United States Department of Labor
Employees' Compensation Appeals Board

KW., Appellant	)	
and	)	**Docket No. 08-2413**
	)	**Issued: June 1, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 5, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 24 and August 6, 2008 merit decisions denying her claim for schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she has permanent impairment due to her accepted bilateral carpal tunnel syndrome.

FACTUAL HISTORY

On July 15, 2000 the Office accepted that appellant, then a 40-year-old mail processor, sustained bilateral carpal tunnel syndrome related to the repetitive duties of her federal employment. Appellant stopped work on April 21, 2000 and returned to modified duty on September 13, 2000. On April 13, 2005 Dr. Raymond Noellert, an attending Board-certified orthopedic surgeon, performed right carpal tunnel release surgery which was authorized by the

Office. On July 18, 2005 he released appellant to modified duty at the employing establishment for six hours per day. Appellant increased her hours to eight hours per day on August 20, 2005.

On May 1, 2006 appellant filed a claim alleging that she was entitled to schedule award compensation due to her bilateral carpal tunnel syndrome. On August 23, 2006 Dr. Noellert performed left carpal tunnel release surgery which was authorized by the Office. Appellant returned to her modified work on November 20, 2006 for eight hours per day. The employing establishment sent her home on July 10, 2007, because it could no longer accommodate her work restrictions.

On July 31, 2007 Dr. Noellert stated that on examination appellant's hands revealed no overt swelling or deformity and that both basilar thumb joints were mildly tender to palpation and manipulation but without subluxation or crepitation. Finkelstein's test was negative bilaterally and there perhaps was very slightly diminished thenar bulk on the right side. Wrist motion was full, carpus was stable and Tinel's sign was negative over the median nerve bilaterally. Dr. Noellert indicated that diffuse crepitation and nodularity of the flexor tendons was palpable in both palms, particularly near the A-l pulley, but there was no palpable triggering and no appreciable intrinsic tightness. There was no small joint warmth or erythema and there was no objective sensory deficit. The predominant diagnosis was bilateral carpal tunnel syndrome and bilateral flexor tenosynovitis. On October 6, 2007 appellant returned to modified duty for the employing establishment.

In a September 5, 2007 report, Dr. Noellert stated that appellant had reached maximum medical improvement in May 2007. He found that even though the diagnosis of bilateral carpal tunnel syndrome was established appellant was not entitled to an impairment rating for her arms under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). Dr. Noellert noted the fact that she had no active triggering, no measurable loss of motion and no measurable irreversible median nerve damage, meant that she did not qualify for a permanent impairment rating on such a basis. He indicated that appellant had objective findings of carpal tunnel syndrome including deformity and discoloration of the median nerve bilaterally and reproducible crepitation and nodularity of the flexor tendons diffusely in both palms with occasional triggering. Appellant also had subjective complaints deriving from the carpal tunnel diagnosis including stiffness particularly on first rising in the morning, intermittent aching, or throbbing particularly with attempts at prolonged or sustained activity and weakness secondary to pain.[1]

On December 24, 2007 Dr. Jason D. Eubanks, a Board-certified orthopedic surgeon, who served as an Office medical adviser, reviewed the medical evidence (including Dr. Noellert's September 7, 2007 report) and agreed with Dr. Noellert's opinion that appellant was not entitled to an impairment rating for her arms under the A.M.A., *Guides*. He stated:

> "After review of the provided medical record, it appears that the above[-]stated claimant has [zero percent] functional impairment for both the right and the left

[1] In an October 30, 2007 report, Dr. Noellert posited that appellant's bilateral flexor tenosynovitis was employment related. He indicated that the risk factors for this condition were similar to those for carpal tunnel syndrome. The Board notes that it has not been accepted that appellant sustained bilateral flexor tenosynovitis.

> upper extremities under the accepted claim of bilateral carpal tunnel syndrome. As demonstrated by Dr. Noellert [appellant] has no residual findings on exam[ination] to justify an impairment rating, displaying normal motion and sensation in both upper extremities. I agree with Dr. Noellert's assessment."

In a January 24, 2008 decision, the Office denied appellant's claim for a schedule award. It relied on the opinions of Drs. Noellert and Eubanks.

Appellant requested a hearing before an Office hearing representative. At the telephone hearing held on June 3, 2008, she testified that she was back at work in a modified job at the employing establishment. Appellant indicated that she still had problems performing such tasks scanning mail, a task which required pushing buttons on a device. She testified that her hands still got numb and that she dropped things. Appellant indicated that she did not have any repeat electrodiagnostic or nerve conduction studies after her surgeries. Her attorney indicated that a new impairment rating would be submitted. The record was held open for 30 days to allow for the submission of additional evidence.

