United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 09-1022**
	)	**Issued: April 22, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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 March 9, 2009 appellant, through her attorney, filed a timely appeal of the February 6, 2009 schedule award of the Office of Workers' Compensation Programs. 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 22 percent permanent impairment of her right upper extremity and 11 percent permanent impairment of her left upper extremity, for which she received schedule awards.

FACTUAL HISTORY

On August 19, 1999 appellant, then a 48-year-old mail processor, filed an occupational disease claim alleging that she developed numbness and loss of strength in her hands due to factors of her federal employment. An electromyogram (EMG) dated October 9, 1999 demonstrated evidence of bilateral median nerve entrapment at the wrists, mild on the left and moderate on the right consistent with bilateral carpal tunnel syndrome. The Office accepted that

appellant sustained bilateral carpal tunnel syndrome on November 10, 1999 and authorized right surgical release on November 16, 1999. Dr. Christopher D. Casscells, a Board-certified surgeon, performed right carpal tunnel release on November 12, 1999. Appellant returned to light-duty work on December 6, 1999. She returned to full duty on July 1, 2002.

Appellant filed a recurrence of disability claim on October 24, 2003 and alleged that the weakness in her hands had recurred. An EMG demonstrated carpal tunnel entrapment of the right and left median nerves involving motor and sensory components. The Office denied this claim on February 19, 2004. Appellant requested an oral hearing.

On July 20, 2001 appellant, then a 50-year-old mail processor, filed an occupational disease claim alleging that she sustained a tear in her right rotator cuff due to her employment duties of feeding and sweeping mail into a machine. She first became aware of her condition on June 22, 2000 and first attributed her condition to her employment on December 4, 2000. The Office initially accepted her claim for bursitis of the right shoulder on October 31, 2001. It expanded appellant's claim on November 28, 2001 to include right rotator cuff tear and the February 2, 2001 anterior acromioplasty and repair of the right rotator cuff tear. Appellant underwent additional surgery on December 20, 2001 consisting of a right Mumford procedure including removal of one centimeter of the distal clavicle.

Appellant requested a schedule award on April 27, 2004 and submitted a report dated February 12, 2004 from Dr. Nicholas Diamond, an osteopath, who diagnosed bilateral carpal tunnel syndrome with right carpal tunnel release on November 12, 1999, right thumb basilar joint tenosynovitis, as well as appellant's right rotator cuff tear and surgeries. Dr. Diamond noted that she had nerve conduction velocity (NCV) and EMG studies on November 22, 2003, which revealed bilateral carpal tunnel syndrome. He performed a physical examination and noted that appellant's sensory examination revealed decreased sensation to light touch and to pinprick over the median nerve distribution of upper extremities. Dr. Diamond provided a correlation of his findings with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) awarding appellant 1 percent impairment due to loss of range of motion of the right thumb,[1] 31 percent impairment due to sensory deficit of the right median nerve,[2] 4 percent impairment due to motor strength deficit of the right supraspinatus,[3] 4 percent impairment due to motor strength deficit of the right deltoid[4] and 10 percent impairment due to right grip strength deficit.[5] He combined these impairments to reach 43 percent impairment of the right upper extremity and added an additional 3 percent impairment due to pain in accordance with Chapter 18 of the A.M.A., *Guides*[6] for 46 percent total impairment of the right upper extremity. Dr. Diamond awarded appellant 31 percent impairment of the left upper

[1] A.M.A., *Guides* 577, Figure 16-15.

[2] *Id.* at 492, Table 16-15, 482, Table 16-10.

[3] *Id.* at 484, Table 16-11; 499, Table 16-15.

[4] *Id.*

[5] *Id.* at 509, Table 16-34.

[6] *Id.* at 574, Figure 18-1.

extremity due to sensory deficit of the left median nerve and added an additional 3 percent impairment due to pain under Chapter 18 of the A.M.A., *Guides* to reach a total impairment rating of 34 percent for the left upper extremity.

The Office medical adviser reviewed the evidence of record on August 12, 2004 and found that appellant had 17 percent impairment of her right upper extremity due to 1 percent impairment of her right thumb, 5 percent impairment due to carpal tunnel syndrome[7] and 10 percent impairment of the right shoulder[8] as well as an additional 2 percent for pain.[9] The Office medical adviser found five percent impairment due to left carpal tunnel syndrome[10] and an additional two percent impairment due to pain for a total left upper extremity impairment of seven percent.[11]

By decision dated September 7, 2004, the Office granted appellant a schedule award for 17 percent impairment of her right upper extremity and 5 percent impairment of her left upper extremity.

