

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

J.D., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Memphis, TN, Employer**

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**Docket No. 10-1036
Issued: January 26, 2011**

Appearances:
Edwin C. Lenow, 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 March 3, 2010 appellant filed a timely appeal from a December 30, 2009 merit 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 sustained any permanent impairment to her left upper extremity causally related to her accepted carpal tunnel and ulnar nerve conditions.

FACTUAL HISTORY

Appellant, a 57-year-old correspondence clerk, filed an occupational disease claim on June 16, 2006, alleging that she developed left carpal tunnel and tennis elbow conditions causally related to employment factors. The Office accepted the claim for left carpal tunnel syndrome and a lesion of the left ulnar nerve.

A July 22, 2006 electromyogram (EMG) of appellant's left upper extremity indicated that she had mild left carpal tunnel syndrome and mild left ulnar nerve compression across her left elbow.

On September 7, 2007 an additional EMG test found that the subtle borderline carpal tunnel syndrome noted on the previous study of July 22, 2006 was not appreciated in this study. All conduction latencies were within normal limits.

In a report dated November 12, 2008, Dr. James H. Calandruccio, Board-certified in orthopedic surgery and hand surgery, found that appellant had a five percent permanent impairment rating due to writer's cramp or focal dystonia of the left upper extremity pursuant to Table 16-13 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) fifth edition.

In a January 7, 2009 report, Dr. Calandruccio stated that appellant was experiencing increasing problems with her right hand and right arm because her job required her to punch buttons all of the time. He stated that her examination was essentially without change, with full digital range of motion and he noted no appreciable numbness in her right hand. Dr. Calandruccio advised that he had no further treatment available for appellant and that her problems were entirely neurological. He recommended that she consult someone who could give her Botox injections in order to ameliorate her condition, especially for her left upper extremity writer's cramp.

On February 9, 2009 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left upper extremity.

In a February 20, 2009 report, Dr. Howard P. Hogshead, an Office medical adviser and a Board-certified orthopedic surgeon, found that appellant did not have any ratable impairment of the left upper extremity. The July 21, 2006 left upper extremity EMG study showed a mild carpal tunnel and cubital tunnel compression; but the results of the second EMG of September 7, 2007 demonstrated no abnormalities of the left upper extremity. Dr. Hogshead stated that, although Dr. Calandruccio indicated that appellant had a neurological disorder, she had been examined by three neurologists without a conclusive diagnosis. He stated that her underlying disorder appeared to be a focal dystonia, which is central in origin. Dr. Hogshead noted that Dr. Calandruccio rated a five percent impairment under Table 13-16, page 338, of the A.M.A., *Guides*. He noted, however, that this was a whole person impairment, which the Office did not recognize and pertained to impairments stemming from the central nervous system or spine which was not an accepted condition.

By decision dated February 26, 2009, the Office found that appellant had no ratable impairment of the left upper extremity and therefore was not entitled to a schedule award.

On March 18, 2009 appellant requested an oral hearing, which was held on October 21, 2009.

In an October 26, 2009 report, Dr. Calandruccio reiterated his opinion that appellant had a five percent left upper extremity impairment under the A.M.A., *Guides*.

By decision dated December 30, 2009, an Office hearing representative affirmed the February 26, 2009 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* fifth edition as the standard to be used for evaluating schedule losses.³ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁴

ANALYSIS

The Office accepted left-sided carpal tunnel syndrome and a lesion of the left ulnar nerve. Appellant filed a claim for a schedule award based on Dr. Calandruccio's November 12, 2008 report. Dr. Calandruccio rated a five percent left upper extremity impairment due to writer's cramp or focal dystonia and referenced Table 13-16, page 338, of the A.M.A., *Guides*, which rates upper extremity impairment based on neurological deficits. Dr. Hogshead, the Office medical adviser, found that this rating was not a sufficient basis for a schedule award because the September 7, 2007 EMG showed no abnormalities pertaining to carpal tunnel and cubital tunnel compression, in contrast with the July 22, 2006 EMG test. He found no substantiation for Dr. Calandruccio's opinion that appellant had a neurological disorder and that focal dystonia was not an accepted condition. Dr. Hogshead further noted that the rating was for whole person impairment, which did not conform with the protocols of the A.M.A., *Guides*.⁵

Dr. Hogshead properly found that appellant did not provide sufficient medical evidence to support a ratable impairment. None of the medical evidence of record provides a rating pursuant to the A.M.A., *Guides*, for her accepted conditions of left carpal tunnel syndrome and left lesion of the ulnar nerve. The most recent diagnostic studies of record, listed normal examination findings for the left upper extremity. The Board finds that the Office properly denied appellant a schedule award for the left upper extremity in its February 26, 2009 decision. Following the February 26, 2009 decision appellant requested reconsideration and submitted an

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² *Id.* at § 8107(c)(19).

³ 20 C.F.R. § 10.404.

⁴ *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

⁵ The Board notes that the Act does not provide for whole person impairments and therefore the calculation of whole person impairment cannot be used to determine the extent of appellant's impairment. *See Tommy R. Martin*, 56 ECAB 273 (2005).

October 26, 2009 report from Dr. Calandrucchio; however, the physician merely reiterated his prior rating of five percent left upper extremity impairment based on a nonaccepted neurological disorder.⁶

On appeal, counsel contends that the Office erred in failing to consider medical evidence from several other physicians who treated appellant's neurological condition affecting her left upper extremity. The reports referenced by counsel are not contained in the case record. Appellant filed a separate claim for a right upper extremity impairment, but that claim is not presently before the Board. The Board will affirm the Office's December 30, 2009 decision.

CONCLUSION

The Board finds that appellant did not establish permanent impairment of her left arm related to her accepted carpal tunnel or ulnar nerve conditions.

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 2011
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

⁶ The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. See *Peter C. Belkind*, 56 ECAB 580, 585 (2005).