United States Department of Labor
Employees' Compensation Appeals Board

N.D., Appellant	)	
and	)	**Docket No. 09-1369**
	)	**Issued: February 1, 2010**
U.S. POSTAL SERVICE, PRIORITY MAIL CENTER Romulus, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 5, 2009 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated April 3, 2009. 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 permanent impairment due to his accepted condition of carpal tunnel syndrome warranting a schedule award.

FACTUAL HISTORY

On March 27, 2006 appellant, then a 42-year-old clerk, filed an occupational disease claim alleging that he developed carpal tunnel syndrome due to factors of his federal employment. He submitted an electromyogram and nerve conduction study of April 8, 2003 which was interpreted as abnormal with evidence of bilateral median motor nerve neuropathy of the wrists or carpal tunnel syndrome. Dr. Jiab H. Suleiman, appellant's attending osteopath, performed a left carpal tunnel release on April 6, 2004. The Office accepted appellant's claim

for bilateral carpal tunnel syndrome on May 17, 2004. Dr. Suleiman performed a right carpal tunnel release on May 11, 2004.

On November 4, 2005 appellant requested to change physicians from Dr. Suleiman to Dr. Richard Singer, a Board-certified orthopedic and hand surgeon. The Office authorized the change of physicians on December 13, 2005.

In a report dated March 6, 2006, Dr. Singer recommended glucose tolerance test and another electromyogram (EMG). Appellant underwent nerve conduction studies on April 17, 2006 and there was no electrodiagnostic evidence for bilateral median or ulnar neuropathy. Dr. Singer examined appellant on June 21, 2006 and recommended work reconditioning and strengthening. He stated that appellant's median nerves were functioning normally. On September 21, 2006 Dr. Singer reviewed a digital video disc (DVD) depicting appellant's date-of-injury position and opined that he could perform the functions of this position after "a couple weeks of work reconditioning."

Appellant requested to change physicians from Dr. Singer in a letter received by the Office on October 11, 2006. The Office denied this request by letter dated November 8, 2006. In a note dated November 27, 2006, Dr. Singer released appellant to return to unrestricted work on November 28, 2006. He completed a separate report on November 27, 2006, noting that appellant missed his appointment but had received work reconditioning. Dr. Singer stated, "Based on the above and the conditions of [appellant's] no-show today, I have released him back to full, unrestricted duty. However, it should be noted that I do not understand the reason for his disability as it is or was when I first saw him. [Appellant] did not have positive rapid exchange gripping in March 2006. I do not believe that his job would have caused or aggravated his problems."

The Office proposed to terminate appellant's compensation benefits by letter dated January 8, 2007, based on Dr. Singer's reports. Appellant disagreed with the Office's proposed termination and requested a second opinion evaluation. He alleged that Dr. Singer did not provide him with adequate care.

By decision dated February 15, 2007, the Office terminated appellant's compensation and medical benefits effective February 18, 2007.

Appellant requested an oral hearing on March 6, 2007. By decision dated July 31, 2007, the Branch of Hearings and Review affirmed the February 15, 2007 decision terminating appellant's compensation and medical benefits.[1]

Appellant requested a schedule award on October 11, 2007. In a January 17, 2008 report, Dr. Jeffrey F. Wirebaugh, a Board-certified family practitioner, found no swelling or deformity of the wrists, some thenar atrophy on the left and positive Phalen's test on the left. He found

[1] The Office issued the last merit decision addressing appellant's continuing disability and medical residuals resulting from his condition on July 31, 2007. Appellant did not file this appeal with the Board until May 5, 2009. As more than one year has lapsed from the date of the Office's decision to the appeal to the Board, the Board may not consider the termination issue. 20 C.F.R. § 501.3(d).

two-point discrimination was eight millimeters on the left median nerve distribution and six millimeters on the right. Dr. Wirebaugh stated, "Referring to paragraph 2 on page 495 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* fifth edition, the claimant has a five percent impairment of his right upper extremity and a five percent impairment of his left upper extremity."