On September 17, 2004 Dr. Casscells performed a right trigger finger release on the long finger.

Appellant, through her attorney, requested an oral hearing on September 10, 2004. She submitted reports dated October 13, 2004 and January 6, 2005 from Dr. Casscells, a Board-certified orthopedic surgeon, which referenced her previous claim for carpal tunnel syndrome. Dr. Casscells stated that appellant underwent a right carpal tunnel release on November 12, 1999 and returned to work. He stated that the chronic repetitive nature of her work resulted in a recurrence of bilateral carpal tunnel syndrome and that as demonstrated by an October 22, 2003 EMG her symptoms had worsened.

By decision dated March 7, 2005, the hearing representative noted that the Office had denied appellant's claim for a recurrence of her carpal tunnel syndrome. He noted that at the oral hearing appellant's attorney had asserted that her claim should be developed as a new occupational disease. The hearing representative reviewed the Office's September 7, 2004 decision and noted that the impairment ratings should have been listed as 17 percent of the right upper extremity and 5 percent of the left upper extremity. He noted that the Office medical adviser did not provide any medical reasoning supporting his impairment rating and distinguishing his methods from Dr. Diamond. The hearing representative directed the Office to create a new occupational disease claim for carpal tunnel syndrome for appellant with evidence related to this condition beginning in October 2003, double this claim with her 1999 carpal tunnel claim and issue a decision regarding her claim for bilateral carpal tunnel syndrome and

[7] *Id.* at 495.

[8] *Id*. at 506, Table 16-27.

[9] *Id.* at 574, Figure 18-1.

[10] *Id*. at 495.

[11] *Id*. at 574, Figure 18-1.

right long trigger finger. The hearing representative also set aside the Office's September 7, 2004 decision and directed the Office to double this claim with the two carpal tunnel claims in order for the Office medical adviser to review the complete case record and provide medical reasoning for his impairment rating.

The district medical adviser reviewed the medical evidence on July 12, 2005 and diagnosed stenosing tenosynovitis and increasing carpal tunnel syndrome. He opined that appellant had five percent impairment of her right upper extremity and that she reached maximum medical improvement on March 28, 2005. The Office requested that the district medical adviser address her permanent impairment due to bilateral carpal tunnel syndrome, right shoulder conditions and right trigger finger.

In a letter dated October 18, 2005, the Office accepted appellant's claim for right trigger finger and aggravation of bilateral carpal tunnel syndrome.

In a report dated July 17, 2006, the district medical adviser found 10 percent sensory impairment due to Dr. Diamond's finding of decreased sensation to light tough and pinprick over the median nerve distribution of the right and left upper extremities or Grade 4 impairment of 25 percent multiplied by the value of the median nerve of 39 percent. The district medical adviser found that a resection arthroplasty of the distal clavicle was 10 percent impairment. He noted that loss of strength should not be combined with other impairments. The district medical adviser found 1 percent impairment for range of motion deficit of the right thumb, 10 percent due sensory deficit of the median nerve and 10 percent for right shoulder resection arthroplasty or 20 percent impairment of the right upper extremity. He also allowed three percent due to pain in accordance with Chapter 18 of the A.M.A., *Guides.*[12] In regard to appellant's left upper extremity, the district medical adviser found 10 percent of the left upper extremity due to Grade 4 sensory impairment of the left median nerve and 3 percent due to pain in accordance with Chapter 18. He noted that any residual discomfort from the right trigger finger would be covered in the pain award. The district medical adviser doubled the schedule awards.

By decision dated August 2, 2006, the Office granted appellant a schedule award for an additional nine percent impairment of her upper extremities. Appellant, through her attorney, requested an oral hearing on August 8, 2006. By decision dated March 2, 2007, the hearing representative found that the district medical adviser's report represented the weight of the medical evidence and established her permanent impairment.

On April 12, 2007 appellant, through her attorney, requested reconsideration and submitted a report dated March 8, 2007 from Dr. Diamond, who provided range of motion for appellant's wrists and noted her right thumb had extension of 40 degrees. Dr. Diamond noted appellant's grip and pinch strength and found diminished light touch involving the median nerve bilaterally. He stated that appellant rated her pain as between 0 and 8 out of 10 in the wrists and hands bilaterally. Dr. Diamond awarded 31 percent impairment of the upper extremities due to Grade 2 sensory deficit of the median nerves and 1 percent impairment for loss of range of motion of the right thumb joint.

[12] *Id*. at (5th ed. 2001).

