United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 10-506**
	)	**Issued: September 17, 2010**
DEPARTMENT OF THE ARMY, INSTALLATION MANAGEMENT AGENCY, Fort Lewis, WA, 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 December 14, 2009 appellant filed a timely appeal from a September 10, 2009 merit decision of the Office of Workers' Compensation Programs granting a schedule award. 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 met his burden of proof to establish that he has more than a five percent permanent impairment of his right arm.

FACTUAL HISTORY

In February 2006 the Office accepted that appellant, then a 53-year-old welder and shipfitter, sustained trigger finger of his right ring finger due to the repetitive duties of his job. In June 2006 it also accepted that he sustained right carpal tunnel syndrome. Appellant received compensation for periods of disability.

The findings of a March 2, 2006 electromyogram (EMG) and nerve conduction velocity (NCV) testing showed a right median nerve delay of 4.84 milliseconds. The report of the testing diagnosed mild right carpal tunnel syndrome (CTS). On August 10, 2006 Dr. Neville A. Lewis, an attending Board-certified orthopedic surgeon, performed right carpal tunnel release surgery which was authorized by the Office.

In two reports dated March 21, 2008, Dr. Lewis stated that appellant reported having weak right grip strength with occasional nighttime pain.[1] Examination of appellant's right upper extremity showed that his shoulder, elbow, wrist and digits had good flexibility. His right ring digit had 15 degrees of hyperextension and 100 degrees of flexion at the proximal interphalangeal (PIP) joint and he was able to swan-neck the digit. Phalen's and Tinel's tests were negative at the carpal tunnel. Dr. Lewis stated that appellant's right grip strength was 95 pounds on the Jamar dynamometer and that right pinch strength was 14 pounds. The rest of the neurovascular examination of appellant's right upper extremity was intact. Dr. Lewis diagnosed right carpal tunnel syndrome resolved with endoscopic release, stenosing tenosynovitis of the right ring and small digits with residual hyperextension deformity of the ring digit and minimal evidence of residual left cubital tunnel and carpal tunnel syndrome. He stated that appellant had reached maximum medical benefits, noted that no further treatment was indicated and discharged appellant. Based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, the permanent impairment of appellant's right arm was estimated at five percent "principally due to loss of grip strength and persistent ring digit triggering."

Appellant filed a claim for a schedule award due to his accepted employment injuries. In August 2009 the Office asked Dr. Kenneth D. Sawyer, a Board-certified orthopedic surgeon serving as an Office medical adviser, to review the medical evidence and provide an impairment rating under the sixth edition of the A.M.A., *Guides*.

In an August 26, 2009 report, Dr. Sawyer provided a summary of the relevant medical evidence of record including the reports of Dr. Lewis. He noted that Dr. Lewis had provided an impairment rating under the fifth edition of the A.M.A., *Guides*, but that it was necessary to provide an impairment rating under the sixth edition. Dr. Sawyer concluded that appellant had a five percent permanent impairment to his right hand. He stated:

> "Converting the rating to one consistent with the 6th edition of A.M.A., *Guides*, the CTS is rated using Table 15-23, page 449. NCV for right CTS on March 2, 2006 showed only mild conduction delay even prior to surgical release. This would be a grade modifier of one for test findings. No sensory loss is reported and the reported grip strength loss is mild. This would be a grade modifier of three for physical findings. There is no *Quick*DASH score, but there are some ongoing intermittent symptoms. This would be a grade modifier of two for history. There is no reported inability to function on the job or [activities of daily living]. Adding 1 + 3 + 2 = 6. Dividing 6 by 3 = 2. The default rating of the [upper extremity] for an average grade modifier of two is five percent. No

[1] Appellant reported that he occasionally wore a brace on his right hand. He obtained a new brace for his right hand in June 2008.

triggering is reported in the examination findings … and none of the motion measurements reported for the ring finger are outside the normal range. There is therefore no additional impairment for trigger finger."

