United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
and	)	**Docket No. 08-1939**
	)	**Issued: September 16, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Los Angeles, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 30, 2008 appellant filed a timely appeal from an April 30, 2008 decision of an Office of Workers' Compensation Programs' hearing representative who denied an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.[1]

ISSUE

The issue is whether appellant has more than 59 percent impairment to her right arm, for which she received schedule awards.

FACTUAL HISTORY

On April 3, 2001 appellant, then a 49-year-old distribution clerk, sustained injury to her right wrist while throwing mail onto a conveyer belt. Her claim was accepted by the Office for

[1] Appellant did not request appeal from the Office's determination that she has three percent impairment of her left arm.

peripheral enthesopathies, right carpal tunnel syndrome and soft tissue disorder.[2] Appellant was also diagnosed with avascular necrosis of the right scaphoid bone. She underwent surgery for right tunnel release and arthrodesis (bone grafting) of the right wrist on April 19, 2002. Appellant returned to limited-duty work with restrictions on March 21, 2003.[3]

Appellant was treated by Dr. Emmett Cox, II, an orthopedic surgeon. In a March 31, 2003 report, Dr. Cox noted that appellant's right forearm incision and left iliac crest area healed uneventfully following surgery. On October 30, 2002 appellant underwent surgery for removal of a stainless steel plate and screws from the right hand and wrist. She had since healed well and underwent physical therapy. On December 7, 2002 appellant underwent additional surgery for drainage, irrigation and debridement of the right wrist. Dr. Cox noted that she had complaints of an aching pain in her wrist with grasping and gripping activities. He provided findings on examination of the right wrist, noting range of motion as 20 degrees dorsiflexion, negative 20 degrees palmar flexion, 0 degrees ulnar deviation and 0 degrees radial deviation. Dr. Cox also measured range of motion impairments to the right index, middle, ring and small fingers at the metacarpophalangeal (MP), proximal interphalangeal (PIP) and distal interphalangeal (DIP) joints.[4] He advised that extension was 0 degrees in all joints of the fingers and flexion was 70 degrees in DIP in each finger, which represent normal measurements and do not represent impairment. For the index finger, flexion was 55 degrees at the MP joint and 95 degrees at the PIP joint. For the middle finger, flexion was 55 degrees at the MP joint and 95 degrees at the PIP joint. For the ring finger, flexion was 75 degrees at the MP joint and 90 degrees at the PIP joint. For the small finger, flexion was 85 degrees at the MP joint and 95 degrees at the PIP joint. Dr. Cox noted that neurovascular examination was normal in the distribution of the median, ulnar and radial nerves with negative carpal tunnel compression. Grip strength measurements were provided and noted as decreased for the dominant right hand. Dr. Cox advised that appellant was at maximum medical improvement. He rated impairment to the right arm as 60 percent based on decreased range of motion with the wrist arthrodesed at 20 degrees of palmar flexion and decreased grip strength of the dominant hand.

In a July 22, 2003 report, Dr. Ellen Pichey, an Office medical adviser, reviewed the medical evidence. She utilized the American Medical Association, *Guides to the Evaluation of Permanent* (A.M.A., *Guides*) to assess loss in range of motion impairment as follows: 20 degrees dorsiflexion (extension) as 7 percent impairment,[5] negative 20 degrees palmar flexion (flexion) as 17 percent impairment, 0 degrees of ulnar deviation as 5 percent impairment[6] and 0 degrees of radial deviation as 4 percent impairment. This totaled 33 percent impairment of the right wrist due to loss of range of motion. For the loss of flexion found in the MP and PIP joints

[2] X-rays obtained on April 3, 2001 revealed an old carpal fracture and end-stage degenerative changes associated with ischemic necrosis of the lunate. The record reflects a prior scaphoid fracture in 1980.

[3] Appellant sustained a recurrence of disability on August 7, 2005 and returned to modified duty full time on August 14, 2006.

[4] Dr. Cox provided range of motion findings of the right thumb for flexion and extension which were normal.

[5] Table 16-28, page 467.

