United States Department of Labor
Employees' Compensation Appeals Board

G.L., Appellant	)	
and	)	**Docket No. 09-2200**
	)	**Issued: May 10, 2010**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION, Fort Snelling, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 31, 2009 appellant timely appealed the August 3, 2009 merit decision of the Office of Workers' Compensation Programs, which granted a schedule award. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than three percent impairment of the right upper extremity.

FACTUAL HISTORY

Appellant, a 61-year-old retired human resource assistant, has an accepted occupational disease claim for right carpal tunnel syndrome, which arose on or about February 20, 2007. On March 30, 2009 she filed a claim for a schedule award. In a March 19, 2009 report, Dr. Nils Fauchald, an orthopedic surgeon, diagnosed bilateral carpal tunnel syndrome. He explained that appellant had presented to him with signs and symptoms consistent with work-related bilateral

carpal tunnel syndrome. Dr. Fauchald noted that the condition was documented by nerve conduction studies and that appellant had not had surgical intervention. He advised that appellant reached maximum medical improvement and she had five percent impairment to each upper extremity.[1] Although Dr. Fauchald mentioned "AMA standards," he did not provide specific reference to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* or indicate to which edition of the A.M.A., *Guides* he referred.

In a report dated April 29, 2009, Dr. Amon Ferry, the district medical adviser (DMA), found three percent impairment of the right upper extremity. He based his impairment rating on the sixth edition of the A.M.A., *Guides* (2008). Dr. Ferry referenced Dr. Fauchald's October 28, 2008 examination findings, noting the absence of a functional history, but complaints of hand numbness and positive Phalen's and Tinel's tests. He also commented that appellant had full motion and no neurologic deficit. Citing Table 15-23, A.M.A., *Guides* 449, Dr. Ferry explained that he assigned a grade modifier of one for carpal tunnel syndrome because of appellant's continued significant intermittent symptoms, but normal neurologic examination findings.

By decision dated August 3, 2009, the Office granted a schedule award for three percent impairment of the right upper extremity. The award covered a period of 9.36 weeks from March 19 through May 23, 2009.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act 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.[2] 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[3] Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008).[4]

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[1] Dr. Fauchald first recommended a right carpal tunnel release in December 2007 and, when he last examined appellant on October 28, 2008, he diagnosed bilateral carpal tunnel syndrome, right greater than left. He noted that surgery had not been authorized despite the one-year-old electrodiagnostic evidence showing right-sided carpal tunnel syndrome. On physical examination, Dr. Fauchald reported full range of motion of the wrist and a "rather striking" Tinel's sign bilaterally, as well as a positive Phalen's test. He also noted appellant reported intermittent symptoms and some periods when she did not have any numbness.

[2] For a total loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1) (2006).

[3] 20 C.F.R. § 10.404 (2009).

[4] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Example 1 (January 2010).

ANALYSIS

Under the sixth edition of the A.M.A., *Guides*, impairments of the upper extremities are covered by Chapter 15. Entrapment neuropathy, such as carpal tunnel syndrome, is addressed at section 15-4f.[5] Having established the diagnosis of carpal tunnel syndrome, the next step in the rating process is to consult Table 15-23, entitled *Entrapment/Compression Neuropathy Impairment*.[6] The table provides a series of grade modifiers from zero to four and a range of corresponding upper extremity impairments from zero to nine percent. Grade modifiers are assigned based on a combination of factors including test findings, history and physical findings.[7] Citing Table 15-23, Dr. Ferry indicated that he had assigned appellant a Grade 1 modifier "based on continued significant intermittent symptoms but normal neurologic exam[ination] findings." As a result, he found three percent impairment of the right upper extremity. According to the A.M.A., *Guides*, the default impairment value for a Grade 1 modifier under Table 15-23 is two percent impairment of the upper extremity. Dr. Ferry did not provide any salient explanation for why he awarded appellant three percent impairment and the justification for such an award is not readily discernable from his report. Accordingly, the Board finds that the case is not in posture for decision. The matter will be remanded to the Office for clarification of the basis of the DMA's finding of three percent impairment of the right upper extremity under the A.M.A., *Guides* (6th ed. 2008).

CONCLUSION

The Board finds that the case is not in posture for decision as to the extent of appellant's right arm impairment.

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[5] A.M.A., *Guides* 432.

[6] *Id.* at 448-49.

[7] Additional grade modifications are permitted using the *Quick*DASH (Disabilities of the Arm, Shoulder, and Hand) functional assessment tool. However, in this instance, Dr. Ferry noted that appellant's functional history was not available for review.

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further action consistent with this decision.[8]

Issued: May 10, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[8] Because the Office has not made specific findings with respect to appellant's left carpal tunnel syndrome, the issue of whether she has an employment-related impairment of the left upper extremity.