In a September 10, 2009 decision, the Office granted appellant a schedule award for a five percent impairment of his right arm. The schedule award ran for 15.6 weeks from March 21 to July 8, 2009.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulations[3] 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.[4] The effective date of the 6th edition of the A.M.A., *Guides* is May 1, 2009.[5]

For evaluating impairment related to dysfunction of the median nerves, the 6th edition of the A.M.A., *Guides* (6th ed. 2009) contains Appendix 15-B (Electrodiagnostic Evaluation of Entrapment Syndromes). It provides that the criteria for carpal tunnel syndrome include distal motor latency longer than 4.5 milliseconds for an 8-centimeter study; distal peak sensory latency longer than 4.0 centimeters for a 14-centimeter distance; and distal peak compound nerve latency of longer than 2.4 milliseconds for a transcarpal or midpalmar study of 8 centimeters.[6]

If carpal tunnel syndrome is found under the standards of Appendix 15-B, impairment is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[7] In Table 15-23, grade modifiers are described for test findings, history and physical findings. A survey completed by a given claimant, known by the name *Quick*DASH, may be used to further modify the grade and to choose the appropriate numerical impairment rating.[8] If carpal tunnel syndrome is not found under the standards of

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] *Id*.

[5] FECA Bulletin No. 09-03 (issued March 15, 2009).

[6] A.M.A., *Guides* 487, Appendix 15-B.

[7] *See id.* at Table 15-23.

[8] *Id.* at 448.

Appendix 15-B, impairment due to median nerve dysfunction is evaluated under the scheme found in Table 15-21 (Peripheral Nerve Impairment: Upper Extremity Impairments).[9]

ANALYSIS

The Office accepted that appellant sustained work-related trigger finger of his right ring finger and right carpal tunnel syndrome. On August 10, 2006 Dr. Lewis, an attending Board-certified orthopedic surgeon, performed right carpal tunnel release surgery. In a September 10, 2009 decision, the Office granted appellant a schedule award for five percent impairment of his right arm based on the impairment calculation of Dr. Sawyer, a Board-certified orthopedic surgeon serving as an Office medical adviser.

In an August 26, 2009 report, Dr. Sawyer reviewed the medical records, including the reports of Dr. Lewis. He found that appellant had a five percent impairment of his right hand under the standards of the sixth edition of the A.M.A., *Guides.*[10] The Board finds that Dr. Sawyer properly applied these standards to reach his conclusion about the permanent impairment of appellant's right hand.

Dr. Sawyer properly made reference to Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides.*[11] He chose grade modifiers from the table for the various categories, including test findings, history and physical findings, based on Dr. Lewis' findings.[12] Dr. Sawyer correctly averaged the grade modifiers to equal two in order to find that appellant fell under the grade modifier two category and chose the default value of five from this category to conclude that appellant had a five percent impairment of his right hand.[13]

On appeal appellant contends that Dr. Sawyer did not adequately evaluate the effect of the trigger condition of his right ring finger on his impairment. However, Dr. Sawyer considered this matter by noting that the most recent reports of Dr. Lewis did not show objective findings of trigger finger and that appellant exhibited good range of motion of his right ring finger. He

[9] *Id.* at 437-40, Table 15-21 (portion relating to median nerves).

[10] The Office's decision regarding impairment was not issued until after May 1, 2009 and therefore evaluation of appellant's impairment under the sixth edition of the A.M.A., *Guides* was appropriate. *See supra* note 6. Dr. Lewis provided an opinion that appellant had a five percent permanent impairment of the right hand, but this impairment rating was no greater than the impairment rating for which appellant received a schedule award and it was made under the fifth edition of the A.M.A., *Guides.*

[11] A.M.A., *Guides* 449, Table 15-23 (6th ed. 2009). The record contains the findings of March 2, 2006 EMG and NCV testing showed a right median nerve delay of 4.84 milliseconds in an eight-centimeter study. *See supra* notes 7 and 8 regarding the application of Table 15-23.

[12] Dr. Sawyer indicated that appellant had a grade modifier of one for test findings noting mild right CTS found on diagnostic testing; a grade modifier of three for physical findings noting mild loss of grip strength; and a grade modifier of two for history noting mild intermittent symptoms. He noted that no grade modifier score was warranted under the functional scale as the evidence did not clearly show notable loss of functional ability at work or in activities of daily living.

[13] *Id.*

properly found that no additional impairment would be warranted for trigger finger. The Board notes that there is no medical evidence of record to establish that appellant has more than five percent permanent impairment of his right hand.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than five percent permanent impairment of his right arm.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2009 is affirmed.

Issued: September 17, 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