

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

C.M., Appellant)

and)

U.S. POSTAL SERVICE, CHICAGO BULK)
MAIL CENTER, Forest Park, IL, Employer)

**Docket No. 08-2221
Issued: July 28, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 6, 2008 appellant filed a timely appeal from a July 8, 2008 merit decision of the Office of Workers' Compensation Programs denying a schedule award. 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 established that he sustained permanent impairment due to his bilateral carpal tunnel syndrome entitling him to a schedule award.

FACTUAL HISTORY

On December 18, 2003 appellant, then a 47-year-old parcel post keyer and clerk, filed an occupational disease claim (Form CA-1) alleging that he sustained carpal tunnel syndrome due to his employment duties, including keying mail in the key station and performing repetitive motions of throwing mail from the slide to the sacks and tossing the sacks into containers while working the rotary. He realized that his condition was due to these duties on September 8, 2003. The Office accepted appellant's claim for bilateral carpal tunnel syndrome.

On December 8, 2004 appellant filed a claim for a schedule award (Form CA-7). By letter dated December 15, 2004, the Office requested that he submit a physician's opinion establishing that he had reached maximum medical improvement. Appellant subsequently submitted a December 4, 2004 medical note from a physician with an illegible signature diagnosing cervical radiculopathy and low back pain.

The case lay dormant until November 16, 2007, when appellant filed a request for a schedule award due to his carpal tunnel syndrome.

By letter dated December 4, 2007, the Office notified appellant that he was required to submit a physician's opinion establishing that he had reached maximum medical improvement, as well as an evaluation regarding his loss of function in conformance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), fifth edition.¹

On two CA-1303 forms dated April 2, 2008, Dr. D. Skias, a Board-certified psychiatrist and neurologist, stated that appellant reached maximum medical improvement for his right and left carpal tunnel syndrome on March 1 and July 1, 2008 respectively. On the forms he listed that appellant sustained 10 percent permanent impairment of the upper extremity due to loss of function from decreased strength and 50 percent permanent impairment of the upper extremity due to loss of function resulting from sensory deficit, pain or discomfort. Dr. Skias did not reference the A.M.A., *Guides*.

By letter dated April 24, 2008, the Office requested that appellant submit a copy of all his medical records from December 23, 2003 to present, which would be forwarded to an Office medical adviser for review.

Appellant submitted medical records addressing his carpal tunnel syndrome and other unrelated conditions, including cervical and lumbar radiculopathy and cubital tunnel syndrome. In a June 8, 2005 progress note, Dr. Carl N. Graf, a Board-certified orthopedic surgeon, noted that appellant experienced bilateral weakness since September 2003. Physical examination revealed 5/5 strength through the bilateral upper extremity and negative Tinel's sign at the elbow and wrist. Dr. Graf opined that chronic neurogenic changes in the right first dorsal interosseous, flexor carpi radialis and triceps could be secondary to chronic right C7, C8 and T1 radiculopathy or a chronic neuropathic process secondary to hepatitis C. An October 2, 2007 electromyography (EMG) scan showed no electrical evidence of carpal tunnel syndrome in either hand.

On June 13, 2008 the Office referred the record to an Office medical adviser, Dr. David H. Garelick, a Board-certified orthopedic surgeon. It requested an opinion on whether appellant sustained any permanent impairment in accordance with the A.M.A., *Guides*, fifth edition, due to his bilateral carpal tunnel syndrome.

In a June 16, 2008 medical report, Dr. Garelick concluded that appellant did not sustain any ratable impairment to his upper extremities. He discounted the impairment rating of

¹ A.M.A., *Guides* (5th ed. 2001).

Dr. Skias on the basis that there was no accompanying narrative addressing the basis for his findings of impairment. Dr. Garelick opined that the October 2, 2007 EMG found no electrical evidence of carpal tunnel syndrome in either hand. A June 8, 2005 note from Dr. Graf found full strength in the bilateral upper extremities and a negative Tinel's test, which supported that appellant did not sustain any permanent impairment. Dr. Garelick set the date of maximum medical improvement as October 2, 2007, the date of the EMG.

By decision dated July 8, 2008, the Office denied appellant's claim for a schedule award relying on Dr. Garelick's medical opinion finding no permanent impairment.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ set the number of weeks of compensation payable to employees sustaining permanent impairment from the 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 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.⁴

ANALYSIS

The issue is whether appellant established that he sustained any permanent impairment due to his bilateral carpal tunnel syndrome, entitling him to a schedule award. The Board finds that appellant has not established impairment of either upper extremity based on this accepted condition.

Appellant submitted two completed CA-1303 forms from Dr. Skias, indicating that he sustained 10 percent impairment of both upper extremities due to decreased strength and 50 percent impairment due to sensory deficit, pain or discomfort. The Office medical adviser, Dr. Garelick, determined that this rating was of diminished probative value because Dr. Skias provided no accompanying narrative. He noted that an October 2, 2007 EMG was negative for evidence of carpal tunnel syndrome in either hand. In a June 8, 2005 medical report, Dr. Graf found full strength to appellant's upper extremities and a negative Tinel's sign. Dr. Garelick opined that neurogenic changes in the hands may be due to cervical radiculopathy or related to hepatitis C, to support his opinion that appellant did not sustain a ratable permanent impairment to the upper extremities.

The Board finds the medical evidence of record insufficient to establish that appellant sustained any impairment of his upper extremities due to his carpal tunnel syndrome. The

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *See id.* *See also James Kennedy, Jr.*, 40 ECAB 620 (1989); *Charles Dionne*, 38 ECAB 306 (1986).

June 8, 2005 medical reports and October 2, 2007 EMG fail to show that appellant has any ongoing symptoms of carpal tunnel syndrome and suggest that any neurogenic changes were related to a nonwork-related condition. This evidence does not support appellant's claim that his carpal tunnel syndrome caused permanent impairment to either upper extremity.⁵

The rating of Dr. Skias failed to provide any information supporting his determination of upper extremity impairment. He did not list any findings of his physical examination or explain how he calculated impairment in accordance with the A.M.A., *Guides*. Thus, the Board finds that Dr. Skias' opinion is of diminished probative value.⁶

The Office procedure manual and Board precedent provide that in obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a detailed description of the impairment, including, where applicable, the loss in degree of motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment. The description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁷ Dr. Skias did not include any findings on examination to support his opinion that appellant sustained a permanent impairment to his upper extremities resulting from the employment-related carpal tunnel syndrome. He merely listed that appellant sustained 10 percent impairment due to decreased strength and 50 percent impairment due to sensory deficit, pain or discomfort. Dr. Skias did not include any findings regarding the amount of loss of strength, how he determined sensory deficit or pain or how his ratings were in conformance with the A.M.A., *Guides*. Because this report does not allow persons reviewing the file to clearly visualize the impairment with its resulting restrictions and limitations, the Board finds that it is insufficient to establish permanent impairment.⁸

CONCLUSION

The Board finds that appellant did not establish that he sustained a permanent impairment of his upper extremities due to his carpal tunnel syndrome.

⁵ Schedule awards are only payable for loss of function due to an accepted employment injury. See *Philip N.G. Barr*, 33 ECAB 948 (1982).

⁶ See *Arch M. Kincaid*, 13 ECAB 482 (1962) (where the Board held that a medical report that did not contain specific findings was inadequate to support a conclusion of permanent impairment).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6 (August 2002). See *Joseph D. Lee*, 42 ECAB 172 (1990).

⁸ See *A.L.*, 60 ECAB ____ (Docket No. 08-1730, issued March 16, 2009).

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2009
Washington, DC

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

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

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