

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

M.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dayton, OH, Employer**

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**Docket No. 09-1372
Issued: February 4, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 May 5, 2009 appellant filed a timely appeal from an April 7, 2009 decision of the Office of Workers' Compensation Programs denying a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained impairment of the upper extremities related to accepted bilateral carpal tunnel syndrome.

On appeal, counsel asserts that the Office's April 7, 2009 decision is contrary to fact and law.

FACTUAL HISTORY

This is the second appeal before the Board. By decision dated July 2, 2008,¹ the Board set aside a June 22, 2007 decision of the Office denying a schedule award for bilateral upper extremity impairment due to appellant's accepted carpal tunnel syndrome. The Board remanded the case to obtain clarification from Dr. Rudolf A. Hofmann, a Board-certified orthopedic surgeon and second opinion physician, regarding permanent impairment. As the case was remanded for further development, the Office's September 5, 2007 decision denying appellant's request for a hearing was moot. The law and the facts of the case as set forth in the Board's prior decision are incorporated by reference.

In a July 14, 2008 letter, the Office asked Dr. Hofmann to clarify his February 27, 2007 report explaining how he applied the specific tables and grading schemes of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*) to determine that appellant had no ratable impairment of either upper extremity. It provided an updated statement of accepted facts.

Dr. Hoffman submitted a July 22, 2008 supplemental report. He reviewed the updated statement of accepted facts. Dr. Hofmann explained that, during the February 27, 2007 examination, appellant had no sensory abnormalities or pain in the median nerve distribution of either arm. According to Tables 16-10² and 16-15³ of the A.M.A., *Guides*, appellant had a Grade 5 or zero percent sensory deficit in the median nerve distribution bilaterally. Dr. Hofmann found that, according to Table 16-11,⁴ appellant had a Grade 5 or zero percent motor deficit, or complete range of motion against gravity with full resistance. He noted that appellant had normal electrodiagnostic findings after right median nerve release on May 7, 2003 and left median nerve release on June 18, 2003. Dr. Hofmann opined that appellant's subjective discomfort at the incision sites was not ratable under the A.M.A., *Guides*.

On September 9, 2008 the Office referred the medical record to an Office medical adviser for review. In a September 17, 2008 report, an Office medical adviser opined that appellant had reached maximum medical improvement as of December 18, 2003. He concurred with Dr. Hofmann's application of the A.M.A., *Guides* in determining that appellant had no sensory or motor impairment to either upper extremity due to the accepted carpal tunnel syndrome. The medical adviser found that appellant had no ratable impairment according to the A.M.A., *Guides*.

¹ Docket No. 07-2392 (issued July 2, 2008).

² Table 16-10, page 482 of the fifth edition of the A.M.A., *Guides* is entitled "Determining Impairment of the Upper Extremity Due to Sensory Deficits of Pain Resulting From Peripheral Nerve Disorders."

³ Table 16-15, page 492 of the fifth edition of the A.M.A., *Guides* is entitled "Maximum Upper Extremity Impairment Due to Unilateral Sensory or Motor Deficits or to *Combined* 100 percent Deficits of the Major Peripheral Nerves."

⁴ Table 16-11, page 484 of the fifth edition of the A.M.A., *Guides* is entitled "Determining Impairment of the Upper Extremity Due to Motor and Loss-of-Power Deficits Resulting From Peripheral Nerve Disorders Based on Individual Muscle Rating."

By decision dated October 14, 2008, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish a ratable impairment of either upper extremity. It accorded the weight of the medical evidence to Dr. Hofmann.

In an October 24, 2008 letter, appellant requested a telephonic hearing, held on February 12, 2009. At the hearing, she asserted that Dr. Gary E. Krause, a Board-certified orthopedic surgeon, who treated her through 2004, rated 25 percent impairment to each upper extremity due to pain, weakness and loss of sensation. The hearing representative advised appellant to obtain an opinion from her current physician.

Following the hearing, appellant submitted a January 26, 2009 report from Dr. Mark Klug, an attending Board-certified orthopedic surgeon,⁵ who reviewed a history of treatment and noted appellant's complaints of numbness and tingling in the median nerve distribution bilaterally. On examination, Dr. Klug found tenderness over both surgical scars, full range of wrist motion bilaterally and normal scaphoid ballotment and medial column shear tests. He noted moving two-point discrimination testing at seven to nine mm in the median nerve distribution bilaterally and bilateral grip strength weakness. Dr. Klug diagnosed "possible recurrent carpal tunnel syndrome." He deferred providing an impairment rating until appellant underwent repeat electrodiagnostic testing.

By decision dated and finalized April 7, 2009, the Office affirmed the October 14, 2008 decision, finding that appellant had no impairment of either upper extremity. It accorded the weight of the medical evidence to Dr. Hofmann. The Office noted that Dr. Klug's opinion, while based on an accurate factual and medical history, was too speculative to outweigh that of Dr. Hofmann.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act⁶ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁷

The standards for evaluation the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors

⁵ On January 15, 2009 the Office approved appellant's request to change treating physicians to Dr. Mark Klug, a Board-certified orthopedic surgeon. Dr. Krause, the previous attending physician, had moved out of state.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

should be considered together in evaluating the degree of permanent impairment.⁸ Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedures for determining impairments of the upper extremities due to pain, discomfort, loss of sensation or loss of strength.⁹

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome. Appellant claimed a schedule award. The Office obtained a second opinion from Dr. Hofmann, a Board-certified orthopedic surgeon. In a supplemental report, Dr. Hofmann correlated his clinical findings to specific grading elements of the A.M.A., *Guides*. He explained that, according to Tables 16-10 and 16-15, appellant had no sensory deficit in the median nerve distribution. Also, appellant had no motor deficit according to Table 16-11. Dr. Hoffman noted that appellant had no ratable pain impairment. He affirmed his prior assessment of a zero percent impairment of the upper extremities.

Appellant submitted a January 26, 2009 report from Dr. Klug, an attending Board-certified orthopedic surgeon, who noted weakness and diminished pinprick sensation in both hands, but did not quantify either deficit according to the A.M.A., *Guides*. Dr. Klug noted that appellant required additional electrodiagnostic testing before he could perform an impairment rating. As he did not provide an impairment rating, his opinion is insufficient to create a conflict with or outweigh Dr. Hofmann's report. The Board finds that the Office properly accorded Dr. Hofmann's opinion the weight of the medical evidence.

On appeal, counsel asserts that the Office's April 7, 2009 decision is contrary to fact and law. As noted, Dr. Hofmann provided a detailed, rationalized impairment rating properly utilizing the A.M.A., *Guides*. Dr. Klug did not provide any impairment rating. Therefore, the Office properly found that Dr. Hofmann's medical opinion constituted the weight of medical opinion.

CONCLUSION

The Board finds that appellant has not established that she sustained a ratable impairment of the upper extremities.

⁸ See *Paul A. Toms*, 28 ECAB 403 (1987).

⁹ A.M.A. *Guides*, Chapter 16, "The Upper Extremities," pp. 433-521 (5th ed. 2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 7, 2009 is affirmed.

Issued: February 4, 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