

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

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M.W., Appellant )

and )

**GENERAL SERVICES ADMINISTRATION,  
REPRODUCTION & DISTRIBUTION  
SERVICES, Washington, DC, Employer** )

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**Docket No. 09-476  
Issued: October 1, 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 December 8, 2008 appellant filed a timely appeal from the July 22, 2008 merit decision of the Office of Workers' Compensation Programs concerning schedule award compensation. 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 has more than a 55 percent permanent impairment of her right arm and any permanent impairment of her left arm.

**FACTUAL HISTORY**

In July 1997, the Office accepted that appellant, then a 61-year-old former printing specialist, sustained bilateral carpal tunnel syndrome due to the repetitive duties of her job.<sup>1</sup> On November 13, 1997 appellant underwent right carpal tunnel release surgery with an excisional

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<sup>1</sup> Appellant retired from the employing establishment in December 1994.

biopsy of the synovium flexor tendon of her right wrist and hand. The surgery was authorized by the Office.

In a September 22, 1999 decision, the Office granted appellant a schedule award for a 10 percent permanent impairment of her right hand. The award ran for 24.4 weeks from November 13, 1998 to May 2, 1999. In a March 3, 2000 decision, the Office granted appellant additional schedule award compensation to reflect that she had a 10 percent permanent impairment of her right arm.<sup>2</sup>

On October 21, 2001 Dr. Hampton J. Jackson, Jr., an attending Board-certified orthopedic surgeon, determined that appellant had a 55 percent permanent impairment of the right arm due to sensory and strength loss related to her carpal tunnel syndrome. In a November 22, 2002 decision, the Office granted appellant a schedule award for an additional 45 percent permanent impairment of her right arm. The award ran for 140.4 weeks from October 12, 2001 to June 20, 2004.

The findings of September 20, 2002 electromyogram (EMG) and nerve conduction velocity (NCV) testing of appellant's right arm revealed normal results with no evidence of recurrent carpal tunnel syndrome.

On April 25, 2006 Dr. Rida N. Azer, an attending Board-certified orthopedic surgeon, performed a left carpal tunnel release with an excisional biopsy of the flexor tendon of the left wrist and hand. The procedure was authorized by the Office. In a June 23, 2006 report, Dr. Azer indicated that appellant was progressing well after the surgery. Appellant had satisfactory range of motion and grip strength of her left fingers and sensation over her left median nerve was normal.

On February 8, 2007 appellant filed a claim for a schedule award for her left arm. The findings of April 19, 2007 EMG and NCV testing of both arms showed essentially normal results with evidence of chronic bilateral median neuritis, the residual of carpal tunnel release.<sup>3</sup> The report contained the signature block of a physical therapist.

In a May 11, 2007 report, Dr. Jackson stated that the April 19, 2007 testing "showed residuals" but did not show worsening of appellant's condition or any other cause of weakness and symptoms in her left hand such as radiculopathy. He indicated that on inspection of appellant's left hand there was obvious atrophy and noted that manual muscle testing showed weakness. Examination of appellant's left hand showed deep cutaneous pain sensibility. Dr. Jackson stated, "There is decreased superficial pain and tactile sensitivity, and she does have abnormal sensation and moderate pain that prevents almost all activities." He indicated that according to Table 16-10 of the American Medical Association, *Guides to the Evaluation of*

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<sup>2</sup> Appellant received a total of 31.2 weeks of compensation. The Office determined that it was more appropriate to evaluate her impairment with respect to her arm rather than her hand.

<sup>3</sup> The test revealed normal NCV and distal motor latency for both median and ulnar nerves, normal bilateral distal median sensory latencies and distal ulnar sensory latencies across both wrists to ring electrodes on the index fingers and small fingers, decreased amplitudinal response of the median motor and median sensory latencies bilaterally, and normal electromyography of selected upper extremity musculature both at rest and with volitional contractions.