Appellant submitted a January 30, 2007 report in which Dr. Noellert indicated that she had no tenderness or induration. Dr. Noellert stated her digital range of motion was full and that she had no triggering. He indicated that appellant's grip strength was symmetrical and that there was no joint warmth or erythema. Appellant had tenderness of the basilar thumb joint bilaterally and moderate crepitance and palpable nodularity of the flexor tendons. Dr. Noellert diagnosed stable bilateral carpal tunnel syndrome, flexor tenosynovitis and basilar thumb synovitis.

In an August 6, 2008 decision, the Office hearing representative affirmed the Office's January 24, 2008 decision.[2]

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 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]

[2] Appellant submitted additional evidence after the Office's August 6, 2008 decision, including a July 30, 2008 report in which an attending physician provided an impairment rating for her arms. However, the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id.*

The A.M.A., *Guides* evaluates the permanent impairment caused by carpal tunnel syndrome by determining whether such a condition falls within one of three categories discussed in section 16.5d.[6] Under the first category, if there are positive clinical findings of median nerve dysfunction and an electrical conduction delay, the condition is rated under the standards found earlier in Chapter 16 for evaluating sensory or motor deficits due to peripheral nerve disorders. Under the second category, if there is normal sensibility (evaluated by two-point discrimination and Semmes-Weinstein monofilament testing) and normal opposition strength with abnormal sensory and/or motor latencies or abnormal electromyogram (EMG) testing of the thenar muscles, an impairment rating not to exceed five percent of the upper extremity may be justified. Under the third category, if there is normal sensibility, opposition strength and nerve conduction studies, there is no objective basis for an impairment rating.[7]

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome. On April 13, 2005 Dr. Noellert, an attending Board-certified orthopedic surgeon, performed right carpal tunnel release surgery and on August 23, 2006 he performed left carpal tunnel release surgery. Both procedures were authorized by the Office. It denied appellant's schedule award claim noting that no such impairment was found by Dr. Noellert and Dr. Eubanks, a Board-certified orthopedic surgeon who served as an Office hearing representative.

The Board finds that appellant did not meet her burden of proof to establish that she has permanent impairment due to her accepted bilateral carpal tunnel syndrome. Dr. Noellert provided an opinion that appellant did not have such impairment. In a September 5, 2007 report, he stated that appellant had reached maximum medical improvement in May 2007. Dr. Noellert found that even though the diagnosis of bilateral carpal tunnel syndrome was established appellant was not entitled to an impairment rating for her arms under the A.M.A., *Guides*. He noted the fact that appellant had no active triggering, no measurable loss of motion and no measurable irreversible median nerve damage, meant that she did not qualify for a permanent impairment rating on such a basis.

Under the A.M.A., *Guides*, in order to fall under one of the two categories in section 16.5d for impairment due to carpal tunnel syndrome, an individual must display, at a minimum, either positive clinical findings of median nerve dysfunction and an electrical conduction delay, abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles.[8] The medical evidence of record does not clearly show that that appellant had either clinical signs or diagnostic testing results showing these conditions. On July 31, 2007 Dr. Noellert noted that the Tinel's sign was negative over appellant's median nerve bilaterally. The record contains no EMG or nerve conduction velocity testing results from the time appellant reached maximum medical improvement in mid 2007 or thereafter. Therefore, there are no diagnostic testing results showing median nerve dysfunction or abnormal results in the thenar muscles.

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

[7] *Id.*

[8] *See supra* notes 6 and 7 and accompanying text.

On December 24, 2007 Dr. Eubanks reviewed the medical evidence, including Dr. Noellert's September 7, 2007 report and agreed with Dr. Noellert's opinion that appellant was not entitled to an impairment rating for her arms under the A.M.A., *Guides*. Dr. Eubanks stated, "As demonstrated by Dr. Noellert [appellant] has no residual findings on exam[ination] to justify an impairment rating, displaying normal motion and sensation in both upper extremities. I agree with Dr. Noellert's assessment." Appellant did not submit any medical evidence showing that she had permanent impairment of her arm due to her accepted bilateral carpal tunnel syndrome under the standards of the A.M.A., *Guides*.[9] Therefore, the Office properly denied her schedule award claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has permanent impairment due to her accepted bilateral carpal tunnel syndrome.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 6 and January 24, 2008 decisions are affirmed.

Issued: June 1, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[9] Appellant submitted other reports of Dr. Noellert but they did not show such permanent impairment.