United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 10-1005**
	)	**Issued: January 13, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Elmira, NY, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 1, 2010 appellant filed a timely appeal of a December 22, 2009 decision of the Office of Workers' Compensation Programs affirming a schedule award decision. 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 two percent permanent impairment of the left upper extremity for which she received a schedule award.

FACTUAL HISTORY

On June 30, 2004 appellant, then a 35-year-old mail handler, filed an occupational disease claim alleging that she developed tendinitis due to the repetitive nature of her job that included lifting bundles of mail, pulling cages of mail and shelving trays of mail. She stopped work on July 14, 2004 and continued working intermittently until she retired on disability on

November 9, 2007. The Office accepted appellant's claim for de Quervain's tenosynovitis of the left hand and authorized appropriate surgery.[1]

Initial medical reports dated between June 29, 2004 and April 12, 2005 from Dr. Sean Stryker, Board-certified in family medicine, noted appellant's complaint of left wrist pain that increased while performing duties at work. Dr. Stryker diagnosed de Quervain stenosing tenosynovitis.[2]

Appellant submitted several reports from Dr. Robert Meyer, a Board-certified orthopedic surgeon, dated between November 1, 2005 and February 8, 2007. Dr. Meyer diagnosed de Quervain tenosynovitis and performed a release of the first dorsal extensor tendon compartment of the left wrist on January 17, 2006. On November 21, 2006 he found that appellant's left wrist impairment was permanent, short of any further intervention and that he could not encourage any further intervention. On February 25, 2007 Dr. Meyer noted appellant's recurrent left wrist pain and advised further surgery for more extensive tenolysis of the extensor tendons of the left thumb. On May 23, 2007 he performed tenolysis of the first dorsal extensor compartment of the left wrist and thumb.

On June 28, 2007 the Office referred appellant with a statement of accepted facts to Dr. Peter Remec, a Board-certified orthopedic surgeon, for a second opinion. In an August 1, 2007 report, Dr. Remec noted appellant's complaint of left wrist and thumb pain with repetitive hand use, pushing and pulling. He indicated that appellant was not at maximum medical improvement as she was 10 weeks following her second surgery. Dr. Remec expected that appellant would reach maximum medical improvement one year following her most recent surgery.

Appellant filed a schedule award claim on November 9, 2007.

In a March 27, 2008 report, Dr. Ibrahim Al-Sinjari, a Board-certified orthopedic surgeon, diagnosed de Quervain's disease of the left wrist. He noted that appellant was at maximum medical improvement but that her left wrist was not back to her preaccident condition.[3]

In an April 3, 2008 letter to Dr. Kevin Coughlin, a Board-certified orthopedic surgeon, the Office requested a report regarding appellant's examination for impairment.[4]

---

[1] The Board notes that this decision contained a typographical error listing the accepted condition as pertaining to appellant's right hand.

[2] Appellant filed several recurrence of disability claims alleging an aggravated left hand condition due to her employment activities. The Office accepted that she sustained recurrences on March 25, 2005 and January 4, 2007. It denied appellant's recurrence of disability claim of August 8, 2007, which was subsequently affirmed by an Office hearing representative.

[3] The Office referred appellant to Dr. Al-Sinjari for an independent medical evaluation to resolve the conflict in medical opinion between Drs. Meyer and Remec regarding the number of hours appellant was able to work.

[4] Dr. Coughlin, a former associate of Dr. Meyer, became appellant's treating physician after Dr. Meyer left the practice.

In a May 8, 2008 decision, the Office denied appellant's schedule award claim finding the evidence insufficient to establish that she sustained a permanent impairment to a schedule member due to the accepted work injury.

Appellant requested a review of the written record on May 21, 2008. She asserted that she and her physician did not receive a letter requesting medical evidence.

In a May 19, 2008 report, Dr. Coughlin noted appellant's complaint of left thumb, hand and wrist pain. Upon examination, he found that the left upper extremity revealed a well-healed and reasonably cosmetic transverse incision about the radial aspect of the left wrist. Dr. Coughlin also found mild swelling along the course of the first dorsal extensor compartment and that the surgical incisions were sensitive to the touch. He noted mild impairment of active and passive thumb palmar adduction and radial adduction. Dr. Coughlin diagnosed left upper extremity work-related de Quervain tendinitis and status post de Quervain surgical release. He opined that based on the New York state workers' compensation guidelines, appellant had 17.5 percent scheduled loss of the left thumb, which was a permanent loss. Dr. Coughlin noted that he was not experienced in using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He also noted that appellant should be reevaluated on an as-needed basis.

