

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

K.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Leandro, CA, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 09-1966
Issued: April 6, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 27, 2009 appellant filed a timely appeal from an October 27, 2008 decision of the Office of Workers' Compensation Programs granting her a 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 greater than 16 percent impairment of her right upper extremity and 16 percent impairment of the left upper extremity, for which she received schedule awards.¹

¹ On appeal appellant references her disagreement with an overpayment decision. The record reflects that the Office issued an overpayment decision on June 3, 2008 in which it found her at fault in the creation of an overpayment in the amount of \$7,183.80. As this decision was not issued within one year of the July 27, 2009 appeal to the Board, the Board lacks jurisdiction to consider this decision. 20 C.F.R. § 501.3(d)(2); *see Linda Beale*, 57 ECAB 429 (2006).

FACTUAL HISTORY

This case is before the Board for the second time. In the first appeal, the Board, on April 21, 2008, set aside an August 20, 2007 overpayment decision and remanded the case for further proceedings.² In its August 20, 2007 decision, the Office finalized its July 16, 2007 preliminary determination of an overpayment, finding that appellant was at fault in the creation of an overpayment in the amount of \$7,183.80 for the period April 10 to July 7, 2007 because she knowingly received wage-loss compensation benefits after she had returned to modified work. Thus, it denied appellant's request for waiver of the recovery of the overpayment. The Board found the evidence of record was devoid of any evidence that compensation was paid for the period in question. The facts and the circumstances of the case are set forth in the Board's prior decision and are hereby incorporated by reference.³

On September 4, 2007 appellant filed a claim for a schedule award due to the effects of her employment-related bilateral carpal tunnel syndrome and resultant surgery.

The Office referred appellant for a second opinion evaluation with Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, on March 5, 2008 to determine the nature of her condition and extent of any disability. In a report dated April 11, 2008, Dr. Hanley found normal two-point discrimination in all fingers and a positive Tinel's sign with some dyesthesia in both hands. (RD 6/3/2008) Using the instructions to determine an impairment rating for carpal tunnel syndrome following surgery on page 495 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*,) (fifth edition), he concluded that appellant fit within scenario one. Scenario one relates to an individual who has positive clinical findings of electrical conduction delays and a medium nerve dysfunction and continues to have complaints of pain or paresthesias and/or difficulties with performing certain activities. Citing to Table 16-10, page 482 of the A.M.A., *Guides*, Dr. Hanley determined that appellant had a Grade 3 or 40 percent sensory deficit. He found there was no ratable impairment for any motor deficit using Table 16-11, page 484 of the A.M.A., *Guides*. Dr. Hanley found a 39 percent maximum sensory deficit for median neuropathy using Table 16-15, 492 of the A.M.A., *Guides*. Multiplying 40 percent by 39 percent resulted in a 16 percent impairment in each upper extremity (15.6 percent round up).

On August 27, 2008 Dr. Charlene Niizawa, an attending Board-certified physiatrist, reviewed Dr. Hanley's report and agreed with his impairment rating.

In an October 21, 2008 report, Dr. Ellen Pichey, an Office medical adviser and physician Board-certified in family medicine and occupational medicine, reviewed Dr. Hanley's April 11, 2008 impairment rating and agreed with his determination.

² Docket No. 08-201 (issued April 21, 2008).

³ On September 26, 2006 appellant, then a 47-year-old letter carrier, filed an occupational disease claim alleging that her carpal tunnel syndrome was employment related. The Office accepted the claim for bilateral carpal tunnel syndrome and authorized carpal tunnel surgery, which occurred on January 8, 2007. In a February 6, 2007 memorandum to file, a claims examiner stated that appellant would be placed on the periodic rolls for temporary total compensation. However, the record does not contain a letter to appellant informing her of this decision. Appellant stopped work on January 8, 2007 and returned to modified work on April 10, 2007.

By decision dated October 27, 2008, the Office issued a schedule award for a 16 percent permanent impairment to each upper extremity. The period of the award was 99.84 weeks from July 10, 2007 to February 9, 2008.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulations⁵ 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.⁶ 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 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.⁷

Office procedures⁸ 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, Table 16-11 and Table 16-15.⁹

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome as a result of her employment duties. It also authorized a carpal tunnel release, which occurred on January 8, 2007. The issue to be resolved is whether appellant has established that she has greater than 16 percent impairment of her right upper extremity and 16 percent impairment of the left upper extremity, for which she received schedule awards.

The Office referred appellant to Dr. Hanley, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Hanley noted that appellant had a bilateral median nerve sensory Grade 3 deficit under Table 16-10, page 482 of the A.M.A., *Guides*. This allows between 26 and 60 percent for a Grade 3 sensory deficit. Dr. Hanley rated appellant with a sensory deficit of 40 percent. Under Table 16-15, page 492 of the A.M.A., *Guides*, maximum impairment of 39 percent is allowed for sensory impairment to the median nerve below the midforearm.

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

⁵ 20 C.F.R. § 10.404.

⁶ 5 U.S.C. § 8107(c)(19).

⁷ 20 C.F.R. § 10.404; *see I.F.*, 60 ECAB ____ (Docket No. 08-2321, issued May 21, 2009); *A.A.*, 59 ECAB ____ (Docket No. 08-951, issued September 22, 2008).

⁸ *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exhibit 4 (June 2003). *See also Cristeen Falls*, 55 ECAB 420 (2004).

⁹ A.M.A., *Guides* 491, 482, 484, 492, respectively; *see Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

Dr. Hanley properly determined that appellant had 16 percent impairment in each right upper extremity, which was properly rounded up from 15.6 percent.¹⁰

Appellant's attending Board-certified physiatrist, Dr. Niizawa, and Dr. Pichey, an Office medical adviser and physician Board-certified in family medicine and occupational medicine, agreed that this was the degree of impairment appellant sustained due to her accepted employment injury. There is no medical evidence that appellant has greater than 16 percent permanent impairment of her right upper extremity and 16 percent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she was entitled to a schedule award for greater than 16 percent permanent impairment of the right upper extremity and 16 percent permanent impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 27, 2008 is affirmed.

Issued: April 6, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ The policy of the Office is to round the calculated percentage of impairment to the nearest whole number. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (January 2010). Fractions are rounded up from .50. See *J.P.*, 60 ECAB ____ (Docket No. 08-832, issued November 13, 2008); *Carl J. Cleary*, 57 ECAB 563 (2006).