United States Department of Labor
Employees' Compensation Appeals Board

N.J., Appellant	)	
and	)	**Docket No. 09-2331**
	)	**Issued: September 3, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 September 23, 2009 appellant filed a timely appeal from the July 7, 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 23 percent impairment of her right arm and 10 percent impairment of her left arm, for which she received schedule awards.

FACTUAL HISTORY

On May 25, 2001 appellant, then a 42-year-old small parcel and bundle sorter clerk, filed an occupational disease claim alleging carpal tunnel syndrome to both wrists related to her work duties. She did not stop work. The Office accepted appellant's claim for bilateral carpal tunnel syndrome. Appellant underwent left carpal tunnel release on December 12, 2001 and right carpal tunnel release on March 13, 2002. She returned to full duty on August 7, 2002. On July 22, 2003 appellant filed a claim for a recurrence of her bilateral carpal tunnel condition.

The Office accepted the recurrence claim as a new occupational disease under case file number xxxxxxx409 and doubled the claims under this master file number.

Appellant underwent a second left carpal tunnel release on April 16, 2004 and a second right carpal tunnel release on October 1, 2004. She returned to limited duty in December 2004, but stopped work again in January 2005. In November 2007, appellant began working as a family advocate for Head Start. The Office reduced wage-loss compensation based on her actual earnings. Appellant then elected to receive retirement benefits through the Office of Personnel Management in lieu of benefits under the Federal Employees' Compensation Act.

On October 29, 2008 appellant filed a claim for a schedule award.

In a June 10, 2008 report, Dr. David Weiss, an osteopath, reviewed a history of appellant's condition and medical treatment. He provided an impairment rating using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) (hereinafter A.M.A., *Guides*). Dr. Weiss advised that appellant's activities of daily living were affected by her accepted condition and she had difficulty with self-care, grasping objects, pushing and pulling. He noted that appellant's work as a family advocate exacerbated her pain. Dr. Weiss examined her right wrist and hand and noted a well-healed mid-palmar surgical scar and some tenderness. He determined that there was no thenar or hypothenar atrophy. Dr. Weiss examined the left wrist and hand and noted a well-healed mid-palmar surgical scar with extension over the flexor retinaculum of the wrist joint with some tenderness and thenar atrophy and flattening noted. On range of motion for both wrists, he found dorsiflexion of "0-75/75 degrees," palmar-flexion of "0-75/75 degrees," radial deviation of "0-20/20 degrees" and ulnar deviation of "0-35/35 degrees." Dr. Weiss performed grip strength testing performed with the Jamar hand dynamometer and noted that appellant had 20 kilograms of force strength on the right versus 24 kilograms of force strength on the left. He determined that lateral pinch key testing revealed five kilograms in the right hand versus six kilograms in the left hand. The lower arm circumference measured 26 centimeters on the right versus 25 centimeters on the left. Dr. Weiss also determined that Semmes-Weinstein monofilament testing revealed a diminished light touch sensibility at 3.6l milligrams over the median nerve distribution of the right hand and a diminished light touch sensibility at 2.83 milligrams over the median nerve distribution of the left hand. He also found two-point discrimination of 6 centimeters on the right over the median nerve versus 10 centimeters on the left over the median nerve distribution. Dr. Weiss referred generally to Tables 16-10 and 16-15 of the A.M.A., *Guides* and advised that, for the right arm, a Grade 2 sensory deficit for the right median nerve resulted in 31 percent impairment.[1] He referred to Tables 16-33 and 16-34 of the A.M.A., *Guides* and determined that appellant had impairment of 10 percent for her right lateral pinch deficit.[2] Dr. Weiss combined these values to find 38 percent impairment of the right arm. For the left arm, he determined that a Grade 4 sensory deficit of the left median nerve represented 10 percent impairment.[3] Dr. Weiss opined that appellant reached maximum medical improvement on June 10, 2008.

[1] A.M.A., *Guides* 482, 492.

[2] *Id*. at 509.

[3] *See supra* note 1.