[6] Table 16-31, page 469.

of the fingers, Dr. Pichey utilized Figures 16-23 and 16-25 to rate impairment. For the index and middle fingers, 55 degrees at MP was 20 percent impairment and 95 degrees at PIP was 3 percent impairment. For the ring finger, 75 degrees at MP was eight percent impairment and 90 degrees at PIP was six percent impairment. For the small finger, 85 degrees at MP was three percent impairment and 95 degrees at PIP was three percent impairment. Dr. Pichey then combined the finger impairments derived for each joint to obtain the total for each finger.[7] This resulted in 22 percent impairment for the index and middle fingers, 14 percent impairment to the ring finger and 6 percent impairment of the small finger. Dr. Pichey then used Table 16-1 to convert the impairment of each digit to the hand, finding that the index and middle fingers each represented four percent impairment to the hand while the ring and small fingers were one percent impairment each. When added, this totaled 10 percent impairment to the hand which, when converted to upper extremity impairment under Table 16-2, results in 9 percent impairment to the arm. Dr. Pichey added the range of motion totals of 33 percent for the wrist and 9 percent to the arm contributed by the fingers to total 42 percent impairment. She also rated loss of grip strength under Table 16-34, finding that 62 percent loss of strength was 30 percent impairment to the upper extremity.[8] Dr. Pichey combined the range of motion impairment of 42 percent with the 30 percent for loss of strength to total 59 percent impairment of appellant's right arm.

In a September 4, 2003 decision, the Office granted appellant a schedule award for 59 percent impairment of her right arm. The period of the award ran for 184.08 weeks from March 31, 2003 to October 9, 2006.

On November 19, 2003 appellant requested reconsideration. She noted that she originally sustained injury to her right wrist in 1978 and that the employing establishment was negligent in failing to ensure that she received adequate treatment at that time. Appellant contended that the schedule award did not compensate her for her inability to perform certain household activities.

In an April 20, 2004 decision, the Office denied modification of the schedule award determination. It found that appellant did not submit any medical evidence to establish greater impairment. The Office also noted that schedule awards did not take in consideration such factors as limitations on lifestyle or daily activities.[9]

On January 10, 2007 appellant filed a claim for an additional schedule award. She submitted an October 24, 2006 report of Dr. Robert Pandya, Board-certified in internal medicine. Dr. Pandya reviewed a history of appellant's injury and medical treatment, noting that on August 4, 2005 she underwent additional right wrist surgery for a failed fusion. X-rays of September 1, 2005 showed a metallic plate and multiple screws present fixating the right wrist. The hardware was removed on April 19, 2006. Appellant was seen in follow up for intermittent pain in the wrist. In rating impairment to the right wrist, Dr. Pandya found that there were zero

[7] Combining abnormal motion at more than one finger joint, page 465.

[8] Table 16-34, page 509. The Board notes, however, that section 16.8 of the A.M.A., *Guides* notes that strength measurements are subjective in nature and, at page 508, provides that decreased strength cannot be rated in the presence of decreased motion.

[9] *See Kimberly M. Held*, 56 ECAB 670 (2005).

degrees of active range of motion in the joint as it had been fused by surgery. He noted mild tenderness to palpation over the healed scar and slight atrophy in the right forearm when compared with the left. Dr. Pandya examined the right shoulder, noting no impairment based on loss of range of motion or other pathology.

On April 22, 2007 Dr. Pichey reviewed the medical evidence and found that the report of Dr. Pandya did not support greater impairment to appellant's right upper extremity. She noted impairment due to loss of range of motion of the right wrist as 11 percent for loss of extension and 10 percent for loss of flexion, 5 percent for loss of radial deviation and 4 percent for loss of ulnar deviation. For the right elbow, Dr. Pichey found two percent loss of motion in supination. She found 30 percent upper extremity impairment due to loss of grip strength on the right. Dr. Pichey noted that the right fourth finger triggering was mild or one percent impairment to the upper extremity. She rated sensory loss of the radial and ulnar nerves, stating the maximum impairment allowed under Table 16-15 was 12 percent. Dr. Pichey graded the extent of sensory deficit as Grade 3, 60 percent, to find 7 percent impairment. She also rated sensory loss of the musculocutaneous nerve, noting the maximum impairment allowed under Table 16-15 was five percent. Dr. Pichey rated the extent of the sensory deficit as Grade 3, 40 percent, to find 2 percent impairment. She stated that she applied the Combined Values Chart to find total impairment of the right arm of 55 percent. Dr. Pichey advised that maximum medical improvement was represented by the October 24, 2006 report of Dr. Pandya.

