United States Department of Labor
Employees' Compensation Appeals Board

WILLIAM P. MONAGHAN, Appellant	)	
and	)	**Docket No. 05-1600**
	)	**Issued: December 14, 2005**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 25, 2005 appellant, through counsel, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 25, 2005 in which an Office hearing representative affirmed a schedule award for five percent impairment of the right arm. Appellant also appealed the Office's July 11, 2005 schedule award granting five percent impairment of the left arm. Pursuant to 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 has more than five percent impairment of the right and left upper extremities for which he received schedule awards.

FACTUAL HISTORY

On September 11, 2001 appellant, then a 56-year-old postal clerk, filed an occupational disease claim alleging that he sustained swelling, pain and loss of mobility in his fingers and

hands. He became aware of his condition on August 14, 2001 and first related it to his federal employment on August 21, 2001. Appellant notified his supervisor on that day but did not stop work.

In a report dated October 16, 2001, Dr. Anthony DiBona, Jr., a treating a Board-certified osteopath specializing in orthopedic surgery, stated that appellant had a positive Tinel's sign and positive Phalen's Test bilaterally, and that an electromyogram evaluation revealed mild carpal tunnel syndrome. Dr. DiBona stated that appellant had bilateral carpal tunnel syndrome caused by repetitive motions at work. On November 20, 2001 the Office accepted appellant's claim for bilateral carpal tunnel syndrome.

On January 3, 2003 appellant filed a claim for a schedule award. He submitted a report from Dr. David Weiss, a treating osteopath, dated October 10, 2002, who stated that appellant reached maximum medical improvement on that day. Dr. Weiss noted that physical examination of the right wrist revealed positive Tinel's sign and Phalen's test, and a positive carpal compression test. Range of motion findings were as follows: dorsiflexion of 75/75 degrees, palmar flexion of 75/75 degrees, radial deviation of 20/20 and ulnar deviation of 35/35 degrees. Examination of the left wrist also revealed positive Tinel's sign and Phalen's test, dorsiflexion of 75/75 degrees, palmar flexion of 75/75 degrees, radial deviation of 20/20 and ulnar deviation of 35/35 degrees. Dr. Weiss further noted grip strength testing on the right via Jamar Hand Dynamometer revealed 16 kilograms of force strength versus 18 kilograms of force strength on the left. He noted that sensory examination revealed no perceived dermatomal abnormalities dermatomes bilaterally. Dr. Weiss diagnosed trauma disorder to both upper extremities, bilateral brachial plexopathy, bilateral carpal tunnel syndrome, bilateral ulnar nerve dysfunction and radial nerve dysfunction, fracture of the fifth metacarpal of the right hand, post lacerations of the left index and middle finger, post acromioclavicular joint separation to the right shoulder, and acromioclavicular arthropathy to the right shoulder. Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001), appellant had a 4 percent impairment on the right for motor strength deficit, right supraspinatus,[1] 30 percent impairment on the right for grip strength deficit, and 3 percent for pain-related impairment[2] for a total impairment rating of 36 percent of the right upper extremity. Dr. Weiss further noted a 20 percent impairment on the left for grip strength deficit and 3 percent for pain-related impairment for a total of 23 percent permanent impairment for the left upper extremity.

On October 24, 2003 the Office referred the medical record to an Office medical adviser for a review of the impairment rating. The Office included a statement of accepted facts which noted that it had accepted bilateral carpal tunnel syndrome, an electromyogram evaluation and nerve conduction studies (NCS) performed on October 9, 2001 and a functional capacity evaluation made on May 17, 2002.

In a report dated November 17, 2003 an Office medical adviser reviewed Dr. Weiss' report and recommended a recalculation of the impairment for entrapment and neuropathy. The

[1] A.M.A., *Guides* 484, Table 16-11; 492, Table 16-15.

[2] *Id*. at 574, Figure 18-1.

Office medical adviser determined that Dr. Weiss incorrectly evaluated appellant's upper extremity impairment because he considered grip strength and motor decreases in his evaluation. In response to the Office medical adviser's report, Dr. Weiss, on January 20, 2004, reported that appellant's grip strength deficit was the only finding regarding carpal tunnel syndrome and was considered a motor deficit, adding that it was not an additional impairment finding.

