

United States Department of Labor
Employees' Compensation Appeals Board

V.P., Appellant)	
)	
and)	Docket No. 10-1885
)	Issued: May 10, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Omaha, NE, Employer)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 20, 2010 appellant filed a timely appeal from the January 26, 2010 merit decision of the Office of Workers' Compensation Programs granting a schedule award. Pursuant to the Federal Employees' Compensation Act¹ and 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 her burden of proof to establish that she has more than a one percent permanent impairment of her left arm and no permanent impairment of her right arm.

FACTUAL HISTORY

On October 7, 2005 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that her bilateral wrist condition was due to her repetitive work duties.

¹ 5 U.S.C. § 8101 *et seq.*

The Office accepted that she sustained bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on February 15, 2005 and a left carpal tunnel release on March 10, 2005. Both procedures were authorized by the Office. Appellant stopped work as a result of her condition and the Office paid compensation for wage loss. She returned to work at regular duty on May 2, 2006.

On November 6, 2006 appellant filed a claim for a schedule award due to her accepted work injury. The Office referred her for a second opinion evaluation with Dr. Andrew Lee, a Board-certified physical medicine and rehabilitation physician, to determine her permanent impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

On February 5, 2007 Dr. Lee detailed his findings on examination and opined that appellant had no neurological deficits to justify any impairment rating. He discussed her wrist range of motion and concluded that this resulted in a one percent permanent impairment of her left arm and a zero percent permanent impairment of her right arm. The Office referred Dr. Lee's report to Dr. Daniel D. Zimmerman, a Board-certified internist serving as an Office medical adviser, who indicated on February 12, 2007 that he concurred with Dr. Lee's opinion on permanent impairment.

In a March 20, 2007 decision, the Office granted appellant a schedule award for a one percent permanent impairment of her left arm. It found that she had no permanent impairment of her right arm.

In a February 25, 2008 report, Dr. Andrew Thompson, an attending orthopedic surgeon, provided a diagnosis of mild residual symptoms status post bilateral carpal tunnel releases, right middle trigger finger, left middle trigger finger and left thumb trigger finger. He opined that appellant's impairment was a combination of the carpal tunnel symptoms and the three triggering fingers. Under the fifth edition of the A.M.A., *Guides*, Dr. Thompson found that appellant had a five percent impairment of her right arm due to her carpal tunnel syndrome and a nine percent impairment of her right arm due to her trigger finger. He also opined that appellant had a 6 percent impairment of her left arm due to her carpal tunnel syndrome and an 18 percent impairment of her left arm due to her trigger fingers.²

In a June 5, 2008 decision, an Office hearing representative set aside the March 20, 2007 decision and remanded the case for an Office medical adviser to review the February 25, 2008 report of Dr. Thompson. On June 15, 2008 Dr. Zimmerman reviewed a report and opined that Dr. Thompson did not report complete range of motion findings of either wrist or indicate that he used a goniometer. He noted that trigger fingers was not accepted by the Office as being work related and stated that it constituted a condition that would likely improve with treatment. Dr. Zimmerman found no evidence that appellant had ever received treatment for finger triggering and noted that Dr. Thompson provided no range of motion measurements for any of

² Dr. Lee's report did not mention any findings related to trigger finger. He only stated that the left middle finger was reported to have diminished sensation but that appellant was able to distinguish two pinpricks separated by 1.5 centimeters. Dr. Lee indicated that appellant's other fingers did not otherwise demonstrate any abnormalities.

the digits that were said to be triggering. He concluded that this report was incomplete and insufficient to change the degree of impairment previously awarded.

In a July 11, 2008 decision, the Office determined that appellant had no more than a one percent permanent impairment of her left arm and a zero percent permanent impairment of her right arm. It found that the February 20, 2008 report of Dr. Thompson was not sufficiently well rationalized to show a greater degree of impairment.

Appellant submitted a supplemental report of Dr. Thompson dated July 30, 2008. Dr. Thompson noted that the measurements of appellant's wrists were taken as her wrists were the source of her impairment rating under evaluation for carpal tunnel syndrome but finger motion was not specifically measured.³ Appellant was reexamined on July 30, 2008 and further range of motion testing was performed. Dr. Thompson discussed the specific results of appellant's wrist range of motion as well as the range of motion of the right middle finger, left middle finger and left thumb. He stated that, under the fifth edition of the A.M.A., *Guides*, the findings continued to support that appellant had a five percent impairment of her right arm and a six percent impairment of her left arm due to her carpal tunnel syndrome.

In an October 8, 2008 decision, the Office set aside its July 11, 2008 decision and remanded the case to the Office in order for an Office medical adviser to review the July 30, 2008 report of Dr. Thompson.

On October 25, 2008 Dr. Zimmerman noted that the July 30, 2008 report of Dr. Thompson did not have any history or current physical examination findings other than range of motion findings even though it had been five months since the original evaluation in February 2008. He noted that the July 30, 2008 report only discussed measurements taken with a goniometer on July 30, 2008. Dr. Zimmerman opined that a full report with a complete history and findings on examination was necessary and posited that the additional range of motion measurements taken five months after the first report, which were unsupported by appellant's history and other examination findings, were not sufficient to use as a basis for a modified impairment rating.

In a December 3, 2008 decision, the Office determined that appellant had no more than a one percent permanent impairment of her left arm and a zero percent permanent impairment of her right arm. It indicated that the July 30, 2008 report of Dr. Thompson was not sufficiently well rationalized to show a greater degree of impairment.

