United States Department of Labor
Employees' Compensation Appeals Board

KATHRYN E. MANNING, Appellant	)	
	)	**Docket No. 04-221**
and	)	**Issued: May 19, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Ponca City, OK, Employer	)	

Appearances:
Kathryn E. Manning, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 3, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated April 22, 2003, granting a schedule award. Pursuant to 20 C.F.R.[1] §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issued in this case.

ISSUE

The issue is whether appellant has more than a 14 percent impairment of the right upper extremity for which she received a schedule award.

FACTUAL HISTORY

On September 2, 1997 appellant, then a 50-year-old timekeeper, filed an occupational disease claim alleging that she injured her hands over 13 years while using a calculator and

[1] The Code of Federal Regulations.

computer keyboard. On October 9, 1997 the Office accepted her claim for tendinitis of the right arm. The Office later accepted the conditions of bilateral carpal tunnel syndrome and right cubital tunnel syndrome. On December 12, 2001 Dr. David K. Wong, appellant's attending Board-certified orthopedic surgeon, diagnosed right cubital tunnel syndrome, right carpal tunnel syndrome and ulnar nerve entrapment at the right wrist. He performed an anterior transposition of the ulnar nerve at the right elbow, decompression of the ulnar nerve at the right wrist and a right carpal tunnel release. Effective December 12, 2001 appellant was placed on the compensation rolls for temporary total disability. She returned to work on February 26, 2002 in a light-duty capacity, working four hours a day.

In a July 2, 2002 report, Dr. Wong indicated that appellant had reached maximum medical improvement of her right upper extremity following surgery on December 12, 2001. He provided findings on examination that included mild sensitivity and a small knot in her palm at the site of her surgical incision, grip strength of 55 pounds on the right compared to 70 pounds on the left, normal elbow range of motion, flexion of 75 degrees, extension 45 degrees, ulnar deviation of 46 degrees and radial deviation of 24 degrees. Dr. Wong stated that appellant had a 20 percent impairment of the right upper extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition (A.M.A., *Guides*).

On July 17, 2002 appellant filed a claim for a schedule award.

In a September 25, 2002 memorandum, an Office medical adviser reviewed Dr. Wong's report and found that it did not meet the requirements for a schedule award determination as he did not explain the impairment rating with reference to applicable sections of the A.M.A., *Guides*.

By letters dated November 25, 2002 and January 7, 2003, the Office asked Dr. Wong to provide a supplemental report explaining his rating of appellant's impairment. A notation in the case file dated January 10, 2003 indicates that Dr. Wong did not wish to submit a supplemental report.

The Office referred appellant, together with copies of medical records and a statement of accepted facts, to Dr. Robert P. Shackelford, a Board-certified orthopedic surgeon, for an evaluation of her right upper extremity impairment. In a February 27, 2003 report, Dr. Shackelford provided a history of appellant's condition and findings on examination. He stated:

> "[Appellant] reports that she has a constant pain in her entire hand that remains at a consistent rate of 5/10 and can increase after excessive use. She complains of persistent numbness in the ulnar aspect of [her] hand.
>
> "Initial inspection of the forearm, the maximum circumference of the right forearm is 24 cm [centimeters] and of the left is 24 cm. Sensory examination shows hypesthesia of the right little [finger] and ulnar aspect of the right ring finger with [2] point discrimination of the little finger being 4 mm [millimeters]

and of the ring finger being 6 mm. According to Table 16-5,[2] there is no sensory quality impairment, but it should be noted that this is definitely decreased when compared to the normal fingers that have 2 point discrimination in the 2 [to] 3 mm range.

"Motor examination in the right, flexion and extension of the wrist as well as the fingers, abduction and adduction of the fingers as well as opposition of the index finger and thumb are all 5/5, but can be reported weaker on the left side."

* * *

"Range of motion, dorsiflexion of the wrist is 40 [degrees], palmar flexion 60 [degrees], radial deviation 20 [degrees], ulnar deviation 30 [degrees], supination and pronation are both approximately 80 [degrees]. All of these are within normal limits when compared to the opposite side."

* * *

"DIAGNOSIS AND IMPAIRMENT

(1) Median neuropathy on the right status post carpal tunnel release;

(2) Ulnar neuropathy on the right status post decompression of the ulnar nerve at the wrist and transposition of the ulnar nerve at the elbow.

