United States Department of Labor
Employees' Compensation Appeals Board

STACY J. WEIR, Appellant	)	
and	)	**Docket No. 04-1065**
	)	**Issued: September 7, 2004**
U.S. POSTAL SERVICE, PEORIA REMOTE ENCODING CENTER, Peoria, IL, Employer	)	

Appearances:
Stacy J. Weir, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 5, 2004 appellant timely appealed from a January 13, 2004 decision of the Office of Workers' Compensation Programs which found that she had a three percent impairment of the right arm and a two percent impairment of the left arm. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant has more than a three percent impairment of the right arm and a two percent impairment of the left arm, for which she received schedule awards.

FACTUAL HISTORY

The case has been on appeal previously.[1] In an August 8, 2003 decision, the Board noted that appellant had filed a claim for bilateral carpal tunnel syndrome which the Office had

[1] Docket No. 03-1449 (issued August 8, 2003). The history of the case is contained in the prior appeal and is incorporated into this decision by reference.

accepted. She underwent carpal tunnel release and ulnar nerve transposition on both arms. She filed a claim for a schedule award but the Office denied the claim on the grounds that she had no permanent impairment. The Board noted that the March 21, 2003 report from Dr. Jeffrey R. Garst, a Board-certified orthopedic surgeon, indicated that appellant experienced pain in her arms. The Board found that Dr. Garst's report was sufficient to require the Office to further develop the medical evidence. The case was remanded for further development of the schedule.

The Office referred appellant to Dr. Jerome P. Kraft, a Board-certified orthopedic surgeon, for an examination and second opinion on the extent of any permanent impairment. In a November 20, 2003 report, Dr. Kraft stated that appellant's chief complaint was intermittent numbness, tingling and a feeling of swelling and tightness, especially in the right hand and forearm, and tenderness along the medial aspect of the right elbow. Appellant reported occasional numbness over the left thenar area which would not cause any functional problems. She experienced numbness and tingling in the third, fourth and fifth fingers of her right hand accompanied by pain. On examination, Dr. Kraft stated that appellant did not have any evidence of gross atrophy or swelling of the right arm. He indicated that appellant had full extension and flexion of the right elbow. He stated that, in the right wrist, dorsiflexion was 65 degrees, palmar flexion 70 degrees, radial deviation 40 degrees and ulnar deviation to 30 degrees. Dr. Kraft indicated that the Tinel's sign at the elbow produced only local tenderness. He found no atrophy of the thenar, hypothenar or interosseous muscles and no atrophy of the right forearm. He reported that the Phalen's sign at the right wrist produced discomfort but no parasthesias. Dr. Kraft noted that the sensory examination produced hyperesthesia over the ulnar aspect of the right forearm and hand. He reported that the left elbow flexion was to 120 degrees and extension was to 0 degrees. He indicated that the dorsiflexion of the left wrist was 65 degrees, volar flexion was 60 degrees, radial deviation was 35 degrees and ulnar deviation was 40 degrees. Dr. Kraft indicated that the Phalen's and Tinel's signs at the left wrist were negative. He found no atrophy of the muscles. He reported that sensory testing was basically within normal limits. Dr. Kraft diagnosed bilateral carpal and ulnar cubital tunnel syndrome and status postoperative bilateral median nerve decompression and anterior subcutaneous bilateral ulnar nerve transposition. He reported that appellant showed grip strengths of 53 pounds, 62 pounds, 60 pounds, 70 pounds and 57 pounds in the right arm and 51 pounds, 56 pounds, 60 pounds, 65 pounds and 36 pounds in the left arm. He reported pinch strength tests of 20 pounds, 22 pounds and 21 pounds in the right arm and 16 pounds, 19 pounds and 17 pounds in the left arm.

Dr. Kraft indicated that appellant had a 20 percent sensory deficit of the right median and ulnar nerves and a 10 percent sensory deficit of the left median and ulnar nerves. He noted that, under the American Medical Association, *Guides to Evaluation of Permanent Impairment*,[2] (A.M.A., *Guides*) the maximum impairment due to unilateral sensory deficit of the median nerve was 13 percent and the maximum impairment due to unilateral sensory deficit of the ulnar nerve was 7 percent. He concluded that appellant had 2.6 percent impairment due to the right ulnar nerve and 1.4 percent for the right median nerve, 1.3 percent for the left ulnar nerve and 0.7 percent for the left median nerve. Dr. Kraft stated that the combined median and ulnar nerve impairment was four percent for the right arm and two percent for the left arm. He stated that

[2] A.M.A., *Guides* (5th ed. 2001).

appellant had a 20 percent bilateral impairment due to loss of strength based on loss of grip or pinch strength. He concluded that appellant had a 24 percent permanent impairment of the right arm and 22 percent permanent impairment of the left arm.

The Office referred Dr. Kraft's report and the case record to Dr. James Bicos, an orthopedic surgeon and Office consultant. In a January 11, 2004 memorandum, Dr. Bicos stated that, based on grip strength, appellant had a 9.4 percent grip strength loss index which equaled no impairment due to loss of strength in the right arm.[3] He concluded that appellant had a two percent permanent impairment of the right arm due to a Grade 4 pain in the distribution of the ulnar nerve and a one percent permanent impairment due to a Grade 4 pain in the median nerve[4] "below the midforearm to the middle and radial aspect of the ring finger." He stated that appellant had a 10 percent grip strength loss index in the left arm which equaled a 1 percent permanent impairment of the arm. Dr. Bicos stated appellant had a one percent permanent impairment of the left arm due to Grade 4 pain in the distribution of the medial nerve below the midforearm to the radial palmar aspect of the left thumb.[5] He concluded that appellant had a three percent permanent impairment of the right arm and two percent permanent impairment of the left arm.

