United States Department of Labor
Employees' Compensation Appeals Board

H.F., Appellant	)	
and	)	
U.S. POSTAL SERVICE, POST OFFICE, Chattanooga, TN, Employer	)	**Docket No. 09-338** **Issued: September 18, 2009**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
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 November 17, 2008 appellant, through counsel, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated November 3 and 5, 2008, which granted him an additional 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 has more than a six percent impairment of the right upper extremity and a four percent impairment of the left upper extremity, for which he received schedule awards.

FACTUAL HISTORY

On December 16, 2003 appellant, then a 58-year-old letter carrier, filed an occupational disease claim. On April 2, 2003 he first became aware of his bilateral carpal tunnel syndrome and realized that this condition was caused by his federal employment. By letter dated February 20, 2004, the Office accepted appellant's claim for bilateral carpal tunnel syndrome. Appellant underwent left carpal tunnel release on May 21, 2004 and right carpal tunnel release on June 4, 2004.

On November 5, 2004 appellant filed a claim (Form CA-7) for a schedule award. The Office granted him a schedule award for a two percent impairment of the right upper extremity and a two percent impairment of the left upper extremity covering the period November 3, 2004 to January 29, 2005.[1]

By letter dated January 5, 2007, the Office accepted appellant's claim for bilateral hand and wrist tenosynovitis and right wrist sprain of the radiocarpal joint.

On January 26, 2007 appellant underwent a left flexor carpi radialis release. On August 3, 2007 he underwent right pronator decompression.

On October 21, 2007 appellant filed a CA-7 form for an additional schedule award. An unsigned treatment note dated October 23, 2007 stated that appellant was stable post pronator release. He was released to return to work with no restrictions on October 23, 2007.

On December 12, 2007 an Office medical adviser reviewed appellant's medical records. He stated that appellant reached maximum medical improvement on October 23, 2007. The Office medical adviser noted that the record did not provide any objective evidence of limitations which increased appellant's impairment from two percent of the right and left upper extremities.

By decision dated April 24, 2008, the Office denied appellant's claim for an increased schedule award.

In a July 22, 2008 letter, appellant, through counsel, requested reconsideration. In a June 26, 2008 medical report, Dr. Eric D. Solomon, a Board-certified physiatrist, provided essentially normal findings on physical examination which included normal sensation throughout the upper extremities on light touch and two-point discrimination. An electromyogram revealed carpal tunnel syndrome. Dr. Solomon diagnosed carpal tunnel syndrome, radiocarpal sprain, tenosynovitis of the hand and wrist, enthesopathy of the wrist and elbow, and a median nerve lesion. Regarding the right upper extremity, he referred to Table 16-11, page 484 in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) and determined that appellant had a Grade 4 motor deficit in the distribution of the median nerve of 15 percent. Dr. Solomon referred to Table 16-10, page 482 in the A.M.A., *Guides* and determined that appellant had a Grade 4 sensory deficit, which represented 10 percent. He combined these deficits to total 24 percent impairment of the median nerve. Dr. Solomon stated that 24 percent of the maximum allowable deficit of 45 percent equaled an 11 percent impairment of the upper extremity due to carpal tunnel syndrome.[2] He further determined that appellant sustained a 10 percent impairment for right wrist weakness due to flexor carpi radialis. Dr. Solomon noted that the maximum impairment for the radiocarpal joint was 40 percent. He determined that appellant sustained a four percent impairment for right wrist tenosynovitis and enthesopathy. Dr. Solomon opined that appellant sustained a total right upper extremity impairment of 15 percent. Regarding the left upper extremity, he determined that appellant sustained a 10 percent motor impairment and a 10 percent sensory impairment

[1] The Board notes that the Office's decision granting appellant a schedule award for a two percent impairment of each upper extremity is not contained in the case record.

