U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD G. SAX and U.S. POSTAL SERVICE,
POST OFFICE, Largo, FL

Docket No. 03-1370; Submitted on the Record;
Issued September 12, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a five percent permanent impairment of both upper extremities for which he received a schedule award.

On August 1, 2001 appellant, then a 53-year-old letter carrier, filed an occupational disease claim alleging that he first became aware of his carpal tunnel syndrome on January 28, 2001. Appellant first realized that his condition was aggravated or caused by factors of his employment on July 25, 2001.

The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome.

On September 19, 2001 appellant filed a claim for a schedule award (Form CA-7) and submitted a September 26, 2001 attending physician's report from his treating physician, Dr. John N. Harker, a Board-certified orthopedic surgeon, indicating that his bilateral carpal tunnel syndrome was employment related.

By letter dated October 11, 2001, the Office advised Dr. Harker to determine the extent of appellant's permanent impairment due to his employment-related bilateral carpal tunnel syndrome based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

On November 5, 2001 Dr. Harker submitted an impairment form indicating that appellant had reached maximum medical improvement on September 19, 2001 and that he had a 6 percent impairment of each wrist, equal to a 12 percent impairment of the whole person.

On November 23, 2001 an Office medical adviser reviewed Dr. Harker's findings and stated that Dr. Harker needed to address the extremity rating noting page 495 of the A.M.A., *Guides*, which related to carpal tunnel syndrome. By letter dated December 3, 2001, the Office advised appellant that it was unable to accept Dr. Harker's impairment rating based on the Office

medical adviser's comments. The Office further advised appellant that Dr. Harker should complete an enclosed impairment form and provide his calculations for each hand.

On December 14, 2001 Dr. Harker submitted a completed impairment form indicating that appellant had a six percent impairment of each upper extremity due to loss of function from decreased strength and a six percent impairment of each upper extremity due to loss of function resulting from sensory deficit, pain or discomfort. Appellant submitted Dr. Harker's December 19, 2001 treatment notes revealing that he was being treated for carpal tunnel syndrome. Dr. Harker indicated that appellant had undergone ankle arthrodesis and since he had to use crutches, his carpal tunnel syndrome symptoms had worsened.[1]

On January 9, 2002 an Office medical adviser reviewed Dr. Harker's December 19, 2001 report and stated that until appellant stopped using crutches and his hands recovered, he had not reached maximum medical improvement of his carpal tunnel syndrome.

In a letter received by the Office on January 24, 2002, appellant stated that he wished to cancel his claim for a schedule award because he was filing a claim for loss wages due to a shoulder injury.[2] By letter dated January 29, 2002, the Office advised appellant that his request had been granted and that he must reach maximum medical improvement in order to file another schedule award claim.

In a letter received by the Office on February 27, 2002, appellant stated that he wished to continue with his schedule award claim because he reached maximum medical improvement on February 20, 2002. Appellant submitted Dr. Harker's February 20, 2002 treatment notes indicating that he reached maximum medical improvement on that date and that his impairment ratings remained the same.

By letter dated March 7, 2002, appellant advised the Office that he wished to put a hold on his schedule award claim again because his physician had taken him off work. Appellant stated that he was seeking lost wages due to pain in both shoulders. Appellant submitted medical evidence indicating that he was totally disabled for work.

On December 30, 2002 appellant filed a Form CA-7 a schedule award claim. Appellant submitted Dr. Harker's December 27, 2002 attending physician's report finding that he was unable to work due to his employment-related bilateral carpal tunnel syndrome. A July 19, 2001 nerve conduction studies report from Dr. William C. Hulley, an osteopath, revealed that appellant had moderately severe carpal tunnel syndrome. Impairment forms from Dr. Harker indicated that appellant reached maximum medical improvement on February 20, 2002 and that he had a six percent impairment of each upper extremity due to loss of function from decreased strength and a six percent impairment of each upper extremity due to loss of function resulting from sensory deficit, pain or discomfort.

[1] The record reveals that appellant filed a claim assigned number 07-0724001 for an injury to both ankles that he sustained on June 2, 1998.

[2] The record indicates that appellant filed a claim assigned number 06-0664191 for an injury to both shoulders that he sustained on October 28, 1996. *Id.*

On February 20, 2003 an Office medical adviser reviewed appellant's medical records and noted that the treating physician suggested a six percent permanent impairment but did "not state for what or what extremity." The Office medical adviser stated that page 495 of the fifth edition of the A.M.A., *Guides* allowed five percent for the accepted condition and concluded that a five percent impairment of the right upper extremity and a five percent impairment of the left upper extremity could be accepted.

By decision dated March 11, 2003, the Office granted appellant a schedule award for a "10 percent loss of use of both arms."

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

The schedule award provisions of the Federal Employees' Compensation Act[3] and its implementing regulation[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. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[5] 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*, fifth edition, has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[6]

The fifth edition of the A.M.A., *Guides*, regarding carpal tunnel syndrome, provides:

> "If, after an *optimal recovery* time following surgical decompression, an individual continues to complain of pain, paresthesias and/or difficulties in performing certain activities, three possible scenarios can be present:
>
> > 1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described earlier.
> >
> > 2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present, and an

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] 5 U.S.C. § 8107(c)(19).

[6] 20 C.F.R. § 10.404. FECA Transmittal No. 02-12 (issued August 30, 2002) explains that all permanent impairment awards determined on or after February 1, 2001 should be based on the fifth edition of the A.M.A., *Guides*. The fifth edition was first published in 2001.

impairment rating not to exceed five percent of the upper extremity may be justified.

3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength, and nerve conduction studies: there is no objective basis for an impairment rating."[7]

In an impairment form, appellant's treating physician, Dr. Harker, provided that appellant reached maximum medical improvement on February 20, 2002. He determined that appellant had a six percent impairment of each upper extremity due to loss of function from decreased strength and a six percent impairment of each upper extremity due to loss of function resulting from sensory deficit, pain or discomfort. Dr. Harker did not indicate which tables of the A.M.A., *Guides* he used to determine the extent of appellant's permanent impairment.

On February 20, 2003 the Office medical adviser stated that appellant's treating physician, Dr. Harker, failed to state for what and for which extremity his finding of a six percent impairment was applicable. The Office medical adviser agreed with Dr. Harker's finding that appellant reached maximum medical improvement on February 20, 2002 and utilized page 495 of the fifth edition of the A.M.A., *Guides* to determine that appellant had a five percent permanent impairment each of the right and left upper extremity. The Office medical adviser failed to specifically identify which criteria of the A.M.A., *Guides* applied to appellant's permanent impairment rating or to provide any rationale for his calculations as to appellant's impairment rating.[8]

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist to provide a fully explained medical opinion with specific reference to the applicable sections of the fifth edition of the A.M.A., *Guides*, including an explanation of which criteria of page 495 of the fifth edition is applicable and a rating under the appropriate criteria. After further development as it may find necessary, the Office should issue a *de novo* decision.[9]

[7] *Silvester DeLuca*, 53 ECAB ___ (Docket No. 01-1904, issued April 12, 2002).

[8] *See Michael D. Nielsen*, 49 ECAB 455 (1998) (where more than one method of calculation may be used, the medical adviser should use the same one as the examining physician).

[9] In issuing the March 11, 2003 schedule award, the Office found appellant had a "10 percent loss of use of both arms," rather than issuing the awards for each member to reflect 5 percent impairment of the right and left upper extremities.

The March 11, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, DC
September 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member