

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

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<b>P.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 09-1770</b>
	)	<b>Issued: March 4, 2010</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer</b>	)	
_____	)	

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 1, 2009 appellant filed a timely appeal from a March 20, 2009 schedule award decision of the Office of Workers' Compensation Programs. 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 five percent left arm impairment and three percent right arm impairment.

**FACTUAL HISTORY**

The Office accepted that appellant sustained bilateral carpal tunnel syndrome causally related to her federal employment as a distribution clerk. In a report dated December 21, 2006, Dr. David Weiss, an osteopath, provided a history of injury and results on physical examination. He opined that appellant had a 31 percent right arm impairment and an 18 percent left arm impairment based on sensory and motor deficits.

In a report dated April 5, 2007, an Office medical adviser opined that appellant had 13 percent right arm impairment and 23 percent left arm impairment based on sensory and motor

deficits. The Office found a conflict in the medical evidence was created and appellant was referred to Dr. Howard Zeidman, a Board-certified orthopedic surgeon, selected as the impartial medical specialist.

By report dated August 9, 2007, Dr. Zeidman reviewed the history of injury and medical treatment. He noted that appellant had complaints of numbness at night but not during the day. The medical record documented a December 21, 2003 electromyography test that was described as showing mild median neuropathy with motor latency. A magnetic imaging scan of the cervical spine revealed degenerative arthritis at C5-6 and C6-7. X-rays showed some ulnar alignment but was otherwise unremarkable. On physical examination, Dr. Zeidman found good motion of the neck, shoulders and elbow without spasms or tenderness. Sensory function was reported intact in both upper extremities, including the hands. There was no evidence of atrophy. The length and circumferences were reported as symmetrical. Dr. Zeidman also noted that motor function was intact except for the hands, where left hand grip strength was approximately half of that on the right. There was tenderness in the volar wrist but no specific Tinel's sign was found. The impartial specialist diagnosed carpal tunnel syndrome, noting that appellant's symptoms had varied in the medical record from examiner to examiner. Dr. Zeidman noted that the only significant finding was loss of strength. Under Table 16-11, he rated loss of strength deficit as Grade 4 (25 percent) on the right side and Grade 3 (50 percent) on the left side. Under Table 16-15, Dr. Zeidman noted that the maximum impairment allowed for motor deficit of the median nerve was 0 percent. He multiplied the maximum motor loss (10 percent) by the 25 percent deficit to find 3 percent impairment to the right arm. For the left arm, he multiplied the maximum motor loss (10 percent) by the 50 percent deficit to find 5 percent impairment. On January 17, 2008 an Office medical adviser reviewed the report of Dr. Zeidman and agreed with the impairment ratings.

In a decision dated September 9, 2008, the Office issued schedule awards for five percent left arm impairment and three percent right arm impairment. The period of the awards ran 24.95 weeks commencing August 9, 2007.

Appellant requested a hearing before an Office hearing representative, which was held on January 13, 2009. By decision dated March 20, 2009, an Office hearing representative affirmed the September 9, 2008 schedule award decision.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>1</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>2</sup> A. George Lampo, 45 ECAB 441 (1994).

When there is a disagreement between the physician making the examination for the United States and the physician of the employee, 5 U.S.C. § 8123(a) provides that a third physician shall be appointed to make an examination to resolve the conflict.<sup>3</sup> It is well established that when a case is referred to a referee physician for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>4</sup>

### ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome due to his work as a distribution clerk. Appellant submitted evidence from Dr. Weiss who rated the extent of permanent impairment as 31 percent of the right arm and 18 percent of the left arm. The medical evidence was reviewed by an Office medical adviser who rated impairment as 13 percent of the right arm and 18 percent to the left arm. The Office found a conflict in medical opinion and referred appellant for an impartial medical examination by Dr. Zeidman, a Board-certified orthopedic surgeon.

On August 9, 2007 Dr. Zeidman reviewed appellant's history of injury and medical treatment, including the reports of Dr. Weiss and the medical adviser. On examination, appellant exhibited a good motion of the neck, shoulders and elbows without spasms or tenderness. Sensory functions were found intact in both upper extremities including the hands. Dr. Zeidman found no evidence of atrophy, as was listed by Dr. Weiss, stating that length and circumferences were symmetrical in both arms. On motor testing, he found that motor function was impaired at the hands with tenderness at the volar wrist but no specific Tinel's sign was elicited. Dr. Zeidman noted that appellant's pattern of symptoms had varied from examiner to examiner and advised that her upper extremity impairment was related to her loss of strength, as it was the only significant finding on examination. Under Table 16-11, he rated the loss of strength deficit as Grade 4 (25 percent) on the right side and Grade 3 (50 percent) on the left side. Under Table 16-15, Dr. Zeidman noted that the maximum allowed for motor deficit of the median nerve was 10 percent. He multiplied the maximum motor loss (10 percent) by the 25 percent deficit to find 3 percent impairment of the right arm. For the left arm, Dr. Zeidman multiplied the maximum motor loss (10 percent) by the 50 percent deficit to find 5 percent impairment. It is well established that when a case is referred to an impartial specialist for the purpose of resolving a conflict of medical evidence, the opinion of such specialist will be accorded special weight if sufficiently well rationalized based on a proper factual background.<sup>5</sup> The record reflects that Dr. Zeidman provided a report based on a proper factual background and thorough consideration of the medical evidence. He made findings on examination of appellant and provided an impairment rating that conforms to the A.M.A., *Guides*. Therefore, the opinion of Dr. Zeidman is entitled to special weight. The Board finds that appellant sustained three percent impairment to her right arm and five percent impairment to her left arm, for which she received schedule awards.

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<sup>3</sup> *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a). The examination by the third physician is called a referee examination. 20 C.F.R. § 10.321(b).

<sup>4</sup> *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

<sup>5</sup> *See Darlene R. Kennedy*, 57 ECAB 414 (2006).

On appeal, counsel for appellant contends that the report of Dr. Zeidman is vague and speculative such that it requires a supplemental report.<sup>6</sup> As noted, when there is a conflict in medical evidence, the opinion of the impartial referee will be given special weight when based on a proper factual and medical background and findings on examination.<sup>7</sup> The Board finds the report of Dr. Zeidman sufficiently well rationalized as to his impairment rating based on loss of strength.

### **CONCLUSION**

The Board finds that appellant has no more than three percent impairment of her right arm and five percent impairment of her left arm, for which she received schedule awards.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 20, 2009 and September 9, 2008 be affirmed.

Issued: March 4, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>6</sup> Counsel cited *Billie M. Gentry*, 38 ECAB ECAB 498 (1987) in support of his argument; however, it is not readily apparent that the case stands for this proposition. The employee was referred to an impartial specialist who provided a November 10, 1980 report on her emotional condition. The Board found that the report of the impartial specialist was based on a proper factual background and was accorded special weight in the termination of benefits. The Board did not find the impartial examiner's report to be speculative or vague.

<sup>7</sup> See *Richard R. LeMay*, 56 ECAB 341 (2005).