

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

G.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baltimore, MD, Employer**

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**Docket No. 09-1762
Issued: March 19, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 29, 2009 appellant filed a timely appeal from the April 17, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant had more than five percent impairment to her right upper extremity and five percent impairment to her left upper extremity, for which she received schedule awards.

On appeal, appellant contends that the rating on the left hand should be greater than that of the right hand. She stated that she was unhappy with the amount of time that she was seen by her physicians.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated July 25, 2001, the Board affirmed a January 28, 1999 Office decision denying appellant's claim for a recurrence of disability on and after May 1, 1998, causally related to her accepted conditions of bilateral flexor tenosynovitis and bilateral carpal tunnel syndrome. The facts and history as set forth by the Board in the prior decision are hereby incorporated by reference.¹

On October 10, 2008 appellant filed a claim for a schedule award. By letter to appellant dated October 27, 2008, the Office requested further information. No further information was received in the allotted time. By decision dated December 11, 2008, the Office denied appellant's request for a schedule award.

In a medical report dated November 20, 2008, Dr. Steven L. Friedman, appellant's treating Board-certified orthopedic surgeon, noted that he examined appellant and that her right upper extremity neurologic examination revealed no focal sensory deficit, no focal motor deficit and no evidence of muscle atrophy. He also noted that the Tinel's sign over the median nerve at the right wrist was negative and that the Tinel's sign at the ulnar nerve of the right elbow was also negative. Dr. Friedman noted deep tendon reflexes were symmetric and two plus. He noted no pathologic reflexes, rigidity or spasticity. With regard to the left wrist, Dr. Friedman noted that the neurologic examination revealed no focal sensory deficit, no focal motor deficit and no evidence of muscle atrophy. He indicated that the Tinel's sign over the median nerve at the wrist was negative and that the Tinel's sign over the ulnar nerve at the elbow was negative. Dr. Friedman noted a negative Phalen's test, a negative elbow flexion test and deep tendon reflexes symmetric at two plus. He noted no pathologic reflexes, rigidity or spasticity present. Dr. Friedman indicated that appellant had clinical and radiographic evidence most suggestive of mild bilateral osteoarthritis affecting the fingers of both hands. He noted that surgery had not been done on either hand, and that the range of motion in digits and both wrists was full and not restricted. Dr. Friedman opined that appellant had reached maximum medical improvement and that he would estimate appellant to have a five percent permanent impairment of each hand based on subjective complaints of pain and stiffness. He further noted that this conclusion was based solely on his physical examination, as appellant had no specific loss of motion for neurologic impairment.

On December 29, 2008 appellant requested reconsideration of the December 11, 2008 decision denying her claim for a schedule award.

By memorandum dated March 16, 2009, the Office asked the Office medical adviser to review the record with regard to appellant's claim for a schedule award pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). In a reply dated the same date, the Office medical adviser reviewed the report of Dr. Friedman, noted his physical findings and further noted that Dr. Friedman did not refer to tables and pages in the A.M.A., *Guides* when evaluating appellant's impairment. He stated that appellant had not had surgery and that the magnetic resonance imaging scan of the left shoulder

¹ Docket No. 99-1752 (issued July 25, 2001). The Office accepted the occupational disease claim of appellant, a letter sorter machine operator, for bilateral flexor tenosynovitis and bilateral carpal tunnel syndrome.

did not indicate a reason to expand the accepted conditions or to represent an impairment. The Office medical adviser further noted that the electromyogram/nerve conduction studies performed on May 16, 1993 indicated right median nerve carpal tunnel syndrome. He found that pursuant to the A.M.A., *Guides* 492, Table 16-15, the maximum percent of upper extremity impairment for sensory deficit or pain, median nerve below midforearm, is 39 percent. The Office medical adviser noted that, pursuant to A.M.A., *Guides* 482, Table 16-10, he would suggest the mid-point of Grade 4 with regard to description of sensory deficits or pain, representing a 12.5 percent sensory deficit. He then multiplied 39 percent by 12.5 percent and determined that appellant had 5 percent impairment for each upper extremity, which he noted was consistent with Dr. Friedman's findings. The Office medical adviser stated that the date of maximum medical improvement was November 20, 2008.

By decision dated April 17, 2009, the Office granted appellant a schedule award for five percent impairment to her right upper extremity and five percent impairment to her left upper extremity.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.³ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁴ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

ANALYSIS

The Board finds that appellant has not met her burden to establish that she was entitled to more than five percent impairment to each upper extremity, for which she received schedule awards. The Office accepted appellant's claim for bilateral flexor tenosynovitis and bilateral carpal tunnel syndrome. In support of her claim for a schedule award, appellant submitted the report of Dr. Friedman, her treating orthopedic surgeon, who noted that appellant had no focal sensory or motor deficit in either upper extremity and no evidence of muscle atrophy. Dr. Friedman noted negative Tinel's signs over the median nerve of the wrist and the ulnar nerve of the elbow in both upper extremities. He noted no pathologic reflexes, rigidity or spasticity. Dr. Friedman noted negative Phalen's tests, negative elbow flexion tests and deep tendon reflexes symmetric at two plus. He also noted that surgery had not been done on either hand and that the range of motion in both wrists was full and unrestricted. Dr. Friedman specifically noted that appellant had no loss of motion for neurologic impairment. He found a five percent

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8107.

⁴ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁵ 20 C.F.R. § 10.404.

impairment to each upper extremity; however, he did not refer to specific tables and pages of the A.M.A., *Guides*. Accordingly, the Office properly referred the record to the Office medical adviser who reviewed Dr. Friedman's opinion and determined that, based on his physical findings, appellant had a midlevel Grade 4 sensory deficit, pursuant to Table 16-10 on page 482 of the A.M.A., *Guides*, which he indicated equaled 12.5 percent sensory deficit. A Grade 4 impairment, pursuant to the A.M.A., *Guides*, involves distorted superficial tactile sensibility with or without minimal abnormal sensation of pain that is forgotten during activity. As the Office medical adviser noted, this is consistent with the physical descriptions given by Dr. Friedman. He correctly noted, pursuant to Table 16-15, page 492 of the A.M.A., *Guides*, that the maximum amount for sensory deficit or pain for the median nerve below the midforearm was 39 percent. The Office medical adviser then multiplied 12.5 percent by 39 percent, which equals 4.88 percent, which he properly rounded up to find a 5 percent impairment in each upper extremity.⁶ The Board finds that the Office medical adviser used the appropriate portions of the A.M.A., *Guides* to calculate the percentage of impairment awarded. The Office medical adviser accurately applied the rating criteria to Dr. Friedman's findings. His opinion is sufficient to represent the weight of the medical evidence in this case.⁷ There is no medical evidence in the record that establishes that appellant has a greater impairment. Accordingly, the Board finds that appellant has no greater than five percent impairment to each upper extremity, for which she received schedule awards.

CONCLUSION

The Board finds that appellant has not established that she had more than five percent impairment to her right upper extremity and five percent impairment to her left upper extremity, for which she received schedule awards.

⁶ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b (January 2010); see, e.g., *Jesse Mendoza*, 54 ECAB 802 (2003).

⁷ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 17, 2009 is affirmed.

Issued: March 19, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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