United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 09-1785**
	)	**Issued: June 1, 2010**
DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Philadelphia, PA, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 8, 2009 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated April 7, 2009. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant had more than 13 percent impairment of her right upper extremity and 10 percent impairment of her left upper extremity for which she has received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board on appeal. On June 5, 1990 appellant, then a 38-year-old benefit authorizer, filed an occupational disease claim, alleging that she developed carpal tunnel syndrome due to factors of her federal employment. She underwent a right carpal tunnel release on May 6, 1990. The Office accepted appellant's claim for carpal

tunnel syndrome on August 17, 1990. It entered her on the periodic rolls and she retired from the employing establishment in 1992. Appellant underwent an electromyelogram (EMG) on November 10, 1992 and demonstrated Grade 2 neuropathy of the right median nerve. She underwent a median nerve release at the right carpal tunnel on June 18, 1999. The Office authorized left carpal tunnel surgery on September 13, 2000. It reduced appellant's compensation benefits based on her capacity to earn wages as an information clerk by decision dated March 30, 2001. The Branch of Hearings and Review affirmed this decision on November 29, 2001. By decision dated March 6, 2003, the Board affirmed the Office's November 29, 2001 decision reducing appellant's compensation benefits.[1]

Appellant, through her attorney, requested a schedule award on June 8, 2007. She completed a claim for compensation requesting a schedule award on August 21, 2007. In support of this request, appellant submitted a report from Dr. Steven M. Allon, an orthopedic surgeon, dated April 17, 2007. Dr. Allon noted appellant's history of injury and medical history. He stated that appellant's EMG and nerve conduction studies dated May 23, 2006 revealed bilateral medial nerve compression at the wrist, rated as moderate on the right and severe on the left. Dr. Allon also found evidence of brachial plexus neuropathy and right ulnar nerve injury. He noted that appellant declined additional surgeries. On physical examination, Dr. Allon found positive compression test with pain radiating into both the ulnar and median distributions, thenar atrophy on the right and positive Phalen's test. Appellant also demonstrated a positive Tinel's sign bilaterally. Dr. Allon found decreased grip strength on the left as well as decreased pinch strength. Appellant demonstrated diminished light touch sensibility over the thenar eminences bilaterally. He diagnosed bilateral carpal tunnel syndrome, recurrent right carpal tunnel syndrome, as well as cumulative and repetitive trauma disorder. Dr. Allon found that appellant had Grade 2 sensory deficit of the right thenar eminence due to the median nerve, 6 percent impairment[2] as well as right pinch deficit equivalent to 20 percent impairment[3] for a combined right upper extremity impairment of 25 percent. In regard to appellant's left upper extremity, Dr. Allon again found 6 percent impairment due to Grade 2 sensory impairment of the median nerve, and 30 percent impairment due to left pinch deficit for a combined left upper extremity rating of 34 percent. He found that appellant reached maximum medical improvement on April 17, 2007.

The Office referred this report to Dr. Arnold T. Berman, a district medical adviser and a Board-certified orthopedic surgeon, on September 28, 2007. Dr. Berman responded on October 9, 2007 and found that appellant was entitled to 13 percent impairment of the right upper extremity and 10 percent for the left. He noted that the A.M.A., *Guides* did not provide for the rating of decreased strength in the presence of painful conditions and that therefore appellant's grip and pinch strength ratings should not be included in her impairment. Dr. Berman also found that a Grade 2 sensory impairment was not supported by the physical findings as appellant had full protective sensibility. He concluded that appellant had 10 percent impairment of the left upper extremity due to 25 percent impairment of the median nerve which

[1] Docket No. 02-956 (issued March 6, 2003).

[2] Dr. Allon cited to the A.M.A., *Guides* 482, Table 16-10 and 492, Table 16-15.

[3] *Id.* at 509, Tables 16-33 and 16-34.

had a maximum sensory value of 39 percent. In regard to appellant's right upper extremity, Dr. Berman accorded a Grade 4 motor weakness of the medial nerve or 25 percent for 3 percent impairment in addition to 10 percent sensory deficit for 13 percent impairment of the right upper extremity.

By decision dated November 27, 2007, the Office granted appellant schedule awards for 13 percent impairment of the right upper extremity and 10 percent impairment of the left upper extremity. Appellant through her attorney requested an oral hearing. He testified at the oral hearing on April 8, 2008.