In an August 18, 2008 decision, an Office hearing representative set aside and remanded the case finding that it should have been referred to an Office medical adviser for a calculation of impairment.

In a September 15, 2008 report, an Office medical adviser reviewed the medical evidence of record including Dr. Coughlin's May 19, 2008 report. He determined that Dr. Coughlin's examination did not allow him to compute a schedule award based on the A.M.A., *Guides* as it was too vague. The Office medical adviser noted that the only real finding was mild impairment of thumb motions and that no reading was given. He advised that appellant be referred to a physician who was experienced with using the A.M.A., *Guides*.

On December 3, 2008 the Office referred appellant to Dr. Remec for an independent medical evaluation to resolve the conflict in medical opinion between Dr. Coughlin and the Office medical adviser regarding appellant's permanent impairment of the left upper extremity.

In a January 7, 2009 report, Dr. Remec summarized appellant's history of injury. His examination revealed well-healed incisions over the dorsum of the left thumb, no visible swelling, erythema or increased warmth, no palpable crepitation and no localized tenderness. Regarding range of motion of the right and left wrist, flexion and extension was symmetric. Range of motion of the thumb showed interphalangeal joint (IP) joint flexion 0 to 75 degrees for the right and 0 to 60 degrees to the left. Metacarpophalangeal joint (MP) flexion was 0 to 65 degrees for the right and 0 to 40 degrees for the left. Thumb abduction was 70 degrees for the right and 50 degrees for the left. Adduction measured 1.5 centimeters (cm). Grip strength was 23 kilograms (kg) for the right and 9 kg for the left. Key pinch strength was 8 kg on the right and 6 kg on the left. Dr. Remec determined that, based on the fifth edition of the A.M.A., *Guides*, IP joint flexion on the left for 0 to 60 degrees was one percent impairment based on Figure 16-12 on page 456 of the A.M.A., *Guides*. He also determined that MP joint flexion 0 to 40 degrees was two percent impairment, citing Figure 16-15 on page 457. Dr. Remec assessed

one percent impairment for adduction loss of 1.5 cm as the distance from the distal palmar crease at the level of the MP joint of the little finger, citing Figure 16-8b on page 459. He noted no loss of abduction or opposition. Dr. Remec determined a total of four percent impairment of the left thumb, which equaled two percent impairment of the left hand, citing Table 16-1 on page 438 of the A.M.A., *Guides*. He noted March 27, 2008 as the date of maximum medical improvement as that was the date of the first independent medical evaluation where appellant was found to have originally reached maximum medical improvement.

In a February 18, 2009 report, another Office medical adviser reviewed the medical evidence. He agreed with Dr. Remec's findings and determined that IP joint flexion on the left side at 60 degrees was one percent impairment, citing Figure 16-12 on page 476 of the A.M.A., *Guides*. The Office medical adviser also determined MP joint flexion was two percent impairment citing Figure 16-15 on page 457, adduction loss was one percent impairment citing Table 16-8b on page 459. He indicated that appellant had four percent total left thumb impairment that equaled two percent left hand impairment. The Office medical adviser noted that Dr. Remec did not calculate left upper extremity impairment. Therefore, he applied Table 16-2 on page 439 of the A.M.A., *Guides* to determine that two percent hand impairment equaled two percent upper extremity impairment. The Office medical adviser also noted that appellant reached maximum medical improvement on January 7, 2009.

In a March 9, 2009 decision, the Office issued appellant a schedule award for two percent impairment of the left upper extremity. It paid her 6.24 weeks of compensation from January 7 to February 19, 2009.

On April 8, 2009 appellant requested a telephone hearing through her representative, which was held on October 26, 2009.