*Permanent Impairment* (5<sup>th</sup> ed. 2001) appellant was between Grade 1 and 2 for sensory loss of the left median nerve and therefore had an 80 percent sensory loss. Dr. Jackson noted that according to Table 16-15 the maximum value for sensory loss associated with the median nerve was 39 percent and stated:

“That means this patient’s sensory deficit is 80 percent x 39, which gives her [a] figure of 37.2 percent, which is the degree of permanent impairment of the upper extremity due to loss of function from sensory deficit, pain or discomfort. In addition, in the same table, this patient has a grade of 4 in manual muscle testing in general with the hand, and according to [T]able 16-11, she rates a 25 percent in motor deficits. When it is applied to [T]able 16-15, that equals a 2.5 percent motor deficit, but in addition to that, this patient only has a 3-kg pinch strength which, according to [T]able[s] 16-33 and 16-34, equals a 20 percent impairment of the upper extremity.

“At the same time, she has only a 10 kg grip strength which, according to [T]ables 16-32 and 16-34, again equals 20 percent impairment of the upper extremity, but these values and strength are not added linearly. It is added on the [C]ombined [V]alues [C]hart, which is on pages 603, 604 and 605, which equals a 37 percent permanent impairment of the upper extremity due to loss of function from decreased strength.”<sup>4</sup>

In a December 4, 2007 report, Dr. Willie E. Thompson, a Board-certified orthopedic surgeon serving as an Office medical adviser, determined that updated EMG and NCV studies were needed prior to making an impairment rating. He indicated that these studies should be performed by a medical examiner not associated with the treating physician.

The findings of January 25, 2008 EMG and NCV testing of appellant’s left arm revealed normal results with no evidence of recurrent carpal tunnel syndrome. The testing was performed by Dr. Anuradha Kulkarni, a Board-certified physical medicine and rehabilitation physician, who had not previously been associated with appellant’s case. In a February 8, 2008 report, Dr. Azer stated that appellant had a palpable nodule in her left middle finger but noted that there was no triggering. Sensation was normal over her left median nerves and over her digital nerves. In a May 30, 2008 report, Dr. Azer indicated that sensation was normal over appellant’s right and left median nerves and over her digital nerves.

In a June 26, 2008 report, Dr. Thompson stated that he had reviewed the medical evidence of record and determined that appellant was not entitled to additional schedule award compensation. He noted that September 20, 2002 EMG and NCV studies of appellant’s right arm were completely within normal limits and indicated that appellant had no permanent impairment of her right arm based on the text on page 495 of the fifth edition of the A.M.A., *Guides*. With respect to the left arm, Dr. Thompson stated that January 25, 2008 EMG and NCV studies showed no evidence of recurrent carpal tunnel syndrome. Therefore, appellant had no

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<sup>4</sup> In a May 11, 2007 form, Dr. Jackson indicated that appellant had a 37 percent impairment of her left arm due to strength loss and a 37 percent impairment due to sensory loss (rounded down from 37.2 percent).

permanent impairment of her left arm based on the text on page 495 of the fifth edition of the A.M.A., *Guides*.

In a July 22, 2008 decision, the Office determined that appellant had no permanent impairment of her left arm or more than a 55 percent permanent impairment of her right arm, for which she received schedule award compensation.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>5</sup> and its implementing regulations<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS**

In July 1997, the Office accepted that appellant sustained bilateral carpal tunnel syndrome due to the repetitive duties of her job.<sup>8</sup> On November 13, 1997 appellant underwent right carpal tunnel release surgery with an excisional biopsy of the synovium flexor tendon of her right wrist and hand. The Office paid her schedule award compensation for a 55 percent permanent impairment of her right arm. On April 25, 2006 appellant underwent left carpal tunnel carpal release surgery with an excisional biopsy of the flexor tendon of her left wrist and hand. On February 8, 2007 she filed a claim for a schedule award for her left arm.

