impairment is not sufficient to warrant an increase in the schedule award. The Board notes that Dr. Wahby did not distinguish between appellant's two upper extremities, finding a 25 percent total hand impairment without discussing any measurable differences between the two hands. Although Dr. Wahby attached some test results from Dr. Raval, he did not provide a rationalized explanation to support increased impairment or show his application of the A.M.A., *Guides* in arriving at the percentage of impairment. The Office medical adviser noted that Dr. Wahby failed to provide a medical history or physical examination findings. Accordingly, the Board finds that appellant has not met her burden to establish that she has greater impairment of either upper extremity.

CONCLUSION

The Board finds that appellant has not established that she is entitled to more than a five percent impairment to each upper extremity, for which she had previously received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 14, 2008 is affirmed.

Issued: July 17, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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