[2] Dr. Solomon did not specifically refer to Table 16-15, which provides 45 percent impairment for combined sensory and motor deficit of the median nerve below the forearm.

which he combined to calculate a 19 percent impairment of the median nerve or a 9 percent impairment of the upper extremity impairment due to carpal tunnel syndrome. Dr. Solomon also determined that appellant sustained a five percent impairment of the left wrist due to flexor carpi radialis which represented a two percent upper extremity impairment. He opined that appellant sustained a total left upper extremity impairment of 11 percent. Dr. Solomon concluded that appellant sustained a combined total upper extremity impairment of 24 percent impairment or whole person impairment of 14 percent.

On September 3, 2008 the Office medical adviser reviewed the medical evidence, including Dr. Solomon's April 24, 2008 report. He noted that Dr. Solomon reported normal sensation throughout the upper extremities including, light touch and two-point discrimination but found a 10 percent sensory deficit of the right upper extremity. The Office medical adviser stated that Dr. Solomon's 15 percent impairment rating for the right upper extremity was incorrect. He determined that Grade 4 motor loss constituted a 15 percent deficit of the right upper extremity (A.M.A., *Guides* 484, Table 16-11). The Office medical adviser multiplied the 39 percent maximum median nerve impairment below the midforearm by the 15 percent Grade 4 deficit to calculate a 5.8 or 6 percent impairment of the right upper extremity (A.M.A., *Guides* 492, Table 16-15). He multiplied the left side 10 percent motor impairment by the 39 percent maximum median nerve impairment below the midforearm to calculate a 4 percent impairment of the left upper extremity (A.M.A., *Guides* 492, Table 16-15). The Office medical adviser concluded that appellant sustained a six percent impairment of the right upper extremity and a four percent impairment of the left upper extremity. He concluded that appellant had an additional four percent impairment of the right upper extremity and two percent impairment of the left upper extremity. The Office medical adviser did not understand the methodology Dr. Solomon used to determine impairment of appellant's upper extremities.

By decision dated November 3, 2008, the Office found that appellant had a six percent impairment of the right upper extremity and a four percent impairment of the left upper extremity. By decision dated November 5, 2008, it granted appellant a schedule award for a six percent impairment of the right upper extremity and a four percent impairment of the left upper extremity, less the awards previously granted for each upper extremity.

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 to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[5] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure

[3] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[4] 20 C.F.R. § 10.404.

[5] 5 U.S.C. § 8107(c)(19).

equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[6]

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

> "If, after an *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 [in Tables 16-10a and 16-11a].
> >
> > 2. Normal sensibility and opposition strength with 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."[7] (Emphasis in the original.)

The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.[8]

ANALYSIS

Appellant contends on appeal that he has more than six percent impairment of his right upper extremity and four percent impairment of his left upper extremity. The Office accepted his claim for bilateral carpal tunnel syndrome and hand and wrist tenosynovits, and right wrist sprain of the radiocarpal joint. Appellant underwent several surgical procedures to treat the accepted conditions. The Office initially granted him a schedule award for a two percent impairment of the right upper extremity and a two percent impairment of the left upper extremity. After appellant underwent additional surgery, he requested an additional schedule award.

On June 26, 2008 Dr. Solomon noted normal findings on physical examination, including, normal sensation throughout the upper extremities on light touch and two-point discrimination. He diagnosed carpal tunnel syndrome, radiocarpal sprain, tensoynovitis of the hand and wrist, enthesopathy of the wrist and elbow, and a median nerve lesion. Dr. Solomon

[6] 20 C.F.R. § 10.404.

[7] A.M.A., *Guides* 495. *See T.A.*, 59 ECAB ___ (Docket No. 07-1836, issued November 20, 2007).