In a July 22, 2008 decision, the Office determined that appellant had a 0 percent permanent impairment of her left arm and no more than a 55 percent permanent impairment of her right arm, for which she received schedule award compensation. The Board finds that she did not meet her burden of proof to establish that she has more than a 55 percent permanent impairment of her right arm and a 0 percent permanent impairment of her left arm.

Appellant submitted May 11, 2007 reports in which Dr. Jackson, an attending Board-certified orthopedic surgeon, concluded that she had a 37 percent permanent impairment of her left arm due to strength loss and a 37 percent permanent impairment of her left arm due to sensory loss. The opinion of Dr. Jackson is of limited probative value in that he failed to provide an explanation of how his assessment of permanent impairment was derived in accordance with

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404 (1999).

<sup>7</sup> *Id.*

<sup>8</sup> Appellant retired from the employing establishment in December 1994.

the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.<sup>9</sup>

Dr. Jackson indicated that appellant had left arm impairment due to weakness upon manual muscle testing. However, he did not provide any findings of manual muscle testing or otherwise show that such testing was carried out in accordance with the standards of the A.M.A., *Guides*.<sup>10</sup> Dr. Jackson also noted impairment due to grip strength deficits, but the A.M.A., *Guides* provides that the evaluation of grip strength under Tables 16-31 through 16-34 should only be included in the calculation of an upper extremity impairment if such a deficit has not been considered adequately by other impairment rating methods for the upper extremity.<sup>11</sup> He did not explain why inclusion of grip strength impairment would be appropriate in the present case. In addition, Dr. Jackson did not adequately explain why the ostensible sensory and strength deficits he observed in appellant's left arm were related to the work-related bilateral carpal tunnel syndrome. He appeared to rely on the findings of April 19, 2007 EMG and NCV testing of appellant's arms. However, the report of this testing is not probative medical evidence because it was prepared by a physical therapist rather than a physician.<sup>12</sup>

Dr. Jackson did not provide any opinion on the permanent impairment of appellant's right arm and there is no medical evidence of record showing that she has more than a 55 percent permanent impairment of her right arm. Moreover, the evidence of record establishes that appellant did not have any impairment of her left arm. The findings of January 25, 2008 EMG and NCV testing of appellant's left arm, the most recent prior to the Office's July 22, 2008 decision, revealed normal results with no evidence of recurrent carpal tunnel syndrome.<sup>13</sup> In a May 30, 2008 report, Dr. Azer, an attending Board-certified orthopedic surgeon, indicated that sensation was normal over appellant's right and left median nerves and over her digital nerves. In a June 26, 2008 report, Dr. Thompson, a Board-certified orthopedic surgeon serving as an Office medical adviser, noted that the most recent diagnostic testing of appellant's arms showed no carpal tunnel syndrome residuals and he therefore concluded that appellant had no permanent impairment of her arms.<sup>14</sup>

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<sup>9</sup> See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

<sup>10</sup> See A.M.A., *Guides* 509-11.

<sup>11</sup> An example of an impairment that would not be adequately considered by other rating methods would be loss of strength caused by a severe muscle tear that healed leaving "a palpable muscle defect." A.M.A., *Guides* 508.

<sup>12</sup> A medical question can only be resolved by medical opinion evidence. The reports of a nonphysician cannot be considered by the Board in adjudicating such an issue. *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993).

<sup>13</sup> The testing was performed by Dr. Kulkarni, a Board-certified physical medicine and rehabilitation physician.

<sup>14</sup> Dr. Thompson referenced the text on page 495 of the fifth edition of the A.M.A., *Guides* concerning impairment due to carpal tunnel syndrome.

Appellant did not submit any evidence showing that she had more than a 55 percent permanent impairment of her right arm and a 0 percent permanent impairment of her left arm and the Office properly denied her claim for additional schedule award compensation.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she has more than a 55 percent permanent impairment of her right arm and a 0 percent permanent impairment of her left arm.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' July 22, 2008 decision is affirmed.

Issued: October 1, 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