

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

B.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 10-2061
Issued: May 19, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 10, 2010 appellant filed a timely appeal from the May 20, 2010 merit decision of the Office of Workers' Compensation Programs concerning entitlement to schedule award compensation. 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 five percent permanent impairment of her right arm and a five percent permanent impairment of her left arm, for which she received a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

In November 2007, the Office accepted that appellant, then a 54-year-old mail processing clerk, sustained bilateral carpal tunnel syndrome due to her repetitive work duties over time.²

In an April 29, 2008 report, Dr. Louise Lamarre, an attending Board-certified family practitioner, stated that appellant reported that at times her right hand became completely numb, mainly in the median distribution (thumb, index and middle digits), to the extent that the condition interfered with activity. Her left upper extremity displayed symptoms to a lesser degree. Dr. Lamarre noted that appellant had a cervical injury in 2004 which required surgery and rehabilitation. Upon physical examination, the flexion of appellant's hands had diminished and was incomplete on the right side with the index and little fingers unable to completely flex. The left hand had a normal range of motion.³ Dr. Lamarre diagnosed bilateral carpal tunnel syndrome (right more than left) and listed the date of maximum medical improvement as April 29, 2008. She provided an opinion that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) appellant had a 22 percent permanent impairment of her right arm and a 9 percent permanent impairment of her left arm. These impairment values were due to sensory and motor deficits associated with the median nerves.

In a May 5, 2009 report, Dr. John A. Sklar, a Board-certified physical medicine and rehabilitation physician serving as an Office referral physician, noted that appellant reported having difficulty bending the third digit on her right hand and experiencing pain at the base of the third, fourth and fifth digits on the right. Appellant was unwilling to have surgery due to her diabetes condition and possible poor wound healing. Upon physical examination, she had generalized tenderness of the neck, shoulders, arms, and hands and there was some tenderness of the small joints of the fingers. Dr. Sklar found that appellant had generalized decreased range of motion in the wrists with flexion and extension to 50 degrees, radial deviation to 10 degrees and ulnar deviation to 25 degrees. Range of motion was limited in the right middle and index finger without evidence of triggering and there was generalized decreased strength in both upper extremities secondary to pain. Two-point discrimination was eight to nine millimeters in the right hand in both the median and ulnar distributions and two-point discrimination was six millimeters on the left. Appellant had generalized chronic pain in the upper extremities and hands, possibly secondary to nonwork-related arthritis, which appeared to cause some loss motion of the wrist and right middle and index fingers. Dr. Sklar noted that appellant had electro-diagnostically confirmed carpal tunnel syndrome and that she might have peripheral neuropathy due to diabetes as two-point discrimination was worse than expected in both hands.

² It appears from the record that appellant had previously sustained a work-related cervical sprain and displaced cervical disc in November 2004.

³ Dr. Lamarre indicated that appellant had definite sensory deficit and hypoesthesia in the median distribution on the right side, not acute in nature but recurring consistently with activity. Her left upper extremity had some hypoesthesia but it was much less pronounced in the median distribution. Appellant's grip testing was 20 pounds on the left side and 10 pounds on the right side and she had a very strong positive Tinel's sign on the right side and mild one on the left side.

Dr. Sklar advised that appellant reached maximum medical improvement on April 29, 2008 and, under the sixth edition of the A.M.A., *Guides* (6th ed. 2009), entrapment/compression neuropathy such as carpal tunnel syndrome was evaluated under Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449. He stated that for the right arm appellant fell under grade modifier 1 for test findings as there was a conduction delay without evidence of a motor conduction block. Appellant fell under grade modifier 3 for history due to constant symptoms and grade modifier 2 for physical findings due to decreased sensation. These grades were averaged to two which meant that overall she fell under grade modifier 2 with a default rating value of five. Dr. Sklar determined that appellant had a moderate functional impairment which fell under the same grade as the overall grade modifier 2 for her condition so there was zero score adjustment for this category. Appellant had a five percent permanent impairment of her right arm. For the left arm, she fell under grade modifier 1 for test findings, grade modifier 3 for history, and grade modifier 1 for physical findings. These grades were averaged to 1.66 which, when rounded up to 2, meant that overall appellant fell under grade modifier 2 with a default rating value of five. The functional modification calculation was the same for the left arm as for the right arm so there was zero score adjustment for this category. Therefore, appellant had a five percent permanent impairment of her left arm.⁴