In a December 22, 2009 decision, an Office hearing representative affirmed the March 9, 2009 decision. She found that Dr. Remec was improperly designated as an independent medical examiner and that he should be considered a second opinion as no conflict existed between Dr. Coughlin and the second Office medical adviser as that medical adviser did not disagree with Dr. Coughlin's findings, rather he only recommended that appellant be referred to another specialist. The hearing representative found that there was no evidence to refute Dr. Remec's findings.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulations 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. 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 sounds 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

[5] 5 U.S.C. §§ 8101-8193. *See* 5 U.S.C. § 8107.

applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[6]

ANALYSIS

Appellant received a schedule award for two percent impairment of her left upper extremity due to her accepted de Quervain's tenosynovitis of the left hand. She provided a report from Dr. Coughlin finding a 17.5 percent loss of use of the thumb. However, Dr. Coughlin did not rate impairment pursuant to the A.M.A., *Guides* and acknowledged that he was not experienced in using the A.M.A., *Guides*. An Office medical adviser, on September 15, 2008, opined that Dr. Coughlin's report provided insufficient findings on which to base an impairment rating based on the A.M.A., *Guides,* and recommended that appellant be referred to another physician for an impairment rating. Thus, Dr. Coughlin's report provides an insufficient basis for rating impairment under the A.M.A., *Guides*.[7] The Office properly referred appellant to Dr. Remec for an impairment evaluation.[8]

Dr. Remec's January 8, 2009 report provided the values for appellant's left thumb range of motion and corresponding calculations. His findings included 60 degrees IP joint flexion for one percent impairment and 40 degrees of MP joint flexion for two percent impairment, citing Figures 16-12 and 16-15 on pages 456 and 457 respectively of the A.M.A., *Guides*. Dr. Remec also found 1.5 cm loss of adduction for one percent impairment, citing Table 16-8b on page 459 of the A.M.A., *Guides*.[9] He totaled appellant's range of motion impairment values to derive four percent left thumb impairment, which he applied to Table 16-1 on page 438 of the A.M.A., *Guides* to correctly determine two percent total left hand impairment. Although Dr. Remec correctly calculated that appellant's left hand impairment totaled two percent, he did not calculate appellant's left upper extremity impairment as requested by the Office.

After receiving Dr. Remec's report, the Office properly referred the matter to its Office medical adviser.[10] The Office medical adviser reviewed the medical evidence of record and

---

[6] *See* 20 C.F.R. § 10.404; *R.D.*, 59 ECAB 127 (2007).

[7] *See J.G.*, 61 ECAB ___ (Docket No. 09-1128, issued December 7, 2009) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

[8] Although the Office initially referred to Dr. Remec as an impartial specialist selected to resolve a conflict between Dr. Coughlin and an Office medical adviser, the Office hearing representative properly found that Dr. Remec was not an impartial specialist as there was no medical conflict. *See* 5 U.S.C. § 8123(a). Dr. Coughlin did not rate impairment under the A.M.A., *Guides,* and the Office medical adviser recommended further medical development. While Dr. Remec was not an impartial specialist with regard to rating permanent impairment, his report may still be considered for its own intrinsic value. *See Cleopatra McDougal-Saddler,* 47 ECAB 480 (1996).

[9] Dr. Remec measured 1.5 cm and properly assigned one percent impairment as 2 cm of adduction equals one percent thumb impairment according to Table 16-8b. *See* A.M.A., *Guides* 459 (impairment values for measured distances falling between those shown in Table 16-8b may be adjusted or interpolated proportionally in the corresponding interval).

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *L.H.*, 58 ECAB 561 (2007) (the Act's procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*).

concurred with Dr. Remec's left hand range of motion findings as well as the finding of two percent left hand impairment. He indicated, as noted, that Dr. Remec did not calculate appellant's left upper extremity impairment. Therefore, the Office medical adviser properly determined that two percent hand impairment equaled two percent upper extremity impairment, citing Table 16-2 on page 439 of the A.M.A., *Guides*.[11]

Accordingly, the Office medical adviser properly correlated Dr. Remec's findings with the A.M.A., *Guides* in finding that appellant had two percent permanent impairment of the left arm. There is no other medical evidence, consistent with the A.M.A., *Guides*, showing that appellant has greater than two percent impairment of the left upper extremity.

CONCLUSION

The Board finds that appellant has not more than two percent impairment of the left upper extremity for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[11] *See Charles B. Carey*, 49 ECAB 528 (1998) (where the residuals of an injury to a member of the body specified in the schedule award provisions of the Act extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm, or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member).