

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

E.B., Appellant)

and)

**U.S. POSTAL SERVICE, POST OFFICE,
Akron, OH, Employer**)

**Docket No. 10-670
Issued: October 5, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 11, 2010 appellant filed a timely appeal from an October 1, 2009 decision of the Office of Workers' Compensation Programs regarding a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained a ratable impairment of the right upper extremity.

On appeal, counsel asserts that the Office's October 1, 2009 decision denying appellant's schedule award claim is contrary to fact and law.

FACTUAL HISTORY

This case has previously been before the Board. In a decision issued April 5, 2007,¹ the Board affirmed the July 24 and October 24, 2006 decisions of the Office finding that appellant

¹ Docket No. 07-285 (issued April 15, 2007).

did not establish that she sustained bilateral carpal tunnel syndrome in the performance of duty. The facts of the case as set forth in the Board's prior decision and order are incorporated by reference.

Following issuance of the Board's decision and order, appellant submitted new medical evidence. Dr. John W. Dietrich, an attending Board-certified orthopedic surgeon, performed a right median nerve release on December 11, 2006. He discharged appellant from active care on March 27, 2007 as she had a negative Tinel's sign, an excellent fist and had returned to full duty with no restrictions.

In a November 9, 2007 report, Dr. Martin Fritzhand, an attending physician Board-certified in preventive medicine, opined that appellant sustained right carpal tunnel syndrome due to repetitive upper extremity motion at work. She attained maximum medical improvement in April 2007. On examination of the right upper extremity, Dr. Fritzhand found radial deviation limited to zero degrees, an interthenar surgical scar, atrophy of the thenar and hypothenar eminences and 4/5 grip strength. He determined that appellant had a 14 percent impairment of the right upper extremity according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), 10 percent for restricted motion according to Figure 16-31 and 4 percent for diminished grip strength according to Table 16-34.

By decision dated March 19, 2008, the Office vacated its prior decisions and accepted that appellant sustained right carpal tunnel syndrome in the performance of duty. Appellant subsequently claimed a schedule award.

On April 2, 2008 an Office medical adviser recommend that Dr. Fritzhand clarify his impairment rating as he improperly included grip strength. Dr. Fritzhand responded on July 1, 2008 that grip strength was an allowable rating element in carpal tunnel syndrome under Table 16-34. An Office medical adviser recommended a second opinion referral as Dr. Fritzhand twice misapplied the A.M.A., *Guides*.

On December 13, 2008 the Office obtained a second opinion from Dr. Karl V. Metz, a Board-certified orthopedic surgeon, who reviewed the medical record and statement of accepted facts, noting that appellant reached maximum medical improvement on March 27, 2007. Dr. Metz listed appellant's symptoms of intermittent positional numbness and tingling in the right hand and difficulty with personal care activities. On examination of the right wrist he found no atrophy, swelling, discoloration, crepitus or weakness. Range of motion was full, including radial deviation of 20 degrees. Grip and pinch strength were 5/5 and reflexes symmetrical. Two-point discrimination testing revealed no sensory deficit in the right hand or forearm. Tinel's sign was negative at the median and ulnar nerves. Dr. Metz found that appellant had no ratable impairment as she had normal strength, sensation and mobility in the right upper extremity. He found no objective explanation for her subjective symptoms. Dr. Metz noted that appellant could perform full-time work with no restrictions. An Office medical adviser reviewed Dr. Metz's report and concurred that appellant had no permanent impairment of the right upper extremity.

By decision dated March 26, 2009, the Office denied appellant's schedule award claim on the grounds that the medical evidence did not support any impairment of the right upper extremity. It accorded the weight of the medical evidence to Dr. Metz.

Appellant requested a telephonic hearing, held July 16, 2009. At the hearing, she addressed her symptoms of numbness and tingling in her right hand, interfering with activities of daily living. She was no longer under medical treatment. Counsel asserted that the Office medical adviser improperly excluded grip strength from consideration.

By decision dated October 1, 2009, an Office hearing representative affirmed the March 24, 2009 decision.² The hearing representative accorded the weight of the medical evidence to Dr. Metz, who found no objective abnormalities of appellant's right upper extremity. His report was based on a complete, accurate history, correctly applied the A.M.A., *Guides* and was significantly more recent than Dr. Fritzhand's opinion. Moreover, Dr. Fritzhand had misapplied the A.M.A., *Guides*, whereas Dr. Metz used the correct tables and grading schemes in addressing why there was no permanent impairment.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act³ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁴

The standards for evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.⁵

² The March 26, 2009 schedule award decision was issued under the fifth edition of the A.M.A., *Guides*. As of May 1, 2009, the Office utilized the sixth edition of the A.M.A., *Guides*. The October 1, 2009 decision was issued after May 1, 2009 but did not specifically reference the sixth edition of the A.M.A., *Guides*. However, as appellant had no objective abnormalities to rate, the sixth edition of the A.M.A., *Guides* referred to is moot.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ *Tammy L. Meehan*, 53 ECAB 229 (2001).

ANALYSIS

The Office accepted that appellant sustained right carpal tunnel syndrome in the performance of duty. She claimed a schedule award based on the reports of Dr. Fritzhand, an attending physician Board-certified in preventive medicine. Dr. Fritzhand submitted November 9, 2007 and July 1, 2008 reports finding a 14 percent impairment of the right upper extremity according to the fifth edition of the A.M.A., *Guides*, 10 percent for radial deviation limited to zero degrees and 4 percent due to diminished grip strength. However, the A.M.A., *Guides* do not permit grip strength to be considered in rating entrapment neuropathies.⁶ As Dr. Fritzhand did not correctly apply the A.M.A., *Guides* the Office obtained a second opinion from Dr. Metz, a Board-certified orthopedic surgeon.

Dr. Metz reviewed the medical record and statement of accepted facts and performed a thorough clinical examination. He observed normal sensation, strength and a full range of right wrist motion. The restricted radial deviation observed by Dr. Fritzhand in November 2007 had improved to the full normal range of 20 degrees. Dr. Metz opined that as appellant had no objective abnormalities of the right upper extremity, she had no ratable impairment. Based on Dr. Metz's opinion, the Office denied appellant's schedule award claim by March 26 and October 1, 2009 decisions.

The Board finds that Dr. Metz's opinion establishes that appellant had no ratable impairment of the right upper extremity. His report was based on a review of the complete medical record and an accurate statement of accepted facts. Dr. Metz performed a thorough clinical examination and provided detailed orthopedic and neurologic findings. He explained that as appellant had a full range of right wrist motion with normal sensation and strength, there were no impairments on which to base a schedule award.

Appellant has not submitted medical evidence sufficient to outweigh Dr. Metz's opinion. Dr. Fritzhand misapplied the A.M.A., *Guides* and did not have the benefit of the complete medical record. Dr. Metz's opinion is more probative than that of Dr. Fritzhand as he provided a thorough examination and explanation for his findings.⁷

As the medical evidence established that appellant did not have a permanent impairment of the right upper extremity, the Office properly denied her schedule award claim. On appeal, counsel asserts that the Office's October 1, 2009 decision finding no ratable impairment contrary to fact and law. As noted, the weight of the medical evidence demonstrates that appellant had no impairment of the right upper extremity based on her accepted right carpal tunnel syndrome.

⁶ A.M.A., *Guides* 491-95 (5th ed).

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

CONCLUSION

The Board finds that appellant has not established that she sustained a ratable impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2010
Washington, DC

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

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

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