United States Department of Labor
Employees' Compensation Appeals Board

W.W., Appellant	)	
and	)	**Docket No. 09-2243**
	)	**Issued: June 24, 2010**
DEPARTMENT OF THE ARMY, U.S. ARMY FORCES COMMAND, Fort Polk, LA, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 8, 2009 appellant filed a timely appeal from the August 10, 2009 merit decision of the Office of Workers' Compensation Programs granting a schedule award. 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 more than a five percent permanent impairment of his right arm and a five percent permanent impairment of his left arm, for which he received a schedule award.

FACTUAL HISTORY

On May 15, 2002 the Office accepted that appellant, then a 63-year-old plumber, sustained bilateral carpal tunnel syndrome due to the repetitive duties of his job. Appellant received compensation from the Office for periods of disability.

The findings of July 16, 2003 motor nerve conduction studies revealed that for the right median nerve appellant had distal latency of 6.4 milliseconds stimulated at the wrist and that for

the left median nerve he had distal latency of 6.2 milliseconds stimulated at the wrist. The findings of July 16, 2003 sensory nerve action potentials testing revealed that for the right median palmar nerve appellant had distal latency of 3.3 milliseconds and that for the left median palmar nerve he had distal latency of 3.2 milliseconds.

On January 7, 2004 appellant underwent left carpal tunnel release surgery and on January 21, 2004 he underwent right carpal tunnel release surgery. Both procedures were authorized by the Office.

On July 9, 2009 Dr. James F. Hood, a Board-certified orthopedic surgeon serving as an Office referral physician, indicated that under the relevant portion of Table 15-21 of the sixth edition of American Medical Association, *Guides to the Evaluation of Permanent Impairment* (median nerve below the forearm -- entire nerve) appellant would be in Class 1 for both arms and would fall into the moderate motor deficit category per his physical findings of decreased thumb to finger pinch. He stated that the default level was six percent for each arm. Appellant bilaterally had -1 grade modifiers for functional history, -1 grade modifiers for physical examination and 0 grade modifiers for clinical studies. These modifiers caused movement two places to the left on the relevant portion of Table 15-21 which meant that appellant had a five percent permanent impairment in each arm.

On July 21, 2009 Dr. Ronald H. Blum, a Board-certified orthopedic surgeon serving as an Office medical adviser, indicated that he was evaluating the July 9, 2009 report of Dr. Hood. He chose to evaluate appellant's median nerve dysfunction under Table 15-23 of the A.M.A., *Guides*. Dr. Blum indicated that appellant bilaterally had test findings grade modifiers of one; history grade modifiers of one and physical findings grade modifiers of three. He indicated that these grade modifiers averaged 1.67 which rounded up to grade modifiers of 2 in each arm. The default value under the "Grade Modifier 2" category was five percent impairment in each arm. Dr. Blum stated that a *Quick*DASH survey was normal and concluded that therefore appellant had a five percent permanent impairment in each arm.

In an August 10, 2009 decision, the Office granted appellant a schedule award for a five percent permanent impairment of his right arm and a five percent permanent impairment of his left arm. The award ran for 31.2 weeks from July 9, 2009 to February 12, 2010. The Office indicated that the award was based on both the report of Dr. Hood and the report of Dr. Blum.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] 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

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

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.[3]

For evaluating impairment related to dysfunction of the median nerves, the sixth edition of the A.M.A., *Guides* (6th ed. 2009) contains Appendix 15-B (Electrodiagnostic Evaluation of Entrapment Syndromes). It provides that the criteria for carpal tunnel syndrome include distal motor latency longer than 4.5 milliseconds for an 8-centimeter study; distal peak sensory latency longer than 4.0 centimeters for a 14-centimeter distance; and distal peak compound nerve latency of longer than 2.4 milliseconds for a transcarpal or midpalmar study of 8 centimeters. If different distances were used in testing, correction to the above-stated distances could be accomplished by assuming each one centimeter of distance required 0.2 milliseconds.[4]

If carpal tunnel syndrome is found under the standards of Appendix 15-B, impairment is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[5] In Table 15-23, grade modifiers are described for test findings, history and physical findings. A survey completed by a given claimant, known by the name *Quick*DASH, is used to further modify the grade and to choose the appropriate numerical impairment rating.[6] If carpal tunnel syndrome is not found under the standards of Appendix 15-B, impairment due to median nerve dysfunction is evaluated under the scheme found in Table 15-21 (Peripheral Nerve Impairment: Upper Extremity Impairments).[7] Under Table 15-21, observed conditions are placed into classes (ranging from Class 0 to Class 4) based on diagnosis and the severity of the condition. After the class is identified, the precise degree of the impairment can be modified by various factors, including functional history, physical examination and clinical studies.[8]

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[9]

[3] *Id*.