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

determined that appellant sustained a Grade 4 motor deficit in the distribution of the median nerve which represented a 15 percent motor deficit (A.M.A., *Guides* 484, Table 16-11). He further determined that appellant sustained a 10 percent Grade 4 sensory deficit (A.M.A., *Guides* 482, Table 16-10). Dr. Solomon stated that appellant sustained a combined 24 percent impairment of the median nerve. He determined that 24 percent of the maximum allowable deficit of 45 percent equaled an 11 percent impairment of the upper extremity due to carpal tunnel syndrome. Dr. Solomon further determined that appellant sustained a 10 percent impairment for right wrist weakness due to flexor carpi radialis. He noted that the maximum impairment for the radiocarpal joint was 40 percent. Dr. Solomon determined that appellant sustained a 4 percent impairment for right wrist tenosynovitis and enthesopathy, resulting in a total 15 percent impairment of the right upper extremity.

Regarding the left upper extremity, Dr. Solomon determined that appellant sustained a 10 percent motor impairment and a 10 percent sensory impairment which he combined to calculate a 19 percent impairment of the median nerve or a 9 percent impairment of the upper extremity impairment due to carpal tunnel syndrome. He also determined that appellant sustained a five percent impairment of the left wrist due to flexor carpi radialis impairment which represented a two percent upper extremity impairment. Dr. Solomon stated that appellant sustained a total left upper extremity impairment of 11 percent. He concluded that appellant sustained a combined total upper extremity impairment of 24 percent or a whole person impairment of 14 percent. While Dr. Solomon referred to Tables 16-10 and 16-11, he failed to indicate that he used Table 16-15 to identify the maximum impairment for the median nerve under this table in combining his motor and sensory impairments for the right and left upper extremities. Office procedures provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[9] Moreover, the report indicates that he combined the Grade 4 deficit for sensory loss under Table 16-10 with that under Table 16-11 for motor loss. This does not conform to a proper application of the tables and reduces the probative value of Dr. Solomon's impairment rating. As noted, the A.M.A., *Guides* set forth a procedure for assessing permanent impairment of the upper extremity due to carpal tunnel syndrome where there has been optimal recovery time following surgical decompression. Dr. Solomon did not properly apply this procedure or explain why it was not applicable to appellant. He also sought to rate impairment based on loss of grip strength. However, A.M.A., *Guides*, provide that in carpal tunnel cases, impairment values are not given for loss of grip strength.[10]

The Board finds that the Office medical adviser properly utilized the findings in Dr. Solomon's April 24, 2008 report and correlated them to specific provisions in the A.M.A., *Guides* to determine that appellant had a six percent impairment of the right upper extremity and a four percent impairment of the left upper extremity. On September 3, 2008 the Office medical adviser stated that Dr. Solomon's finding that appellant sustained a 15 percent impairment of the right upper extremity was incorrect, noting that he reported normal sensation but, found a 10 percent sensory impairment. He did not understand the methodology used by Dr. Solomon to determine impairment of appellant's upper extremities. Regarding the right upper extremity, the

[9] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[10] *See E.L.*, 59 ECAB ___ (Docket No. 07-2421, issued March 10, 2008); A.M.A., *Guide*s 494.

Office medical adviser multiplied the 15 percent motor deficit (Grade 4) with the 39 percent maximum median nerve (below the midforearm) impairment to calculate a 5.8 or 6 percent impairment of the right upper extremity (A.M.A., *Guides* 484, 492, Tables 16-11 and 16-15). Regarding the left upper extremity, the Office medical adviser multiplied the left side 10 percent motor deficit (Grade 4) by the 39 percent maximum median nerve (below the midforearm) impairment to calculate a 4 percent impairment of the left upper extremity (A.M.A., *Guides* 484, 492, Tables 16-11 and 16-15). He did not find any impairment due to sensory deficit. The Office medical adviser concluded that appellant was entitled to an additional four percent impairment of the right upper extremity and two percent impairment of the left upper extremity.

The Office medical adviser properly applied the A.M.A., *Guides* to Dr. Solomon's findings and reached an impairment rating of six percent impairment for the right upper extremity and four percent impairment for the left upper extremity. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a six percent impairment of the right upper extremity and four percent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant has failed to establish that he has more than a six percent impairment of the right upper extremity and a four percent impairment of the left upper extremity, for which he received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the November 5 and 3, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 18, 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