"IMPAIRMENT RATING AND CRITERIA

> "The permanent impairment of the upper extremity due to peripheral nerve disorders is calculated according to Chapter 16, [s]ection 16.5. The nerves involved by documented history and surgical procedures include the median and ulnar nerves. In Table 16-10, the impairment of the median nerve can be considered a Grade [4] with a 25 [percent] sensory deficit. Impairment of the ulnar nerve is a Grade [3] with a 60 [percent] sensory deficit. Next, referring to Table 16-15, the maximum percent upper extremity impairment due to pain of the median nerve below the forearm is 39 [percent] and of the ulnar nerve above the forearm is 7 [percent]. Using Table 16-10b, the median nerve with a 25 [percent] sensory deficit can be multiplied by 39 [percent] maximum upper extremity impairment, yielding 10 [percent] upper extremity impairment secondary to the median nerve lesion. The ulnar nerve, a Grade [3] lesion and 60 [percent] impairment, can be multiplied by 7 [percent], yielding a 4 [percent] upper extremity impairment secondary to the ulnar nerve lesion. These two

[2] A.M.A., *Guides* 447.

> impairments can be combined, yielding a total of 14 [percent] upper extremity impairment secondary to the median and ulnar nerve lesions."
>
> "Loss of grip strength has been identified and measured clinically, but page 494 of the [A.M.A., *Guides*] 5th [e]dition states [that] in compression neuropathies, additional impairment values are not given for decreased grip strength. Thus, the final impairment rating of the right upper extremity is 14 [percent] according to the [A.M.A., *Guides*] 5th [e]dition."

In a March 31, 2003 memorandum, the Office medical adviser noted that the Office had accepted bilateral carpal tunnel syndrome, but Dr. Shackelford described impairment only to appellant's right upper extremity. He indicated that Dr. Shackelford's rating of appellant's impairment was correctly based on Tables 16-10, 16-11 and 16-15 and the Combined Values Chart at pages 482, 484, 492 and 604, respectively, of the 5th edition of the A.M.A., *Guides*.

By decision dated April 22, 2003, the Office granted appellant a schedule award for a 14 percent impairment of the right upper extremity for 43.68 weeks[3] of compensation.[4]

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act[5] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[6] Section 8107 provides that if there is permanent disability involving the loss or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[7] The schedule award provision of the Act[8] and its implementing regulation[9] 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

[3] Under the Act, the maximum award for loss or loss of use, of an arm is 312 weeks of compensation. 5 U.S.C. § 8107(c)(1). A 14 percent impairment of the arm equals 43.68 weeks of compensation (312 weeks multiplied by 14 percent).

[4] Appellant submitted additional evidence subsequent to the Office decision of April 22, 2003. However, 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).

[5] 5 U.S.C. §§ 8101-8193.

[6] *Edward W. Spohr*, 54 ECAB ___ (Docket No. 03-1173, issued September 10, 2003); *Nathaniel Milton*, 37 ECAB 712 (1986).

[7] 5 U.S.C. § 8107(a).

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

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*[10] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[11]

ANALYSIS

Dr. Shackelford noted in his February 27, 2003 report, that appellant had constant pain in her entire hand at a 5/10 rate that could increase after excessive use. He said that she had a Grade 4 sensory deficit of the median nerve according to Table 16-10 at page 482 of the A.M.A., *Guides*. However, the A.M.A., *Guides* defines a Grade 4 sensory deficit or pain as "[d]istorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations of pain that is forgotten during activity." Dr. Shackelford's choice of a Grade 4 deficit does not seem consistent with his description of constant pain at a 5/10 rate that could increase with excessive use. His description of appellant's pain indicates that it is neither "minimal" nor "forgotten during activity." Dr. Shackelford found a Grade 3 deficit based on the ulnar nerve.[12] He described a "persistent numbness" in the ulnar aspect of appellant's hand. However, Dr. Shackelford did not describe whether the numbness interfered with some activities or prevented some activities. If the latter, then Grade 3 would not be the appropriate deficit rating according to Table 16-10. His report contains an insufficient description of the nature of appellant's ulnar nerve deficit to determine the appropriate sensory deficit grade according to Table 16-10. Due to these deficiencies, Dr. Shackelford's report is insufficient to be used in determining appellant's right upper extremity impairment.

CONCLUSION

As explained above, the report of Dr. Shackelford is insufficient to establish appellant's right upper extremity impairment. On remand the Office should refer appellant to an appropriate medical specialist for an examination and evaluation of her right upper extremity impairment with reference to applicable sections of the fifth edition of the A.M.A., *Guides* and thorough medical rationale explaining the impairment rating.

[10] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002).

[11] 20 C.F.R. § 10.404.

[12] Under Table 16-10, Grade 3 is described as "distorted superficial tactile sensibility (diminished light touch and two-point discrimination) with some abnormal sensations or slight pain that interferes with some activities."

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 22, 2003 is set aside and the case is remanded for further action consistent with this opinion.

Issued: May 19, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member