On May 22, 2009 Dr. Ronald H. Blum, a Board-certified orthopedic surgeon serving as an Office medical adviser, stated that appellant reached maximum medical improvement on April 29, 2009. He indicated that, on the right side, application of Table 15-23 of the sixth edition of the A.M.A., *Guides* showed that appellant fell under grade modifier 1 for test findings grade modifier 3 for history and grade modifier 2 for physical findings. Adding the grade modifiers to six and then dividing by three meant that appellant fell under grade modifier 2 with a default value of five percent. Appellant's score on the functional scale fell under grade modifier 2 and therefore there was no adjustment to the default value of five percent. Dr. Blum concluded that appellant had a five percent permanent impairment of her right arm. On the left side, application of Table 15-23 showed that appellant fell under grade modifier 1 for test findings, grade modifier 3 for history and grade modifier 1 for physical findings. Averaging the grade modifiers (the average of 1.66 rounded up to 2) meant that she fell under grade modifier 2 with a default value of five percent. Appellant's score on the functional scale fell under grade modifier 2 and again there was no adjustment to the default value of five percent. Dr. Blum concluded that appellant had a five percent permanent impairment of her left arm.

In a May 20, 2010 decision, the Office granted appellant schedule awards for a five percent permanent impairment of her left arm and a five percent permanent impairment of her right arm.

⁴ Dr. Sklar indicated that appellant had arthritis of her arms which was not work related, so no additional impairment was granted for loss of range of motion which was not part of the accepted condition, bilateral carpal tunnel syndrome.

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 The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁸

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁹ In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories test findings, history, and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.¹⁰

ANALYSIS

The Office accepted that appellant, then a 54-year-old mail processing clerk, sustained bilateral carpal tunnel syndrome due to her repetitive work duties over time. In a May 20, 2010 decision, it granted her a schedule award for a five percent permanent impairment of her left arm and a five percent permanent impairment of her right arm. The Office based its schedule award on the opinions of Dr. Sklar, a Board-certified physical medicine and rehabilitation physician serving as an Office referral physician, and Dr. Blum, a Board-certified orthopedic surgeon serving as an Office medical adviser.

In a May 5, 2009 report, Dr. Sklar, discussed his examination of appellant and provided an opinion that she had a five percent permanent impairment of her right arm and a five percent permanent impairment of her left arm under the standards of the sixth edition of the A.M.A., *Guides*. In a May 22, 2009 report, Dr. Blum addressed the findings of record, including those contained in Dr. Sklar's May 5, 2009 report, and also performed a calculation finding that appellant had a five percent permanent impairment of her right arm and a five percent permanent impairment of her left arm under the standards of the sixth edition of the A.M.A., *Guides*.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

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

⁹ *See* A.M.A., *Guides* 449, Table 15-23.

¹⁰ *Id.* at 448-50.

The Board finds that Dr. Sklar and Dr. Blum properly applied the standards of the sixth edition of the A.M.A., *Guides* to reach their conclusion about appellant's permanent arm impairment.

For each arm, Dr. Sklar and Dr. Blum 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 They chose grade modifiers from the table for the various categories, including test findings, history and physical findings. Dr. Sklar and Dr. Blum then averaged the grade modifiers and chose the default value of five percent for the grade modifier 2 category to conclude that appellant had a five percent impairment. They found that in each arm appellant's score on the functional scale fell under grade modifier 2 and there was no adjustment to the default value of five percent.¹²

The Board notes that there is no medical evidence of record to establish more than a five percent permanent impairment of each arm, for which appellant received schedule award compensation. On appeal appellant argued that the Office did not give proper weight to the impairment ratings calculation of Dr. Lamarre, an attending Board-certified family practitioner. In her April 29, 2008 report, Dr. Lamarre, an attending Board-certified family practitioner, indicated that appellant had a 22 percent permanent impairment of her right arm and a 9 percent permanent impairment of her left arm under the fifth edition of the A.M.A., *Guides*. However, appellant's impairment was appropriately evaluated under the standards of the sixth edition of the A.M.A., *Guides* as the May 20, 2010 Office decision granting schedule award compensation was issued after May 1, 2009, the effective date of the sixth edition.¹³

For these reasons, the Office properly declined to award appellant additional schedule award compensation.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a five percent permanent impairment of her left arm and a five percent permanent impairment of her right arm, for which she received a schedule award.

¹¹ A.M.A., *Guides* 449, Table 15-23 (6th ed. 2009).

¹² *Id.*

¹³ *See supra* note 6. On appeal appellant also argued that the Office impermissibly referred appellant to Dr. Sklar. However, at the time of the referral to Dr. Sklar, additional clarification was needed regarding appellant's arm impairment that had not been provided by any attending physician. Appellant claimed that Dr. Sklar and Dr. Blum did not take into account her preexisting cervical condition, but the effects of this condition were considered in conjunction with the grade modifier scores for test findings, history and physical findings under Table 15-23.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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