[4] A.M.A., *Guides* 487, Appendix 15-B.

[5] *See id*. at 449, Table 15-23.

[6] *Id.* at 448.

[7] *Id. at* 437-40, Table 15-21 (portion relating to median nerves).

[8] *Id.* at 406-09.

[9] *Russell F. Polhemus,* 32 ECAB 1066 (1981).

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome. In an August 10, 2009 decision, it granted him a schedule award for a five percent permanent impairment of his right arm and a five percent permanent impairment of his left arm.

On July 9, 2009 Dr. Hood, a Board-certified orthopedic surgeon serving as an Office referral physician, indicated that under the relevant portion of Table 15-21 of the sixth edition of A.M.A., *Guides* (median nerve below the forearm -- entire nerve) appellant would be in Class 1 for both arms and would fall into the moderate motor deficit category per his physical findings of decreased thumb to finger pinch. Dr. Hood applied grade modifiers to conclude that appellant had a five percent permanent impairment in each arm. On July 21, 2009 Dr. Blum, a Board-certified orthopedic surgeon serving as an Office medical adviser, indicated that he was evaluating the July 9, 2009 report of Dr. Hood. He chose to evaluate appellant's median nerve dysfunction under Table 15-23 of the A.M.A., *Guides*. Dr. Blum placed appellant in the "Grade Modifier 2" category with a default value of five percent and indicated that a *Quick*DASH survey was normal. He concluded that appellant had a five percent permanent impairment in each arm.

Although both Dr. Hood and Dr. Blum concluded that appellant had five percent impairment in each arm, neither physician adequately explained the reasoning for his impairment evaluation. Dr. Hood chose to evaluate appellant's impairment under Table 15-21 (Entrapment/Compression Neuropathy Impairment), but he did not explain why he chose Table 15-21 for this purpose. Dr. Blum chose Table 15-23 (Peripheral Nerve Impairment: Upper Extremity Impairments) to perform his evaluation, but he also did not explain why he made this choice.

As noted, with respect to evaluating impairment related to dysfunction of the median nerves, Appendix 15-B (Electrodiagnostic Evaluation of Entrapment Syndromes) contains criteria for evaluating whether carpal tunnel syndrome is present. If carpal tunnel syndrome is found under the standards of Appendix 15-B, impairment is evaluated under the scheme found in Table 15-23. If carpal tunnel syndrome is not found under the standards of Appendix 15-B, impairment due to median nerve dysfunction is evaluated under the scheme found in Table 15-21. There is no indication that either Dr. Hood or Dr. Blum made reference to Appendix 15-B. In fact, it is not clear whether the electrodiagnostic nerve testing of July 16, 2003 was sufficiently complete to allow evaluation of the existence of carpal tunnel syndrome under Appendix 15-B. The testing results did not indicate over what distance nerve conduction was tested and did not appear to contain findings for distal peak compound nerve latency.[10]

The Board further notes that Dr. Hood and Dr. Blum did not adequately explain how they arrived at their respective grade modifiers. Dr. Hood did not fully explain why he concluded that appellant bilaterally had -1 grade modifiers for functional history, -1 grade modifier for physical examination and 0 grade modifiers for clinical studies. Dr. Blum did not fully explain why

[10] *See supra* note 4.

bilaterally appellant had test findings grade modifiers of 1; history grade modifiers of 1 and physical findings grade modifiers of 3.[11]

For these reasons, the case is in need of further development regarding appellant's arm impairment. As noted, the Office shares responsibility in developing the medical evidence. Therefore, the case will be remanded to the Office for this purpose. After such development as it deems necessary, the Office will issue an appropriate decision regarding appellant's entitlement to schedule award compensation.

CONCLUSION

The Board finds that the case is not posture for decision regarding whether appellant has more than a five percent permanent impairment of his right arm and a five percent permanent impairment of his left arm, for which he received a schedule award. The case is remanded to the Office for further development of the medical evidence to be followed by the issuance of an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: June 24, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[11] A.M.A., *Guides* 28, 2.7 *Preparing Reports*.