Dr. Allon submitted a supplemental report dated April 18, 2008. He reviewed the district medical adviser's report and noted that the A.M.A., *Guides* did not allow for additional impairment for grip strength and that he did not include this in his impairment rating. Dr. Allon stated that pinch strength impairments could be considered under the A.M.A., *Guides* and that he appropriately measured with a pinch gauge or lateral pinch and repeated the measurements three times before reporting the average and comparing this figure to the appropriate table in the A.M.A., *Guides*. He also stated that appellant's left hand and wrist condition was worse than the right. Dr. Allon stated that appellant's diminished light touch sensibility at 4.81 milligrams over the thenar eminence through use of Semmes-Weinstein monofilament represented a loss of protected sensation which was classified at a Class II sensory deficit under the A.M.A., *Guides*. He found that appellant had Grade 2 sensory deficit of the thumb involving the right radial palmar and right ulnar palmar digital thumb 6 and 9 percent impairment respectively as well as 20 percent impairment due to right lateral pinch deficit totaling 31 percent impairment of the right upper extremity. In regard to appellant's left upper extremity, Dr. Allon found similar sensory impairments, but 30 percent left lateral pinch deficit for 40 percent impairment of the left upper extremity.

By decision dated June 20, 2008, the hearing representative set aside the Office's November 20, 2007 decision and remanded the case for additional consideration by the district medical adviser and a *de novo* decision.

The Office referred the medical evidence to Dr. Berman on July 2, 2008. Dr. Berman reviewed Dr. Allon's reports and noted the increased impairment ratings on July 13, 2008. He discounted the 2006 EMG testing because it was performed by a physical therapist. Dr. Berman stated that it was not appropriate for Dr. Allon to use the right ulnar palmer digital nerve as this was not appropriate based on the anatomy in question, but that the median nerve values should be utilized. He also stated that if appellant was unable to protect her self the clinical picture would include skin breakdown which was not presented in this case. Dr. Berman opined that Grade 4 sensory impairment was most appropriate for appellant's clinical picture. Regarding pinch strength rating, he noted that the A.M.A., *Guides* did not assign a large role to strength measurements and that only one observer had described the findings. Dr. Berman noted that he found three percent impairment due to motor deficit of the right median nerve.

By decision dated August 25, 2008, the Office found that appellant had no more than 10 percent impairment of her left upper extremity and 13 percent impairment of her right upper extremity. Appellant, through her attorney, requested an oral hearing on August 28, 2008. At the oral hearing on January 13, 2009, he argued that there was an unresolved conflict of medical

opinion evidence between Drs. Allon and Berman regarding the extent of appellant's permanent impairment for schedule award purposes.

By decision dated April 7, 2009, the hearing representative affirmed the Office's August 25, 2008 decision and found that the weight of the medical opinion evidence established that appellant had no more than 13 percent impairment of the right upper extremity and 10 percent impairment of the left upper extremity.

On appeal, appellant's attorney again alleged that there was an unresolved conflict of medical opinion evidence requiring review by an impartial medical examiner.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulations[5] 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[6] 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.[7]

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."[8] 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.[9]

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[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.*

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

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

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

To accurately evaluate sensory impairment clinically and reduce the subjective nature of these findings,[10] the A.M.A., *Guides* recommend either the two-point test for fine discrimination, the monofilament touch-pressure threshold test or the pinprick test.[11]

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.[12]

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome due to factors of her federal employment and authorized surgical corrections. Appellant underwent two surgeries on her right wrist, but did not undergo the authorized left carpal tunnel release. She requested a schedule award and submitted a report from Dr. Allon, an orthopedic surgeon, dated April 17, 2007 which found that appellant's EMG and nerve conduction studies dated May 23, 2006 revealed bilateral medial nerve compression at the wrist. On physical examination, Dr. Allon found positive compression test, positive Phalen's test and positive Tinel's sign bilaterally. He also found thenar atrophy on the right. Dr. Allon found decreased grip and pinch strength on the left as well as diminished light touch sensibility over both the thenar eminences. He found that appellant had Grade 2 sensory deficit of the right thenar eminence due to the median nerve, 6 percent impairment[13] right pinch strength deficit equivalent to 20 percent impairment[14] and provided a right upper extremity impairment of 25 percent. Dr. Allon rated appellant's left upper extremity 34 percent with 6 percent impairment due to Grade 2 sensory impairment of the median nerve, and 30 percent impairment due to left pinch deficit. He submitted a supplemental report dated April 18, 2008 and stated that pinch strength impairments could be considered under the A.M.A., *Guides.* Dr. Allon opined that he had appropriately measured with a pinch gauge or lateral pinch and repeated the measurements three times before reporting the average and comparing this figure to the A.M.A., *Guides*. He stated that he measured appellant's diminished light touch sensibility with Semmes-Weinstein monofilament over the thenar eminence and that she demonstrated a loss of protected sensation which he classified at a Class II sensory deficit under the A.M.A., *Guides*. Dr. Allon also provided appellant's sensory deficits in her thumb, which he found involved the right radial palmar and right ulnar palmar digital thumb rated at six and nine percent impairment respectively. He found 20 percent impairment due to right lateral pinch deficit for a total 31 percent impairment of the right upper extremity. Dr. Allon listed the same sensory impairments for appellant's left upper

[10] *Id.* at 446.

