United States Department of Labor
Employees' Compensation Appeals Board

A.E., Appellant	)	
and	)	**Docket No. 11-1803**
	)	**Issued: March 14, 2012**
U.S. POSTAL SERVICE, BAY VALLEY PERFORMANCE CLUSTER, Oakland, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 1, 2011 appellant filed a timely appeal from the May 20, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her schedule award claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 a permanent impairment of her arms warranting schedule award compensation.

FACTUAL HISTORY

OWCP accepted that on July 25, 2009 appellant, then a 55-year-old clerk, sustained bilateral carpal tunnel syndrome and a crushing injury to both hands and wrists (except the

[1] 20 C.F.R. § 8101 *et seq.*

fingers) when mail tubs fell out of a wire cage and landed on her hands. Appellant stopped work on July 25, 2009 and returned to light-duty work on July 27, 2009.

On November 4, 2009 appellant began to be treated by Dr. Jing W. Hsieh, an attending Board-certified hand surgeon, who diagnosed work-related bilateral carpal tunnel syndrome and recommended surgical intervention.[2] On March 18, 2010 Dr. Hsieh performed a left carpal tunnel release with distal forearm fasciotomy, neurolysis and epineurotomy. On May 6, 2010 he performed a right carpal tunnel release with distal forearm fasciotomy. Both surgeries were authorized by OWCP.

Appellant returned to full-time work for the employing establishment on July 15, 2010. On September 8, 2010 Dr. Hsieh advised that appellant could perform her regular work on a full-time basis without restrictions.

On November 17, 2010 Dr. Hsieh reported the findings of his examination of appellant. In reporting appellant's history, he stated that appellant had recovered well from her March and May 2010 surgeries and noted that she had reported that all of her paresthesias and most of her deep hand aching had resolved. Appellant reported occasional sharp pain along the flexor wrist tendons with heavy lifting and indicated that she was not taking any medications. Dr. Hsieh stated that physical examination of appellant's hands revealed no obvious swelling or major deformity. The overlying skin was intact with no lacerations, abrasions, puncture wounds or skin breakdown and there was no ecchymosis or erythema. Dr. Hsieh indicated that there was no tenderness to palpation over the flexor and extensor surfaces. Upon range of motion testing, the fingers had full extension and flexion to the distal palmar crease without restriction. There was no subluxation of the metacarpophalangeal joints or interphalangeal joints and there was no crepitation on range of motion. Dr. Hsieh stated that there was no instability about the carpometacarpal joint of the thumbs and there was a negative carpometacarpal grind test of the thumbs.

Dr. Hsieh indicated that examination of the wrists revealed no deformity, swelling, skin breakdown, ecchymosis or sign of infection. He stated that appellant indicated no tenderness on palpation of the wrist joints in the radial, ulnar, volar and dorsal aspects and range of motion in both wrists was unrestricted and painless in all planes. The Finkelstein's test in both wrists was negative and the nerve examination revealed negative Phalen's and Tinel's signs. Dr. Hsieh indicated that the abductors were strong and no compression testing, diminished stroke or two-point discrimination deficits were noted. He indicated that the surgical scars in appellant's wrists were well faded and that there was no hypertrophy, hyperpigmentation, hypersensitivity, hypopigmentation, atrophy, abrasion, discoloration or bruising. Dr. Hsieh diagnosed bilateral carpal tunnel syndrome and stated that there was "no whole person impairment" under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

Appellant filed a claim for a schedule award. In a May 4, 2011 report, Dr. Christopher R. Brigham, a Board-certified occupational medicine physician serving as an OWCP medical

[2] The findings of electromyogram testing from October 28, 2009 showed severe carpal tunnel syndrome in both wrists.

consultant, reviewed the evidence of record, including Dr. Hsieh's November 17, 2010 report. Dr. Brigham advised that date of maximum medical improvement was November 17, 2010 and concluded that appellant had no permanent impairment of her arms under the standards of the sixth edition of the A.M.A., *Guides*. He stated:

