

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

R.C., Appellant)
and) Docket No. 09-2284
DEPARTMENT OF DEFENSE, DEFENSE) Issued: August 13, 2010
CONTRACT MANAGEMENT AGENCY,)
West Valley City, UT, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 15, 2009 appellant filed a timely appeal from an August 19, 2009 merit decision of the Office of Workers' Compensation Programs regarding a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than 25 percent right upper extremity impairment, for which she received schedule awards.

On appeal, appellant contends that the Office should not have combined both her right upper extremity injuries in calculating the amount of her schedule award. She also argues that the schedule award decision was not fair or reasonable and that she is unable to hold items in her hand.

FACTUAL HISTORY

The Office accepted that in August 2005 appellant, then a 50-year-old procurement technician, sustained right carpal tunnel syndrome due to her daily use of a computer.¹ Appellant underwent a right carpal tunnel release on March 31, 2006. On July 27, 2006 she filed a claim for a schedule award.

By decision dated August 28, 2006, the Office denied appellant's claim for a schedule award finding that the medical evidence of record did not establish that she sustained any permanent impairment.

On October 19, 2006 appellant filed a request for reconsideration.

Nerve conduction tests performed on September 27, 2006 revealed distal latency prolongation of the right median antidromic sensory and median palmar studies. Further, an electromyography (EMG) test was abnormal and showed a chronic right median neuropathy at the wrist.

By decision dated December 1, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence of record was cumulative, repetitious or irrelevant to the issue of whether she was entitled to a schedule award.

On March 30, 2007 appellant underwent a second right open carpal tunnel release with epineurolysis.

The Office referred appellant to Dr. Brian H. Morgan, a Board-certified physiatrist, for an impairment rating.

In a July 11, 2008 report, Dr. Morgan reviewed appellant's medical history and noted her complaints of numbness, pins and needle dysesthesia and aching in the right hand. Physical examination revealed slight swelling and a circumferential difference of .5 centimeters of the right and left wrists. On the right, the Tinel's test, Phalen's maneuver and reverse Phalen's maneuver were positive; however, the tests were all negative on the left. Manual muscle strength testing was five out of five. Two-point discrimination was within normal limits at less than six millimeters in both the median distributions bilaterally, as well as radial and ulnar distributions. Deep tendon reflexes were two plus at both upper extremities. Dr. Morgan diagnosed right median neuropathy of the wrist confirmed by an EMG and nerve conduction tests performed on September 27, 2006, status post endoscopic carpal tunnel release on March 31, 2006 and March 30, 2007 and normal sensibility and opposition strength on physical examination but positive Tinel's test and Phalen's maneuvers on the right as compared with the left. He opined that, under the 5th edition of the A.M.A., *Guides*, appellant had five percent right upper extremity impairment. Dr. Morgan cited to page 495, which provides that, if after an optimal recovery time following surgical decompression, an individual still continues to

¹ The Office initially denied appellant's claim by decision dated November 7, 2005 on the grounds that she did not provide sufficient medical evidence to establish causal relationship. This decision was set aside on January 19, 2006 by an Office hearing representative.

complain of pain, paresthesia or difficulties in performing certain activities, three possible scenarios could be present. He stated that appellant's situation best fit the second scenario as she had abnormal EMG testing results and objective findings of a positive Tinel's test and positive Phalen's maneuvers. Dr. Morgan also noted her complaints of difficulties with daily living activities and found that, in accordance with this section of the A.M.A., *Guides*, a five percent impairment rating was justified.

On December 5, 2008 the Office referred appellant's record to Dr. Morley Slutsky, an Office medical adviser Board-certified in occupational medicine. It noted that appellant previously received a schedule award for 21 percent right upper extremity impairment on November 3, 2006 for her accepted conditions of right elbow contusion and right lateral epicondylitis in Office file number xxxxxx886.

On December 6, 2008 Dr. Slutsky noted Dr. Morgan's findings of normal sensory and motor testing, positive Tinel's and Phalen's tests and abnormal EMG and nerve conduction tests. He agreed that page 495 of the A.M.A., *Guides* allowed five percent right upper extremity impairment. Dr. Slutsky totaled appellant's right upper extremity impairment by combining the previous 21 percent right upper extremity impairment for her elbow condition with the 5 percent right upper extremity impairment for the carpal tunnel syndrome using the Combined Values Chart on page 604. He found total right upper extremity impairment of 25 percent.

By decision dated February 17, 2009, the Office found that appellant had 25 percent permanent impairment of the right upper extremity. As appellant previously received a schedule award for 21 percent right upper extremity impairment, she was compensated for the additional four percent impairment of her right arm.

On March 17, 2009 appellant requested a telephonic hearing before an Office hearing representative that was held on June 15, 2009. She contended that her right elbow epicondylitis was not related to her right carpal tunnel syndrome and that she was confused why they were both calculated in determining the schedule award for her carpal tunnel syndrome.

In a March 5, 2009 report, Dr. Michael H. Sumko, a Board-certified orthopedic surgeon, stated that appellant sustained lateral epicondylitis but that this condition had no connection or relationship to her carpal tunnel syndrome. On July 9, 2009 he reiterated that, while appellant's epicondylitis and carpal tunnel syndrome were related to her repetitive employment activities, they were not causatively related to one another. Dr. Sumko noted that her epicondylitis was diagnosed and treated in 2003, three years prior to her 2006 carpal tunnel syndrome.

By decision dated August 19, 2009, an Office hearing representative affirmed the February 17, 2009 schedule award. Although appellant had 5 percent right upper extremity impairment due to carpal tunnel syndrome, when combined under the Combined Values Chart of the A.M.A., *Guides* with the 21 percent right upper extremity impairment previously awarded, this totaled 25 percent impairment to the right.