In a January 13, 2004 decision, the Office granted appellant schedule awards for three percent impairment of the right arm and a two percent impairment of the left arm.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[6] and its implementing regulation[7] 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 regulation as the appropriate standard for evaluating schedule losses.[8]

ANALYSIS

Dr. Kraft indicated that the maximum impairment of sensory loss in the ulnar nerve was seven percent. He concluded that appellant had a 20 percent sensory loss of the right ulnar nerve which, when multiplied by the 7 percent maximum impairment equaled a 1.4 percent permanent

[3] *Id.* at page 509, Table 16-34.

[4] *Id.* at page 482, Table 16-10.

[5] *Id.* at page 492, Table 16-15.

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999).

[8] *Id.*

impairment of the right arm. He stated that appellant had a 10 percent sensory in the left ulnar nerve which equaled a 0.7 permanent impairment of the left arm. Dr. Bicos stated that appellant had a Grade 4 pain in the ulnar nerve of the right arm which had a maximum percentage of 25 percent. He stated that appellant had a two percent permanent impairment of the right arm due to sensory loss in the ulnar nerve. Multiplying the 25 percent maximum for a Grade 4 level of pain by the 7 percent maximum impairment for sensory loss of the ulnar nerve equals 1.75 percent which was rounded up to 2 percent. As Dr. Bicos' calculations used the maximum percentage for a Grade 4 pain in his calculations, his conclusion of a two percent permanent impairment in the right arm due to sensory loss in the ulnar nerve was proper.

Dr. Bicos stated that appellant had a one percent permanent impairment of the left arm due to a Grade 4 sensory loss in the median nerve down to the radial aspect of the thumb. However, the maximum impairment for sensory loss of the medial nerve to the radial aspect of the thumb is seven percent. If Dr. Bicos used the 25 percent for a Grade 4 pain in the median nerve of the left arm, he should have calculated that appellant had a 2 percent permanent impairment of the left arm. He did not explain how he concluded that appellant had only a one percent permanent impairment in the left arm due to sensory loss when the same calculation yielded a two percent permanent impairment of the right arm due to sensory loss.

Dr. Kraft stated that the maximum impairment for the sensory deficit of the median nerve was 13 percent. The A.M.A., *Guides*, however, do not show a 13 percent maximum impairment due to sensory loss in the median nerve. Dr. Kraft report appellant experiencing pain and numbness to the third, fourth and fifth fingers in the right hand. The A.M.A., *Guides* show a maximum impairment for sensory loss of the median nerve to the radial plantar digital of the ring finger to be three percent. The maximum impairment for sensory loss of the median nerve to the middle finger to the radial plantar digital is five percent while the sensory loss to the ulnar palmar digital of the middle finger is four percent.[9] The A.M.A., *Guides* do not give any permanent impairment for sensory loss of the little finger. Dr. Bicos, however, gave a confusing statement that appellant had a one percent permanent impairment due to sensory loss in the median nerve to the "middle and radial aspect of the ring finger." Dr. Kraft stated that appellant had pain and numbness in the third, fourth and fifth fingers of the right hand. While Dr. Bicos made a clear reference to the ring finger, his statement is unclear on whether he was also referring to the middle finger as well. Since he stated that appellant's impairment of the ulnar nerve in the left arm was above the midforearm, it is not clear whether he was referring to the radial palmar digital of the middle finger. The 25 percent for a Grade 4 pain, when multiplied by the 3 percent maximum impairment due to sensory loss in the radial palmar digital of the ring finger would be 0.75 percent. The 25 percent for a Grade 4 for pain, when multiplied by the 4 percent maximum impairment due to sensory loss in the radial palmar digital of the middle finger would be 1 percent. Dr. Bicos did not clearly explain how he calculated a one percent permanent impairment due to sensory loss in the medial nerve. If he had indicated that the permanent impairment was solely due to sensory loss in the ring finger, he would not be taking into account the pain in the middle finger reported by Dr. Kraft. If he meant to include the middle finger in his calculations, he should have reached a permanent impairment of two percent of the left arm due to sensory loss in the median nerve.

[9] *See supra* note 5.

Dr. Kraft stated that appellant had a 20 percent permanent impairment of each arm due to loss of strength. He did not explain how he calculated that percent. Dr. Bicos used grip strength to calculate appellant's loss of strength. However, the A.M.A., *Guides* do not encourage the use of grip strength as an impairment rating because strength measurements are functional tests influenced by subjective factors that are difficult to control. The A.M.A., *Guides* provide that only in rare cases should grip strength be used and only when it represents an impairing factor that has not been otherwise considered adequately.[10] In the present case, Dr. Bicos did not determine whether appellant had a loss of strength due to sensory impairment. Such an attempt should have been made before determining loss of strength due to grip strength.

Dr. Bicos did not adequately explain how he reached the permanent impairment rating appellant's arm due to sensory loss in the median nerve distribution in both arms. Drs. Kraft and Bicos based their calculations for permanent impairment of the arms due to loss of strength on appellant's grip strength which, as described above, is to be used only in rare cases when any other impairment measure would be inadequate. The case will therefore be remanded. On remand, the Office should refer develop the medical evidence to determine the permanent impairment to appellant's arms. After further development as it may find necessary, the Office should issue a *de novo* decision.

CONCLUSION

The case is not in posture for decision because the calculations of appellant's permanent impairment in both arms were in error. The case must be remanded for further development.

[10] *Id.* at page 508. *See Mary L. Henninger*, 52 ECAB 408, 409 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 13, 2004, be set aside and the case remanded for further development as set forth in this decision.

Issued: September 7, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member