Appellant requested a review of the written record by an Office hearing representative. In an April 1, 2009 decision, the Office hearing representative affirmed the Office's December 3, 2008 decision. Appellant found that the Office had properly relied on the opinion of Dr. Zimmerman to find that Dr. Thompson's reports, including his July 30, 2008 report, did not show that appellant had more than a one percent permanent impairment of her left arm and a zero percent permanent impairment of her right arm.

³ Dr. Thompson noted that his original examination of appellant was made using a goniometer.

On October 27, 2009 appellant submitted an October 7, 2009 report of Dr. Thompson and asserted that it showed that she was entitled to an increased schedule award for permanent impairment of her arms.

In an October 7, 2009 report, Dr. Thompson reported examination findings obtained on September 30, 2009 and diagnosed mild residual carpal tunnel syndrome postbilateral carpal tunnel releases. Under the standards of the fifth edition of the A.M.A., *Guides*, he determined that appellant had a 4 percent impairment of her right arm by converting a 13 percent impairment of her right middle finger for sensory loss to a 3 percent impairment of her right arm and combining this value with and a 1 percent impairment of her right arm due to loss of radial deviation of her right wrist.⁴ Dr. Thompson found that appellant had an 8 percent impairment of her left arm by converting several digit ratings to arm ratings (including a 13 percent impairment of her index finger, a 13 percent impairment of her left middle finger, and an 8 percent impairment of her right ring finger due to sensory loss) and then combining these values with a 1 percent impairment of her left arm due to loss of radial deviation of her left wrist. He used the fifth edition of the A.M.A., *Guides* for all these assessments.

On December 27, 2009 Dr. Zimmerman stated that the impairment ratings provided by Dr. Thompson in his October 7, 2009 report appeared to be largely based on range of motion and digital sensory changes that were not quantified with a two-point discrimination testing device. He asserted that such findings did not provide a “basis to modify impairment ratings for right or left upper extremity diagnoses accepted by the [Office].”

In a January 26, 2010 decision, the Office affirmed its April 1, 2009 decision. It discussed Dr. Thompson’s October 7, 2009 report and found that the Office had properly relied on the opinion of Dr. Zimmerman to find that the October 7, 2009 report did not show that appellant was entitled to additional compensation for arm impairment.

LEGAL PRECEDENT

The schedule award provision of the Act⁵ and its implementing regulations⁶ 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.⁷

⁴ The three percent impairment rating was due to decreased sensation of appellant’s right middle finger both radial and ulnar from the proximal interphalangeal joint distally.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁸ Office procedures provide that, effective May 1, 2009, all schedule awards are to be calculated under the sixth edition of the A.M.A., *Guides*. The bulletin describing these procedures indicate that any recalculations of previous awards which result from hearings or reconsideration decisions issued on or after May 1, 2009, should be based on the sixth edition of the A.M.A., *Guides*. The bulletin notes, a claimant who has received a schedule award calculated under a previous edition and who claims an increased award, will receive a calculation according to the sixth edition for any decision issued on or after May 1, 2009.⁹

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on February 15, 2005 and a left carpal tunnel release on March 10, 2005. In a March 20, 2007 decision, the Office granted her a schedule award for a one percent permanent impairment of her left arm. The award was based on an impairment rating derived under the standards of the fifth edition of the A.M.A., *Guides*.

Appellant claimed entitlement to increased schedule award compensation. She submitted several reports of Dr. Thompson, an attending orthopedic surgeon. In an April 1, 2009 decision, an Office hearing representative affirmed the Office's December 3, 2008 decision finding that appellant had not shown that she had more than a one percent permanent impairment of her left arm and a zero percent permanent impairment of her right arm. Up to this point, all assessments of her arm impairment had been made under the standards of the fifth edition of the A.M.A., *Guides*.

On October 27, 2009 appellant submitted an October 7, 2009 report of Dr. Thompson, contending that she was entitled to an increased schedule award for permanent impairment of her arms.¹⁰ Dr. Thompson reported the findings of his September 30, 2009 examination and found that, under the fifth edition of the A.M.A., *Guides*, appellant had a four percent impairment of her right arm and an eight percent impairment of her left arm. In a January 26, 2010 decision, the Office determined that appellant had not shown that she had more than a one percent permanent impairment of her left arm and a zero percent permanent impairment of her right arm.

The Board notes that the Office issued its January 26, 2010 decision denying appellant's claim for increased impairment after May 1, 2009, the effective date of the sixth edition of the A.M.A., *Guides*, and therefore appellant's claim should have been evaluated under the standards of the sixth edition.¹¹ Dr. Thompson did not apply the standards of the sixth edition of the A.M.A., *Guides* in his October 7, 2009 report. There is no indication that the Office, in its

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ *Id.*

¹⁰ On appeal appellant claimed that the Office did not adequately explain why the reports of Dr. Thompson did not show that she was entitled to additional schedule award compensation for permanent impairment of her arms.

¹¹ *See supra* note 7 and 8.

January 26, 2010 decision, made any attempt to apply the standards of the sixth edition of the A.M.A., *Guides* to the findings contained in Dr. Thompson's October 7, 2009 report.

For these reasons, the case will be remanded to the Office for evaluation of appellant's arm impairment under the standards of the sixth edition of the A.M.A., *Guides*. After such development as it deems necessary, the Office shall issue an appropriate decision regarding her arm impairment.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she has more than a one percent permanent impairment of her left arm and a zero percent permanent impairment of her right arm. The case is remanded to the Office for further development.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: May 10, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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