United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 10-1238**
	)	**Issued: January 5, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Milwaukee, WI, Employer	)	

Appearances:
Appellant, pro se
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 March 31, 2010 appellant filed a timely appeal from the March 11, 2010 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 the claim.

ISSUE

The issue is whether appellant has more than two percent impairment to his left upper extremity.

FACTUAL HISTORY

On November 16, 2005 appellant, then a 49-year-old flat sorter clerk, filed an occupational disease claim alleging that he injured his left elbow and hand due to repetitive work activities. The Office accepted his claim for left lateral epicondylitis. Appellant also has a claim

accepted for left medial epicondylitis and left cubital tunnel syndrome.[1] On September 2, 2009 he underwent surgery for his accepted left cubital tunnel syndrome and left medial epicondylitis and for nonwork-related left carpal tunnel syndrome performed by Dr. Steven I. Grindel, a Board-certified orthopedic surgeon.[2] On December 8, 2009 appellant filed a claim for a schedule award.

On December 8, 2009 Dr. Grindel released appellant to full-time work with no restrictions. He noted that there was some left palm discomfort and numbness along the posterior/medial left elbow. There was no left hand intrinsic atrophy. Appellant was able to make a full fist. Dr. Grindel opined that he had two percent left wrist impairment and two percent left elbow impairment due to scarring and some pain with use.

By letter dated December 21, 2009, the Office asked appellant to provide a report and impairment rating from his physician based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*), including a description of all pertinent objective findings such as decreased strength or sensory changes, a description of subjective complaints and a recommended percentage of impairment. The report was to include an explanation of how the impairment percentage was determined with reference to applicable tables in the A.M.A., *Guides*. A permanent impairment worksheet was provided for the physician to complete and sign.

On February 2, 2010 appellant submitted a copy of the Office's December 21, 2009 letter on which a physician, apparently Dr. Grindel,[3] made brief comments next to the list of information that the impairment rating report should contain. He noted a December 8, 2009 date of maximum medical improvement, "none" as to decreased range of motion, "pain, weakness [and] slight decreased sensation" as to pertinent objective findings and "see above" regarding a description of subjective complaints. As to the recommended percentage of left upper extremity impairment, the response stated: "two percent [left] wrist [and] two percent [left] elbow." There was no narrative report or completed impairment worksheet. There was no reference to the A.M.A., *Guides* sixth edition.

On March 3, 2010 Dr. Neil Ghodadra, an orthopedic surgeon and an Office medical adviser, noted that the Office had accepted left lateral and medial epicondylitis. He stated that "Dr. Lawrence and others submitted notes to the medical narrative."[4] Dr. Ghodadra found that appellant had two percent left upper extremity impairment based on Table 15.4 at page 399 of

[1] In 2009 the Office accepted appellant's claim for left medial epicondylitis and left cubital tunnel syndrome under subfile number xxxxxx547.

[2] Left carpal tunnel syndrome has not been accepted by the Office as a work-related condition.

[3] The signature is illegible.

[4] There is only one report from Dr. Lawrence. It is dated November 15, 2005, four years prior to appellant's schedule award claim.

the sixth edition of the A.M.A., *Guides* (one percent for left lateral epicondylitis symptoms and one percent for left medial epicondylitis).[5]

By decision dated March 11, 2010, the Office granted appellant a schedule award for two percent left upper extremity impairment. The award ran for 6.24 weeks from December 18, 2009 to January 30, 2010.[6]

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[7] and its implementing regulations[8] 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.[9]

It is well established that proceedings under the Act are not adversarial in nature, and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[10] The Office has an obligation to see that justice is done.[11] Once the Office undertakes development of the record, it has the responsibility to do so in a proper manner.[12]

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[5] *See* Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010) (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*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

[6] The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of the upper extremity. 5 U.S.C. § 8107(c)(10). Multiplying 312 weeks by 2 percent equals 6.24 weeks of compensation. Subsequent to the March 11, 2010 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *See* 20 C.F.R. § 10.404; FECA Bulletin No. 9-03, issued March 15, 2009 (providing for use of the sixth edition of the A.M.A., *Guides* effective May 1, 2009).

[10] *See Udella Billups*, 41 ECAB 260 (1989).

[11] *John J. Carlone*, 41 ECAB 354 (1989).

[12] *See Henry G. Flores, Jr.*, 43 ECAB 901 (1992).

ANALYSIS

The Board finds that this case is not in posture for decision.

On a copy of the Office letter sent to appellant that explained the medical evidence needed for a schedule award, a physician noted a December 8, 2009 date of maximum medical improvement. He wrote "none" regarding decreased range of motion, "pain, weakness [and] slight decreased sensation" regarding pertinent objective findings and "see above" regarding a description of subjective complaints. As to the recommended percentage of left upper extremity impairment, two percent was provided for both the wrist and elbow. There was no narrative explanation of how the rating was made under the A.M.A., *Guides*, sixth edition.

Dr. Ghodadra indicated that the Office had accepted left lateral and medial epicondylitis. He noted that Dr. Lawrence and others submitted notes to the medical narrative. Dr. Ghodadra did not mention Dr. Grindel. He found that appellant had two percent left upper extremity impairment based on Table 15.4 of the sixth edition of the A.M.A., *Guides* (one percent for left lateral epicondylitis symptoms and one percent for left medial epicondylitis). He did not mention appellant's accepted left cubital tunnel syndrome. The Office medical adviser did not adequately explain how he determined appellant's left upper extremity impairment in light of the fact that there was no comprehensive narrative report from an examining physician containing a description of pertinent objective findings such as decreased strength or sensory changes, a description of subjective complaints and a recommended percentage of impairment. As noted, the handwritten comments on the Office's letter did not include an explanation of how the impairment percentage was determined with reference to applicable tables in the A.M.A., *Guides* sixth edition or a completed and signed impairment worksheet. Dr. Ghodadra did not explain how he determined one percent impairment for left lateral epicondylitis and one percent for left medial epicondylitis in light of the fact that Table 15-4 at page 399 provides for a range of 1 to 13 percent for a Class 1 impairment due to lateral or medial epicondylitis. Due to these deficiencies, Dr. Ghodadra's impairment determination is not sufficient to establish appellant's left upper extremity impairment.

The Board will remand the case to the Office for further medical development. The Office should refer appellant to an appropriate medical specialist for evaluation of his left upper extremity impairment. The Office should provide the physician with a list of appellant's accepted left upper extremity conditions, a statement of accepted facts and the case record. The physician should be asked to provide an explanation of appellant's left upper extremity impairment with reference to applicable sections and tables in the A.M.A., *Guides*. After such further development as the Office deems necessary, it shall issue a *de novo* decision on the extent of permanent impairment to appellant's left arm.

CONCLUSION

The Board finds that this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 11, 2010 is set aside. The case is remanded to the Office for further action consistent with this decision of the Board.

Issued: January 5, 2011
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