United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
	)	
and	)	**Docket No. 09-2142**
	)	**Issued: June 3, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 20, 2009 appellant filed a timely appeal from an April 30, 2009 merit decision of the Office of Workers' Compensation Programs concerning a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that she has any permanent impairment causally related to her accepted bilateral carpal tunnel or bilateral trigger finger conditions.

FACTUAL HISTORY

On December 9, 2004 appellant, then a 54-year-old general clerk, filed an occupational disease claim for bilateral carpal tunnel syndrome due to repetitive job duties. The Office assigned file number xxxxxx127 and accepted the claim for bilateral aggravation of carpal tunnel syndrome. It paid compensation and authorized left-side carpal tunnel surgery in March 2006 and right-side carpal tunnel surgery in July 2006 performed by Dr. James Plettner, a Board-certified hand surgeon. Appellant returned to regular full-time duty work on

December 28, 2007. She later claimed a bilateral trigger finger condition for which she underwent a right trigger thumb release on July 3, 2007 and left middle finger trigger release on November 20, 2007. These surgeries were also performed by Dr. Plettner. Under file number xxxxxx589, the Office accepted bilateral trigger finger conditions and combined the two claims under file number xxxxxx127.

On January 30, 2008 Dr. Plettner noted appellant's complaints of soreness and discomfort over the wrists with increased activities. On examination, he could not find any objective findings of pathology over either hand. Dr. Plettner advised appellant that there was nothing further he could do regarding her carpal tunnel and trigger finger releases. He recommended over-the-counter anti-inflammatory medication and that she be seen on an as needed basis.

On September 2, 2008 appellant filed a schedule award claim. On September 8, 2008 the Office requested that Dr. Plettner provide a report addressing any permanent impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Plettner did not respond and on September 25, 2008 it authorized appellant to obtain an impairment evaluation from Dr. Mohab Foad, a Board-certified hand surgeon, who had also previously treated her. Dr. Foad did not respond.[1]

On December 18, 2008 the Office referred appellant with a statement of accepted facts to Dr. E. Gregory Fisher, a Board-certified orthopedic surgeon, for an impairment evaluation based on the A.M.A., *Guides* (5th ed. 2001). In a January 8, 2009 report, Dr. Fisher provided a detailed summary of appellant's work injuries and treatment. He reviewed the statement of accepted facts and medical evidence. On examination, Dr. Fisher found appellant had full range of motion of the elbows, forearms and wrists bilaterally with some soreness and discomfort over the wrists bilaterally more on the right side. Range of motion of each wrist revealed flexion of 65 degrees, extension of 60 degrees, radial deviation of 25 degrees and ulnar deviation of 30 degrees bilaterally. Dr. Fisher indicated that there was some mild soreness over each wrist on the dorsal side and volar aspect on flexion and extension with some referred pain going up the arm. He noted there was no soft tissue swelling, thickening or pitting edema and the healed scars were not tender or painful. There was no thenar or hypothenar atrophy over either hand and intrinsic muscles were intact. Dr. Fisher found full flexion and extension of all the finger joints as well as the thumbs of each hand with no evidence of any triggering or locking effect of the fingers on either hand. While he noted some soreness over the volar aspect at the base of the right long finger, there was no thickening of the tendon sheath or discomfort noted on palpation of the remaining flexor tendons. The Tinel's and Phalen's signs were bilaterally negative as was the compression testing over the nerves. Appellant was noted to have normal flexion of the hands and fingers as well as normal pinch strength testing.

Dr. Fisher advised that appellant had subjective findings of intermittent aches and pains over the wrists with referred pain up to the elbows noted on increased activity. Under the criteria found in Table 16-29 of the A.M.A., *Guides,* he found that appellant had no digit impairment as she had full range of motion of all fingers and thumbs without any triggering effect. For bilateral carpal tunnel syndrome, Dr. Fisher found no muscle atrophy, muscle loss or weakness, the

[1] In a prior July 22, 2008 report, Dr. Foad declined to address whether appellant had permanent impairment.

sensation over the median nerve distribution was intact to light touch, the Tinel's sign, Phalen's tests were all negative bilaterally. Under Table 16-10 and 16-11, he found that appellant was classified as Grade 5 deficit for sensory and motor loss in the median nerve distribution which resulted in no impairment to the upper extremities. Dr. Fisher advised under page 494 of the A.M.A., *Guides*, hand grip was not used for neuropathy. Under Figure 16-28 and 16-31 of the A.M.A., *Guides,* he found that appellant would have no impairment for loss of range of motion of the upper extremity as her wrist range of motion was full bilaterally in all planes. Dr. Fisher concluded that appellant had no impairment for the accepted conditions of bilateral carpal tunnel syndrome and bilateral trigger finger.