On February 5, 2004 the Office medical adviser noted that Dr. Weiss failed to adequately explain his impairment calculations but that, based on the statement of accepted facts and the A.M.A., *Guides*, appellant had five percent upper extremity impairment.[3] By decision dated March 17, 2004, the Office granted a schedule award for five percent impairment to the right upper extremity. The date of maximum medical improvement was October 10, 2002, and the award ran for a period of 15.60 weeks, from October 10, 2002 to January 27, 2003. Appellant, through counsel, requested an oral hearing, held on November 30, 2004.

By decision dated March 25, 2005, the hearing representative affirmed the five percent impairment to the right upper extremity. The hearing representative noted that the Office properly relied on the Office medical adviser's report as it was the only medical record that correctly utilized the A.M.A., *Guides.* However, he also found that the Office medical adviser failed to review Dr. Weiss' report as it applied to appellant's left upper extremity and remanded the case to the Office for further development.

On June 2, 2005 an Office medical adviser reviewed Dr. Weiss' reports and determined that appellant had five percent impairment of the left upper extremity based on the A.M.A., *Guides*, page 495, under scenario two. The Office medical adviser again noted that grip strength was not a consideration in the evaluation of carpal tunnel syndrome. The Office medical adviser further explained that motor loss in carpal tunnel syndrome comes from muscles that innervate the palm and that Dr. Weiss found no atrophy in either the thenar or hypothenar muscles.

In a memorandum for the file dated June 30, 2005, the Office noted that appellant's left upper extremity schedule award would run from January 28, 2003. By decision dated July 11, 2005, the Office awarded appellant a five percent impairment to the left upper extremity. The date of maximum medical improvement was October 10, 2002, and the award ran for a period of 15.60 weeks, from January 28 to May 17, 2003.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] sets 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

[3] *Id.* at 495, section 16.5d.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

uniform standards applicable to all claimants. The A.M.A., *Guides* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[6]

ANALYSIS

The Board finds that this case is not in posture for a decision. Appellant contends that he is entitled to an impairment rating of more than five percent for the right and left upper extremity as set forth by Dr. Weiss. The Board has carefully reviewed Dr. Weiss' reports dated October 10, 2002 and January 30, 2004, which determined that appellant sustained a 36 percent permanent impairment of the right extremity and a 23 percent impairment to the left upper extremity. However, the impairment estimate of Dr. Weiss is not in accordance with the protocols of the A.M.A., *Guides*.[7] The Office, however, held that a separate pain calculation under Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain as outlined in Chapters 13, 16 and 17 of the fifth edition of the A.M.A., *Guides* as noted in Dr. Weiss' report of October 10, 2002.[8]

With respect to the right and left upper extremities Dr. Weiss noted range of motion for dorsiflexion of 75 degrees which is 0 percent impairment,[9] palmar flexion of 75 degrees which is 0 percent impairment,[10] radial deviation of 20 degrees for 0 percent impairment,[11] ulnar deviation of 35 degrees which is 0 percent impairment.[12] Dr. Weiss also noted results of grip strength testing. However, the A.M.A., *Guides* provides that, in case of compression neuropathies, additional impairment values are not given for decreased grip strength.[13] The Board has noted that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated only on motor and sensory impairments.[14]

The Office medical adviser further determined that appellant had a five percent impairment based on the A.M.A., *Guides* 495, section 16.5d, scenario two. However, the ratings on this page for carpal tunnel syndrome indicate that the listed scenarios apply "after an optimal

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[6] *Willie C. Howard*, 55 ECAB ___ (Docket No. 04-342 & 04-464, issued May 27, 2004).

[7] *See Tonya R. Bell*, 43 ECAB 845, 849 (1992

[8] *Philip A. Norulak*, 55 ECAB ___ (Docket No. 04-817, issued September 3, 2004).

[9] *Id*. at 467, Figure 16-28.

[10] *Id*.

[11] *Id*. at 469, Figure 16-31.

[12] *Id*.

[13] *See page* 494, the fifth edition of the A.M.A., *Guides; see also Robert V. Disalvatore*, 54 ECAB ___ (Docket No. 02-2256, issued January 17, 2003) (where the Board found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory impairments only).

[14] *Id.*

recovery time following surgical decompression."[15] The record does not indicate that appellant underwent either a right or left carpal tunnel release surgery. It appears that the impairment rating in this case should have been made under Table 16-15 for any sensory and motor loss.

On remand, the Office should further develop the medical record as appropriate to obtain impairment ratings that comply with Office procedures and the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision. The case requires additional development of the medical evidence to determine the extent of appellant's impairment of his right and left upper extremities.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 11 and March 25, 2005 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 14, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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

[15] A.M.A., *Guides* 495.