In a December 1, 2008 report, an Office medical adviser reviewed the medical evidence of record. He agreed with the 10 percent sensory impairment rating provided by Dr. Weiss for the left arm. The Office medical adviser noted that under Table 16-15, page 492, the maximum percentage of permanent impairment for sensory loss involving the median nerve below the forearm was 39 percent. He concurred with the classification of the extent of sensory deficit under Table 16-10 as Grade 4, or 25 percent. Multiplying the maximum 39 percent times 25 percent equaled 9.75, rounded to 10 percent sensory loss.

For the right arm, the Office medical adviser stated that two-point discrimination testing was 6 millimeters on the right as opposed to 10 millimeters on the left that "would actually be the opposite of what would be expected based upon the other studies." He referred to section 16.8a, Principles Of Strength Evaluation,[4] and noted that decreased strength cannot be rated in the presence of painful conditions. The Office medical adviser advised that the right side showed no thenar or hypothenar atrophy, the basis for an objective assessment of grip strength and pinch deficit and recommended against including grip or pinch deficit in the determination of impairment. As to the extent of sensory deficit under Table 16-10, he disagreed with the Grade 2 (80 percent) classification by Dr. Weiss. The Office medical adviser stated that the findings on examination did not support this grade for decreased protective sensibility.[5] He noted that this had not been demonstrated. The Office medical adviser advised that classification of Grade 3 would apply since appellant had diminished light touch and two-point discrimination. He explained that a Grade 3 represented a 60 percent sensory deficit which, when multiplied by 39 percent maximum loss, equaled 23 percent impairment for pain or discomfort.

In a December 16, 2008 decision, the Office granted appellant schedule awards for 23 percent impairment of the right arm and 10 percent impairment of the left arm. The awards covered 102.96 weeks from June 10, 2008 to May 31, 2010.

On December 24, 2008 appellant's representative requested a hearing, which was held on May 19, 2009. He contended that decreased strength could be rated in the presence of pain if the pain did not prohibit the application of maximum effort. Appellant's representative questioned the validity of the Office medical adviser's report and suggested a conflict may have been created.

By decision dated July 7, 2009, the hearing representative affirmed the December 16, 2008 decision.

[4] A.M.A., *Guides* 508.

[5] *Id*. at 482.

LEGAL PRECEDENT

The schedule award provision of the Act[6] and its implementing regulations[7] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates 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 implementing regulations as the appropriate standard for evaluating schedule losses.[8]

The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.[9] The fifth edition of the A.M.A., *Guides*, regarding impairment due to carpal tunnel syndrome, provides that, if, after an optimal recovery time following surgical decompression, an individual continues to complain of pain, paresthesias or difficulties in performing certain activities, three possible scenarios can be present: 1. Positive clinical findings of median nerve dysfunction and electrical conduction delays: the impairment due to residual carpal tunnel syndrome is rated according to the sensory and/or motor deficits in Tables 16-10a and 16-11a. 2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal electromyogram testing of the thenar muscles: a residual carpal tunnel syndrome is still present and an impairment rating not to exceed five percent of the upper extremity may be justified. 3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating.[10]

ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome for which she underwent surgery. The schedule awards granted by the Office pertain to findings of sensory loss to her right and left arms due to residuals of her accepted conditions.

Dr. Weiss rated the extent of impairment for sensory deficit to appellant's left arm at 10 percent. The Office medical adviser concurred with this rating. Under Table 16-15 the maximum impairment for sensory loss involving the median nerve below the forearm is 39 percent. Dr. Weiss classified the extent of sensory deficit under Table 16-10 as Grade 4, which is described as distorted superficial tactile sensibility (diminished light touch), for which 25 percent deficit is allowed.[11] Multiplying the 39 percent maximum percentage by 25 percent

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] A.M.A., *Guides* (5th ed. 2001).

[9] *B.P.*, 60 ECAB ___ (Docket No. 08-1457, issued February 2, 2009).

[10] *T.A.*, 59 ECAB ___ (Docket No. 07-1836, issued November 20, 2007). *See* A.M.A., *Guides* 495.

[11] A.M.A., *Guides* 482.

sensory deficit totaled 9.75 percent which was rounded to 10 percent.[12] The Board will affirm the determination that appellant sustained 10 percent impairment to her left arm due to sensory loss.

As to the extent of impairment to appellant's right arm, Dr. Weiss found 38 percent impairment based on 31 percent sensory loss and right lateral pinch deficit of 10 percent.