The district medical adviser reviewed Dr. Diamond's report on June 3, 2007 and disagreed with his sensory loss grading. He opined that appellant had a Grade 4 rather than Grade 2 sensory impairment. On September 13, 2007 the district medical adviser again found that she had no additional impairment.

By decision dated October 11, 2007, the Office denied modification of its prior decision. Appellant appealed this decision to the Board and in an Order Remanding Case dated September 22, 2008,[13] the Board directed the Office to combine her claims as initially instructed by the hearing representative and to issue an appropriate decision. The Office reissued the October 11, 2007 decision on February 6, 2009.

On appeal, appellant's attorney alleged that there was an unresolved conflict of medical opinion evidence regarding the extent of appellant's permanent impairment, which required referral to an impartial medical specialist.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[14] and its implementing regulations[15] 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.[16] Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[17]

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides* his opinion is of diminished probative value in establishing the degree of permanent impairment and the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.[18]

[13] Docket No. 08-1195 (issued September 22, 2008).

[14] 5 U.S.C. § 8107.

[15] 20 C.F.R. § 10.404.

[16] *Id.*

[17] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

[18] *Linda Beale*, 57 ECAB 429, 434 (2006).

ANALYSIS

Appellant's physician, Dr. Diamond, an osteopath, provided his impairment rating on February 12, 2004 and found that appellant had a Grade 2 impairment of the median nerve for 31 percent impairment of the upper extremity. Grade 2 impairment encompasses decreased superficial cutaneous pain and tactile sensibility with abnormal sensations or moderate pain that may prevent some activities with values of 61 to 80 percent.[19] The Board notes that Dr. Diamond found that appellant's sensory examination demonstrated only decreased sensation to light touch and pin prick in the median nerve distribution. Dr. Diamond also provided an impairment rating for loss of strength of the right supraspinatus and deltoid muscles as well as loss of grip strength. In providing these ratings he failed to consider that the A.M.A., *Guides* provide loss of strength should not be rated in the presence of decreased range of motion, such as the loss of range of motion of appellant's thumb found by Dr. Diamond,[20] who also estimated that appellant had three percent impairment due to pain found in Chapter 18 of the A.M.A., *Guides*. The fifth edition of the A.M.A., *Guides* allows for impairment percentage to be increased by up to three percent for pain by using Chapter 18, which provides a qualitative method for evaluating impairment due to chronic pain. If an individual appears to have a pain-related impairment that has increased the burden on his or her condition slightly, the examiner may increase the percentage up to three percent. However, examiners should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.[21] Dr. Diamond did not provide any reason for adding the additional impairment rating for pain. Such reasoning would be necessary as he already accorded appellant 31 percent sensory impairment of the median nerve. The Board finds that the additional three percent impairment for pain, should not be considered in appellant's final impairment rating.

Dr. Diamond completed a supplemental report on March 8, 2007 awarding 31 percent impairment of the upper extremity due to Grade 2 sensory deficit of the median nerves bilaterally and 1 percent impairment for loss of range of motion of the right thumb joint. He again noted diminished light touch involving the median nerve bilaterally and stated that appellant rated her pain as between 0 and 8 out of 10 in the wrists and hands bilaterally.

The district medical adviser reviewed Dr. Diamond's findings of decreased sensation to light touch and to pinprick over the median nerve distribution of upper extremities as well as appellant's statement that her hand pain ranged from 0 to 8 out of 10. He opined that her objective findings supported Grade 4 impairment of the median nerve. Grade 4 impairment is the result of distorted superficial tactile sensibility with or without minimal abnormal sensations or pain that is forgotten during activity with values of 1 to 25 percent. The Board concludes that these findings of Dr. Diamond are comparable to Grade 4 impairment under the A.M.A., *Guides*, distorted superficial tactile sensibility or diminished light touch. It is well established that, when

[19] A.M.A., *Guides* 482, Table 16-10.

[20] *Id*. at 508. "Decreased strength *cannot* be rated in the presence of decreased motion…."

[21] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); A.M.A., *Guides*, 571, 18.3(b); *P.C.*, 58 ECAB 539 (2007); *Frantz Ghassan*, 57 ECAB 349 (2006).

the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides* his opinion is of diminished probative value in establishing the degree of permanent impairment and the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.[22] The Board finds that the district medical adviser properly reduced appellant's impairment rating to reflect the findings provided by Dr. Diamond.

CONCLUSION

The Board finds that appellant has no more than 22 percent permanent impairment of her right upper extremity and 11 percent permanent impairment of her left upper extremity for which she has received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2010
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

[22] *Linda Beale*, 57 ECAB 429, 434 (2006).