In a January 17, 2008 decision, the Office denied appellant's request for an additional schedule award, finding that the medical evidence did not establish greater impairment.

On February 4, 2008 appellant requested a review of the record before an Office hearing representative. She resubmitted a copy of Dr. Pandya's October 24, 2006 report.

In an April 30, 2008 decision, the Office hearing representative affirmed the denial of an additional schedule award.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[10] and section 10.404 of the implementing federal regulations,[11] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*[12] has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404.

[12] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

ANALYSIS

The Board finds that the case is not in posture for decision as the impairment ratings of the Office medical adviser, Dr. Pichey, depart from the A.M.A., *Guides*.

Chapter 16 of the A.M.A., *Guides* rates impairment of the upper extremity based on such factors as loss in range of motion or sensory and strength deficit. In assessing loss of strength under subsection 16.8, it is provided that strength measures such as loss of grip and pinch strength are functional tests influenced by subjective factors.[13] For this reason, the A.M.A., *Guides* do not assign a large role to such measurements. As applicable to this case, it is noted that decreased strength cannot be rated in the presence of decreased motion that prevent the application of maximal force in the region being evaluated.[14] Dr. Pichey, in both reports assessing appellant's impairment, allowed for grip strength impairment in the presence of noted decreases in her right wrist range of motion. She did not provide any explanation as to why it was appropriate in this case to rate the loss of strength separately.[15]

In assessing impairment based on loss of range of motion to appellant's right wrist, Dr. Cox provided range of motion measurements that were relied upon by Dr. Pichey in making the initial 59 percent impairment rating. Most recently, Dr. Pandya noted that appellant had undergone additional surgery and that her wrist had been fused, with no range of motion of the joint. This is called ankylosis.[16] Dr. Pandya reported measurements of "[zero] degrees" for right wrist dorsiflexion, palmar flexion, radial deviation and ulnar deviation. However, he did not provide the actual measurements in which the position of the wrist was ankylosed. The A.M.A., *Guides* note that the joint is to be measured at the angle of ankylosis and the figures at section 16.4g provide impairment values specifically for loss due to ankylosis. This was not addressed by Dr. Pichey.[17] The Board notes that the impairment percentages Dr. Pichey listed on April 22, 2007 do not conform to the values for ankylosis of the wrist under section 16.4g.[18]

In rating sensory loss (pain) under Chapter 16, Dr. Pichey advised that Table 16-15 provides a maximum impairment of 12 percent based on the radial and ulnar nerves. The Board notes, however, that this deficit value is not listed in the table. In rating impairment of the median nerve below the forearm, the maximum percentage for sensory loss is 39 percent. Under this subsection, other deficit values are provided for the radial or ulnar nerves as they affect

[13] Page 507.

[14] The A.M.A., *Guides* note that in a rare case, an examiner may rate loss of strength if it represents an impairing factor not adequately considered by the other methods provided for rating impairment. Page 508.

[15] The A.M.A., *Guides* provide an alternative method for evaluating motor deficit or loss of strength at Table 16-15.

[16] Page 450.

[17] The medical evidence is also not clear as to the basis for rating two percent impairment on right elbow loss of supination.

[18] Figure 16-28 provides a range of 21 to 42 percent impairment for wrist joint ankylosis in extension and flexion and Figure 16-31 provides a range of 9 to 18 percent impairment for ankylosis in radial and ulnar deviation.

specific fingers. If Dr. Pichey intended to combine several of the smaller sensory deficit values, she did not clearly state how this was accomplished in her report. Due to these deficiencies, the April 22, 2007 impairment rating is of diminished probative value.

The medical evidence of record on appeal does not allow the Board to fully visualize the extent of appellant's impairment due to her accepted conditions. On remand, the Office should further develop the medical evidence as appropriate to determine the nature and extent of permanent impairment to appellant's right arm.

CONCLUSION

The Board finds that the case is not in posture for decision and requires further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2008 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further action in conformance with this decision.

Issued: September 16, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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