[11] *Id.* at 445.

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

[13] Dr. Allon cited to the A.M.A., *Guides* 482, Table 16-10 and 492, Table 16-15.

[14] *Id.* at 509, Tables 16-33 and 16-34.

extremity and found 30 percent left lateral pinch deficit which resulted in 40 percent impairment of the of left upper extremity.

The district medical adviser, Dr. Berman, a Board-certified orthopedic surgeon, reviewed these reports on October 9, 2007 and July 13, 2008. He concluded that appellant was entitled to no more than 13 percent impairment of the right upper extremity and 10 percent for the left. Dr. Berman found based on the A.M.A., *Guides* that appellant was not entitled to an impairment rating for loss of pinch strength as the A.M.A., *Guides* did not provide for the rating of decreased strength in the presence of other impairments such as painful conditions.[15] He also found that a Grade 2 sensory impairment was not supported by the physical findings as appellant had full protective sensibility.[16] Dr. Berman stated that, if appellant had a loss of protective sensibility, her clinical picture would have include skin breakdown and that therefore Grade 4 sensory impairment was most appropriate for appellant's clinical picture. Dr. Berman opined that appellant had 10 percent impairment of the left upper extremity due to 25 percent impairment[17] of the median nerve which had a maximum sensory value of 39 percent.[18] In regard to appellant's right upper extremity, he accorded a similar Grade 4 motor weakness of the medial nerve[19] or 25 percent[20] for 3 percent impairment in addition to 10 percent sensory deficit for 13 percent impairment of the right upper extremity. Dr. Berman stated that it was not appropriate for Dr. Allon to use the right ulnar palmer digital nerve as this was not based on the anatomy in question, as the median nerve values should be utilized.

The Board finds that the weight of the medical evidence rests with the detailed and well-reasoned report of Dr. Berman who reviewed the findings in Dr. Allon's report and appropriately applied the A.M.A., *Guides*. Dr. Berman noted that the A.M.A., *Guides* did not accord weight to strength measurements in the presence of painful conditions and therefore properly discounted appellant's pinch strength rating accorded by Dr. Allon. He noted that the clinical findings did not support a Grade 4 sensory impairment as appellant did not have any skin damage as a result of her sensory deficits. Dr. Berman also found that the nerve involved in appellant's impairment was the median nerve and that additional individual nerve impairments were not supported by the record. As he offered medical reasoning to support his deviations from the conclusions from Dr. Allon and correctly applied the provisions of the A.M.A., *Guides*, the Board finds that his

[15] *Id.* at 508, 507. "Because strength measurements are functional tests influenced by subjective factors that are difficult to control and the A.M.A., *Guides* for the most part is based on anatomic impairment, the A.M.A., *Guides* do not assign a large role to such measurements. Those who have contributed to the A.M.A., *Guides* believe that further research is needed before loss of grip and pinch strength is given a larger role in impairment evaluation."

[16] *Id.* at 482, Table 16-10. Grade 2 impairment results from "decreased superficial cutaneous pain and tactile sensibility (decreased protective sensibility), with abnormal sensations or moderate pain, that may prevent some activities."

[17] *Id.* at 482, Table 16-10. This is a Grade 4 impairment resulting from "distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity."

[18] *Id.* at 492, Table 16-15.

[19] The maximum motor deficit of the median nerve is 10 percent. A.M.A., *Guides* 492, Table 16-15.

[20] A.M.A., *Guides* 484, Table 16-11. Grade 4 is defined as "complete active range of motion against gravity with some resistance."

report establishes that appellant has no more than 13 percent impairment of her right upper extremity and 10 percent impairment of her left upper extremity for which she has received schedule awards. Accordingly, there is no conflict in medical opinion.

CONCLUSION

The Board finds that appellant has no more than 13 percent impairment of her right upper extremity and 10 percent impairment of her left upper extremity for which she has received schedule awards.

ORDER

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

Issued: June 1, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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