The Office medical adviser rejected the motor strength weakness impairment rating of Dr. Weiss. The Board notes that Dr. Weiss rated 10 percent impairment for right lateral pinch deficit with reference to Tables 16-33 and 16-34 of the A.M.A., *Guides*.[13] In providing this rating, Dr. Weiss' report does not address the limitations found in the A.M.A., *Guides* at section 16.8a. Under principles applicable to rating grip and pinch strength, the A.M.A., *Guides* do not assign a large role to measurements of weakness based on manual muscle testing because they are functional tests influenced by subjective factors that are difficult to control. Loss of strength may be rated separately in rare cases if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the chapter. Even then, impairment due to loss of strength could be combined with other impairments only if it is based on unrelated etiologic or pathomechanical causes. Otherwise, impairment ratings based on objective anatomic findings take precedence. The A.M.A., *Guides* caution that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities or absence of parts that prevent effective application of maximal force in the region being evaluated. Dr. Weiss provided a general reference to Table 16-34 in rating loss of strength to appellant's left arm. He did not provide any discussion of those factors or circumstances in this case that warranted measuring loss of grip or pinch strength in view of the cautionary language in the A.M.A., *Guides*.[14] For this reason, Dr. Weiss' rating does not fully comply with the A.M.A., *Guides* and is of diminished probative value.[15]

The Board notes that, for the right upper extremity, Dr. Weiss referred to Tables 16-10 and 16-15 of the A.M.A., *Guides*. He classified the extent of sensory deficit under Table 16-10 as Grade 2 or 80 percent. Dr. Weiss multiplied the 80 percent sensory deficit in the distribution of the median nerve by the 39 percent maximum impairment value for sensory deficit, which totaled 31 percent impairment.[16] The Office medical adviser, however, explained that a Grade 2 classification was not appropriate. Grade 2 is described as decreased superficial cutaneous pain and tactile sensibility (decreased protective sensibility) which was not supported by the findings made on examination by Dr. Weiss.[17] The Office medical adviser explained that this had not

[12] The Office rounds the calculated percentage of impairment to the nearest whole point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

[13] A.M.A., *Guides* 509.

[14] *Id.* at 507-08. *See J.G.*, 61 ECAB ___ (Docket No. 09-1128, issued December 7, 2009); *K.W.*, 59 ECAB ___ (Docket No. 07-1547, issued December 19, 2007).

[15] *See J.G.*, *supra* note 14 (an attending physician's report is of diminished probative value where the A.M.A., *Guides* are not properly followed).

[16] A.M.A., *Guides* 482, 492.

[17] *Id*. at 482.

been demonstrated in appellant's case. He noted that Grade 3 was applicable since appellant had diminished light touch and two-point discrimination. Grade 3 classified sensory deficit as 60 percent which, when multiplied by 39 percent, totals 23 percent impairment. The Board finds that Dr. Weiss did not adequately explain the elements that went into classifying sensory deficit as Grade 2 or 80 percent. As noted, the Office medical adviser's report supports diminished light touch with two-point discrimination. For this reason, the Board finds that his explanation as to how he used the A.M.A., *Guides* is more probative. It is well settled that, when an attending physician's report gives an estimate of impairment but does not address how the estimate is based upon the A.M.A., *Guides*, the Office may follow the advice of a medical adviser or consultant as to the proper application of the A.M.A., *Guides*.[18] The weight of probative medical evidence supports 23 percent impairment of the right arm for sensory impairment of the median nerve. The Board will affirm the schedule award based on impairment to appellant's right arm.

Counsel contends that the A.M.A., *Guides* provides that decreased strength can be rated in the presence of pain if the pain does not prohibit the application of maximum effort. Dr. Weiss, however, did provide an explanation addressing appellant's pain and how it affected her effort in strength testing.

CONCLUSION

The Board finds that appellant has 23 percent permanent impairment of the right arm and 10 percent permanent impairment of the left arm, for which she received schedule awards.

[18] *J.Q.*, 59 ECAB ___ (Docket No. 06-2152, issued March 5, 2008); *Laura Heyen*, 57 ECAB 435 (2006).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 3, 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