LEGAL PRECEDENT

The schedule award provision² of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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. The Act, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of the Office.⁵ 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 scheduled losses.⁶

The fifth edition of the A.M.A., *Guides*, regarding carpal tunnel syndrome, provides that, 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 EMG 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), oppositional strength, and nerve conduction studies: there is no objective basis for an impairment rating.”⁷

ANALYSIS

The Office accepted that appellant sustained right carpal tunnel syndrome due to her federal employment. Appellant underwent right open carpal tunnel releases on March 31, 2006 and March 30, 2007. The Office found that appellant had a total 25 percent right upper

² 5 U.S.C. § 8107.

³ *Id.* at §§ 8101-8193.

⁴ 20 C.F.R. § 10.404.

⁵ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781, 783-84 (1986).

⁶ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁷ A.M.A., *Guides* 495. See also B.P., 60 ECAB __ (Docket No. 08-1457, issued February 2, 2009).

extremity impairment. Subtracting out the prior 21 percent impairment appellant received for her right elbow conditions under the separate claim, the Office granted a schedule award for an additional 4 percent impairment of the right upper extremity. This issue is whether appellant has more than 25 percent impairment of the right arm.

The Office referred appellant to Dr. Morgan for an impairment rating. In a July 11, 2008 report, Dr. Morgan diagnosed right median neuropathy of the wrist confirmed by EMG and nerve condition studies performed on September 27, 2006. Physical examination revealed slight swelling of the right wrist and positive Tinel's test, Phalen's maneuver and reverse Phalen's maneuver on the right. However, appellant demonstrated normal sensibility and opposition strength. Dr. Morgan also noted her complaints of difficulties with daily living activities. He opined that, according to page 495 of the A.M.A., *Guides*, appellant sustained five percent permanent impairment of her right upper extremity due to her carpal tunnel syndrome.⁸ Dr. Morgan determined that, based on the abnormal EMG and objective findings on the Tinel's test and Phalen's maneuvers, as well appellant's complaints of difficulties with daily living activities, that she fit the second of the three possible scenarios provided for continuing complaints after an optimal recovery time following surgical decompression.⁹

The Office properly referred Dr. Morgan's report to Dr. Slutsky, an Office medical adviser.¹⁰ In a December 6, 2008 report, Dr. Slutsky agreed with Dr. Morgan's finding that appellant sustained five percent impairment due to right carpal tunnel syndrome. He noted Dr. Morgan's findings of normal sensory and motor testing with respect to the right median nerve distribution. Based on the abnormal EMG and nerve conduction tests, as well as the positive Tinel's and Phalen's tests, he agreed that appellant fit the second scenario for carpal tunnel syndrome found on page 495 of the A.M.A., *Guides*.¹¹ Dr. Slutsky rated total impairment to her right upper extremity by combining the prior 21 percent impairment with the 5 percent rating for the right carpal tunnel syndrome using the Combined Values Chart on page 604.¹² He found that appellant sustained a total 25 percent upper extremity impairment.

The Board finds that Drs. Morgan and Slutsky properly found that appellant sustained five percent right upper extremity impairment due to her right carpal tunnel syndrome. The physicians properly applied her postsurgical decompression findings to page 495 of the A.M.A., *Guides*.¹³ The findings of normal sensibility and opposition strength, but with positive Tinel's test and Phalen's maneuvers coincide with the second scenario on page 495. This scenario provides that residual carpal tunnel syndrome is still present and that an impairment rating of

⁸ See A.M.A., *Guides* 495.

⁹ See *id.*

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹¹ See A.M.A., *Guides* 495.

¹² See *id.* at 604.

¹³ See *id.* at 495.

five percent may be justified.¹⁴ Thus, the finding of five percent right upper extremity impairment is based on a proper application of the A.M.A., *Guides*.

The Board finds that Dr. Slutsky properly used the Combined Values Chart to combine appellant's previous 21 percent upper extremity impairment with the 5 percent impairment for carpal tunnel syndrome to total 25 percent permanent impairment of the right upper extremity.¹⁵ It is well established that preexisting impairments to the scheduled member are to be included when determining entitlement to a schedule award.¹⁶ Office procedures state that any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury. In that case, the percentage already paid is subtracted from the total percentage of impairment.¹⁷ Even though appellant's right elbow epicondylitis and right carpal tunnel syndrome arose separately from her federal job duties, they were properly combined to determine that appellant sustained 25 percent total impairment. The Office properly subtracted out appellant's previous schedule award for 21 percent impairment to find an additional 4 percent impairment.¹⁸ Appellant did not submit any additional medical evidence to establish that she has impairment.¹⁹

On appeal, appellant contends that the schedule award decision was not fair and that she is still unable to hold things in her right hand. Factors, such as limitations on daily activities, do not go into the calculation of a schedule award.²⁰ As Drs. Slutsky and Morgan properly applied the 5th edition of the A.M.A., *Guides* to the findings on physical examination and nerve conduction tests in determining the percentage of permanent impairment to the right upper extremity. Thus, the Board finds that the Office properly issued a schedule award for an additional four percent impairment of the right upper extremity.

CONCLUSION

The Board finds that appellant does not have more than an addition four percent impairment of her right upper extremity.

¹⁴ See *id.*

¹⁵ See *id.* at 604. See also *Carol A. Smart*, 57 ECAB 350 (2006).

¹⁶ See *Michael C. Milner*, 53 ECAB 446, 450 (2002); *Raymond E. Gwynn*, 35 ECAB 247 (1983).

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7a(2) (November 1998).

¹⁸ See *id.*

¹⁹ See *N.M.*, 58 ECAB 222 (2007).

²⁰ See *E.L.*, 59 ECAB ____ (Docket No. 07-2421, issued March 10, 2008).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2009 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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