> "Using Table 15-23, Entrapment/Compression Neuropathy Impairment … the following impairments were determined:
>
> "For Test Findings a [g]rade [m]odifier 1 is assigned based on electrodiagnostic studies that confirm conduction delay of sensory and/or motor [sic].
>
> "Based on the History provided, a [g]rade [m]odifier 0 is assigned for as the patient is asymptomatic.
>
> "With regard to the physical findings, there is [no] documentation of sensory deficits or weakness/atrophy…; therefore, a [g]rade [m]odifier 0 is assigned.
>
> "The value of the [g]rade [m]odifiers are added and in this case result in 1 (1 + 0 + 0 = 1). Dividing 1 [by] 3 gives a rounded average of 0. Therefore, there is [g]rade [m]odifier 0 for each hand resulting in 0 percent upper extremity impairment for each extremity."

In a May 20, 2011 decision, OWCP denied appellant's schedule award claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained permanent impairment of her arms. It found that the May 4, 2001 report of Dr. Brigham established that appellant did not have permanent impairment of her arms.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing regulations[4] 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, FECA 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.[5] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[6]

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id*.

[6] FECA Bulletin No. 09-03 (issued March 15, 2009).

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[7] In Table 15-23, grade modifiers levels (ranging from 0 to 4) are described for the categories of 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.[8]

ANALYSIS

OWCP accepted that on July 25, 2009 appellant sustained bilateral carpal tunnel syndrome and a crushing injury to both hands and wrists (except the fingers) when mail tubs fell out of a wire cage and landed on her hands. On March 18, 2010 Dr. Hsieh, an attending Board-certified hand surgeon, performed a left carpal tunnel release with distal forearm fasciotomy, neurolysis and epineurotomy. On May 6, 2010 he performed a right carpal tunnel release with distal forearm fasciotomy. Dr. Hsieh found no whole person impairment. Appellant filed a claim for a schedule award, but OWCP determined in a May 20, 2011 decision that she did not have a permanent impairment of her arms which entitled her to schedule award compensation. OWCP based its decision on the May 4, 2011 report of Dr. Brigham, a Board-certified occupational medicine physician who served as OWCP's medical consultant.

In a May 4, 2011 report, Dr. Brigham indicated that he had reviewed the evidence of record, including Dr. Hsieh's November 17, 2010 findings. He provided an opinion that appellant had no permanent impairment of her arms under the standards of the sixth edition of the A.M.A., *Guides.*[9] Dr. Brigham properly applied these standards to reach his conclusion about her permanent impairment.

Dr. Brigham properly made reference to Table 15-23 (Entrapment/Compression Neuropathy Impairment) on page 449 of the sixth edition of the A.M.A., *Guides.*[10] He chose grade modifiers for appellant's arms from the table for the various categories, including test findings, history and physical findings. Dr. Brigham stated that, for each arm, test findings fell under grade modifier 1 based on electrodiagnostic studies that confirmed conduction delay (sensory and/or motor), that history fell under grade modifier 0 as appellant was asymptomatic and that physical findings fell under grade modifier 0 because there was no clinical documentation of sensory deficits, weakness or atrophy. The Board notes that these grade modifier assessments are warranted by the evidence of record, including Dr. Hsieh's November 17, 2010 findings. Dr. Brigham then correctly averaged the grade modifiers to equal

[7] *See* A.M.A., *Guides* 449, Table 15-23 (6th ed. 2009).

[8] A survey completed by a given claimant, known by the name *Quick*DASH, may be used to determine the Function Scale score. *Id.* at 448-49.

[9] OWCP's decision regarding impairment was not issued until after May 1, 2009 and therefore evaluation of appellant's impairment under the sixth edition of the A.M.A., *Guides* was appropriate. *See supra* note 6.

[10] *Supra* note 7.

zero in each arm and concluded that appellant did not have any permanent impairment in her arms.[11]

The Board notes that appellant did not submit medical evidence showing that she has work-related permanent impairment of her arms which would entitle her to schedule award compensation.[12] For these reasons, OWCP properly declined to award her schedule award compensation for permanent impairment of her arms.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has a permanent impairment of her arms which entitles her to schedule award compensation.

[11] *Id.*

[12] On appeal, appellant asserted that her work-related condition was severe enough to warrant entitlement to schedule award compensation and described activities which she could no longer perform. She did not indicate how the medical evidence of record supported her entitlement to schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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