

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

J.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Martinez, GA, Employer**

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**Docket No. 10-917
Issued: November 3, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 18, 2010 appellant, through his representative, filed a timely appeal from the December 14, 2009 merit decision of the Office of Workers' Compensation Programs, which found that he had a five percent impairment of his right upper limb. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant has more than a five percent permanent impairment of his right upper limb.

FACTUAL HISTORY

On September 3, 2008 appellant, then a 61-year-old letter carrier, filed a claim alleging that he had severe pain in his right hand mostly when he cased mail. The Office accepted his claim for right carpal tunnel syndrome.

Appellant underwent a right carpal tunnel release on October 21, 2008, from which he had an excellent result. He later filed a schedule award claim.

On January 16, 2009 Dr. James L. Becton, the attending orthopedic surgeon, found that appellant was doing “real well.” He released him from care with no permanent disability. Dr. Becton completed an Office questionnaire indicating that appellant had no permanent physical impairment of his right upper limb from the accepted carpal tunnel syndrome.

On February 17, 2009 the Office denied appellant’s schedule award claim. Appellant requested reconsideration and submitted diagnostic studies from September 2, 2009. An Office medical adviser noted that the median nerve function in these studies looked normal to his eye. With some abnormal activity in other regions, it appeared to him that some other neurologic process was occurring but “the median nerve function seems ok.”

On November 18, 2009 Dr. Ildemaro J. Volcan, a Board-certified neurosurgeon and consulting spine specialist, evaluated appellant and noted complaints of some tingling in the second, third, fourth and fifth fingers of the right hand. Physical examination showed evidence of cervical spondylitic myelopathy. He noted that the electromyogram and nerve conduction studies obtained on September 2, 2009 were consistent with chronic root changes most likely related to a previous neck surgery from C4-7 with reconstruction of the neck. The studies also showed slow conduction of the ulnar nerve at the elbow, which was mild.¹

Dr. Volcan noted a sensory deficit as a result of carpal tunnel surgery and a very mild hypalgesia in the median nerve distribution “at least not the most troubled objectively, but he complains of them in his right hand.” He found a 20 percent sensory impairment in the median nerve distribution below the wrist with no motor deficit.

The Office medical adviser reviewed Dr. Volcan’s findings. Using Table 15-21, page 438 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008), he found that appellant had a five percent impairment of the right upper limb as a result of a mild sensory deficit in the median nerve below the midforearm.²

On December 14, 2009 the Office reviewed the merits of appellant’s claim, vacated its prior decision and accepted appellant’s claim for a five percent impairment of his right upper limb. It issued a schedule award for the impairment two days later.

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act³ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of

¹ Appellant started having some numbness in the right little finger around mid February 2009.

² That table describes peripheral nerve impairment involving the entire median nerve below the midforearm. The evaluating physician is directed to see Table 15-23 for rating carpal tunnel syndrome.

³ 5 U.S.C. § 8107.

permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁴

ANALYSIS

The diagnosis of a focal neuropathy syndrome must be documented by sensory and motor nerve conduction studies and/or need electromyogram in order to be ratable as impairment under the entrapment neuropathy section of the A.M.A., *Guides*. If nerve conduction testing does not meet the diagnostic criteria listed in Appendix 15-B, page 487, it is considered a normal study for the purpose of rating impairment. Such a case may still be rated under section 15.2, diagnosis-based impairment, using the diagnosis of nonspecific hand, wrist or elbow pain, depending on the affected region.⁵

Dr. Volcan, the consulting spine specialist who obtained an electromyogram and nerve conduction studies on September 2, 2009, did not report that the studies documented a right carpal tunnel syndrome. He appeared to base his finding of median nerve sensory impairment solely on appellant's complaints. The Office medical adviser noted that the median nerve function in these studies looked normal to his eye and the Board notes that the recorded latencies relating to the median nerve at the wrist all appear to be within the stated normal values.

Because it is not clear whether the September 2, 2009 electromyogram and nerve conduction studies meet the diagnostic criteria listed in Appendix 15-B, page 487 of the sixth edition of the A.M.A., *Guides*, the Board finds that this case is not in posture for decision. The Board will set aside the Office's December 14, 2009 decision and remand the case for a supplemental report from Dr. Volcan. The Office shall ask Dr. Volcan to determine whether the September 2, 2009 studies meet the diagnostic criteria of Appendix 15-B. If so, Dr. Volcan should follow Example 15-18, page 449, and determine appellant's entrapment/compression neuropathy impairment using Table 15-23, page 449. If not, he should determine a diagnosis-based impairment under section 15.2, page 387, using the diagnosis of nonspecific hand or wrist pain, as applicable. After such further development as may become necessary, the Office shall issue an appropriate final decision on the extent of any permanent impairment resulting from the accepted employment injury.⁶

⁴ 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

⁵ A.M.A., *Guides* 445-46.

⁶ Dr. Volcan indicated that the September 2, 2009 studies showed chronic root changes most likely related to a previous neck surgery from C4-7 with reconstruction of the neck. It is well established that in determining entitlement to a schedule award, preexisting impairments to the scheduled member are to be included. *Michael C. Milner*, 53 ECAB 446, 450 (2002); *Raymond E. Gwynn*, 35 ECAB 247 (1983). Any previous impairment to the member under consideration is included in calculating the percentage of loss, except when the prior impairment is due to a previous work-related injury (and a schedule award has been granted for such prior impairment), in which case the percentage already paid is subtracted from the total percentage of impairment, or the Department of Veterans Affairs has already paid a claimant for a previous impairment to the same member, in which case an election will be required if the VA has increased the percentage payable as a result of the civilian injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7.a(2) (January 2010).

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: November 3, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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