The district medical adviser reviewed appellant's claim on March 1, 2008 and stated that the A.M.A., *Guides* did not support Dr. Wirebaugh's impairment rating as appellant did not have nerve conduction or EMG studies documenting abnormal sensory latencies as required.

Appellant submitted physical therapy notes on May 2, 2008.[2] The district medical adviser reviewed the file on August 1, 2008 and again stated that appellant's permanent impairment could not be determined without updated EMG of the bilateral upper extremities.

The Office denied appellant's claim for a schedule award by decision dated September 12, 2008 finding that Dr. Wirebaugh's rating was of little probative value as he did not provide a date of maximum medical improvement and his report did not comport with the A.M.A., *Guides*.

Appellant, through his attorney, requested an oral hearing on September 15, 2008. He testified that Dr. Singer was not his attending physician, Dr. Suleiman was. Appellant stated that Dr. Singer did not request an EMG and that he had not undergone an EMG following his carpal tunnel surgeries. He stated that he continued to experience symptoms in his hands.

By decision dated April 3, 2009, the hearing representative affirmed the September 12, 2008 decision.

LEGAL PRECEDENT

The schedule award provision of the Act[3] and its implementing regulations[4] 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.[5] Effective February 1, 2001, the Office

[2] Registered nurses, licensed practical nurses, physician's assistants and physical therapists are not "physicians" as defined under the Federal Employees' Compensation Act. Their opinions are of no probative value in establishing permanent impairment for schedule award purposes. *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologist, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id.*

adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.[6]

In evaluating carpal tunnel syndrome, the A.M.A., *Guides* provide that, if after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias or difficulties in performing certain activities three possible scenarios can be present. The first situation is: "Positive clinical finding of median nerve dysfunction and electrical conduction delay(s): The impairment due to residual CTS [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier."[7] In this situation, the impairment due to residual carpal tunnel syndrome is evaluated by multiplying the grade of severity of the sensory or motor deficit by the respective maximum upper extremity impairment value resulting from sensory or motor deficits of each nerve structure involved. When both sensory and motor functions are involved the impairment values derived for each are combined.[8] In the second scenario: "Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles: a residual CTS is still present, and an impairment rating not to exceed five percent of the upper extremity may be justified." In the final situation: "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."[9]

ANALYSIS

Appellant requested a schedule award for his accepted condition of bilateral carpal tunnel syndrome on October 11, 2007. He submitted a January 17, 2008 report from Dr. Wirebaugh, a Board-certified family practitioner, who found no swelling or deformity of the wrists, some thenar atrophy on the left and positive Phalen's test on the left. Dr. Wirebaugh listed appellant's two-point discrimination findings and concluded that appellant was entitled to five percent impairment bilaterally. He referred to page 495 of the A.M.A., *Guides* in support of his rating.

The district medical adviser reviewed appellant's claim on March 1 and August 1, 2008 and stated that A.M.A., *Guides* did not support Dr. Wirebaugh's impairment rating. There was no evidence that appellant had nerve conduction or EMG studies documenting abnormal sensory latencies. He found that appellant's impairment could not be established without updated electrodiagnostic testing of the bilateral upper extremities.

The Board finds that the medical record does not establish permanent impairment due to appellant's accepted conditions. Appellant underwent nerve conduction testing on April 17, 2006, following his carpal tunnel release surgeries. The diagnostic studies found no bilateral median or ulnar neuropathy. As noted, the A.M.A., *Guides* provide three scenarios for carpal

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

[7] A.M.A., *Guides* 495.

[8] *Id.* at 494, 481.

[9] *Id.* at 495.

tunnel impairment following surgical releases. As appellant does not have positive electrodiagnostic findings, he does not fall within a ratable impairment category for carpal tunnel syndrome under the A.M.A., *Guides*.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a schedule award as the record does not support permanent impairment due to his accepted bilateral carpal tunnel syndrome.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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