In a January 28, 2009 report, an Office medical adviser reviewed appellant's medical record. He opined that appellant reached maximum medical improvement on December 28, 2007, the date she returned to work full duty. Based on Dr. Fisher's findings on examination and the A.M.A., *Guides*, the Office medical adviser agreed that appellant had no impairment of either her right or left upper extremity due to her accepted conditions.

In an April 30, 2009 decision, the Office denied appellant's claim for a schedule award finding the medical evidence did not establish she sustained any permanent impairment due to her accepted conditions.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulations[3] 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.[4] 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.[5] A claimant may seek an increased schedule award if the evidence establishes that she sustained an increased impairment at a latter date causally related to her employment injury.[6]

Not all medical conditions accepted by the Office result in permanent impairment to a scheduled member.[7] It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.[8] Office

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.404.

[4] 5 U.S.C. § 8107(c)(19).

[5] *Supra* note 3.

[6] *Linda T. Brown*, 51 ECAB 115 (1999).

[7] *Thomas P. Lavin*, 57 ECAB 353 (2006).

[8] *Tammy L. Meehan,* 53 ECAB 229 (2001).

procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement), describes the impairment in sufficient detail to include, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent description of the impairment and the percentage of impairment should be computed in accordance with the A.M.A., *Guides*.[9]

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel and bilateral trigger finger conditions and authorized surgical repair for each condition. Appellant subsequently claimed a schedule award due to these accepted conditions. The Board finds that the medical evidence of record is insufficient to establish that her accepted conditions caused any permanent impairment to her upper extremities under the A.M.A., *Guides*.

The Office referred appellant to Dr. Fisher for a second opinion evaluation. In a January 8, 2009 report, Dr. Fisher properly determined that appellant had no ratable impairment for her accepted bilateral trigger fingers under Table 16-29, page 507 of the A.M.A, *Guides*. He found had a full range of motion of all finger and thumb joints without any triggering effect. For bilateral carpal tunnel syndrome, Dr. Fisher also determined appellant had no ratable impairment under the A.MA., *Guides.* Under Tables 16-10 and 16-11, page 482 and 484 of the A.M.A, *Guides*, he classified that appellant was Grade 5 or zero percent for sensory and motor deficit of the median nerve distribution.[10] There was not evidence of muscle atrophy, muscle loss or weakness, intact light sensation over the median nerve distribution, and negative Tinel's sign, Phalen's test and compression test bilaterally. Dr. Fisher found no basis to rate sensory or motor deficit of the median nerve. Under Figure 16-28, page 467 and Figure 16-31, page 469 of the A.M.A., *Guides,* he advised that appellant had no impairment based on loss of range of motion of the upper extremities. Appellant demonstrated full range of motion of the wrists bilaterally in all planes. The Board finds that Dr. Fisher conducted a thorough examination of appellant's upper extremities and found no basis on which to note permanent impairment to her arms under the A.M.A., *Guides*. An Office medical adviser reviewed the medical evidence of record and concurred with Dr. Fisher's opinion.

The Office requested that Dr. Plettner, appellant's treating physician, provide a report addressing any permanent impairment. Dr. Plettner did not respond to the Office's request. The Office also authorized appellant to obtain an impairment evaluation from Dr. Foad, but he did

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[9] *J.P.*, 60 ECAB ___ (Docket No. 08-832, issued November 13, 2008); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

[10] Under Table 16-15 page 492, maximum percent upper extremity impairment for median nerve distribution below midforearm is 39 percent for sensory deficit and 10 percent for motor deficit. However, with a Grade 5 or zero percent deficit under Tables 16-10 (sensory impairment) and 16-11 (motor deficit), this yields no sensory or motor impairment as the procedure in Tables 16-10 and 16-11 provide for multiplying the zero percent deficit by the maximum impairment allowed for the nerve. Zero multiplied by thirty-nine and zero multiplied by ten both yield zero.

not respond. There is no medical evidence from these physicians on which an impairment rating may be based.

The medical evidence of record does not establish impairment of a scheduled member, attributable to appellant's accepted bilateral carpal tunnel and bilateral trigger finger conditions. For these reasons, the Office denied her claim for a schedule award.

CONCLUSION

The Board finds that appellant failed to establish that she sustained any permanent impairment of her upper extremities causally related to her accepted bilateral carpal tunnel and bilateral trigger finger conditions.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2009 is affirmed.

Issued: June 3, 2010
Washington, DC

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

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

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