United States Department of Labor
Employees' Compensation Appeals Board

JERALD L. ARMON, Appellant	)	
and	)	**Docket No. 05-1929**
	)	**Issued: December 22, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Novato, CA, Employer	)	

Appearances:
Jerald L. Armon, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 14, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 19, 2005, finding five percent impairment of the left upper extremity for which she received a schedule award. 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 left upper extremity for which she received a schedule award.[1]

FACTUAL HISTORY

On July 25, 2001 appellant, then a 41-year-old rural letter carrier, filed an occupational disease claim alleging that her bilateral carpal tunnel syndrome was caused by her employment.

[1] Appellant filed a separate claim on the right upper extremity, number No.13-1163901 which is not before the Board in this appeal. This appeal concerns the left upper extremity only, claim number 13-2033443.

She became aware of her condition and first realized it was caused by her employment on July 24, 2001. Appellant stopped work on July 11, 2001 and notified her supervisor on July 26, 2001. The Office accepted the claim for bilateral carpal tunnel syndrome and paid appropriate benefits.

In a report dated June 17, 2002, Dr. Michael F. Charles, a Board-certified orthopedic surgeon, determined that appellant had reached maximum medical improvement on May 23, 2002 and that the left wrist revealed a positive Tinel's sign and Phalen's test. Electromyogram (EMG) evaluation and nerve conduction studies were also positive for bilateral carpal tunnel syndrome. Appellant's left wrist range of motion revealed dorsiflexion of 45 degrees, palmar flexion of 45 degrees, radial deviation of 20 degrees and ulnar deviation of 30 degrees. On August 12, 2002 she filed a claim for a schedule award.

On November 17, 2002 Dr. Ellen Pichey, an Office medical adviser Board-certified in family and preventive medicine, reviewed Dr. Charles' report and indicated that appellant had a 40 percent right upper extremity impairment and that her 5 percent left upper extremity impairment was due to residual carpal tunnel syndrome in accordance with the A.M.A., *Guides* 495, section 16.5d.[2]

By decision dated December 18, 2002, the Office granted appellant a schedule award for five percent impairment of the left arm and an additional seven percent impairment for the right arm. The right arm award was in addition to a prior 33 percent impairment of the right upper extremity based on an accepted shoulder condition. The period of award ran for 37.44 weeks, from June 17, 2002 to March 6, 2003.

On January 13, 2003 appellant requested a review of the written record. In support of her request, she submitted a January 14, 2003 report from Dr. Charles, who noted left wrist dorsiflexion of 60 degrees, palmar flexion of 70 degrees, ulnar deviation of 30 degrees with no ankylosis. No radial deviation finding was recorded. There was a negative left Tinel's sign. Appellant's date of maximum medical improvement was May 23, 2002.

In a decision dated June 12, 2003, a hearing representative set aside and remanded the December 18, 2002 schedule award. The hearing representative directed the Office to recalculate appellant's upper extremity impairment. In reports dated June 30, 2003, Dr. Pichey stated that her prior evaluation of a five percent impairment of the left upper extremity for residual carpal tunnel syndrome was correct based on the persistent electromyogram evaluations and nerve conduction studies. She noted that, in compression neuropathies, additional impairment was not given for grip strength.

In a report dated August 20, 2003, Dr. Robert K. Peterson, a treating Board-certified orthopedic surgeon, found bilateral wrist and hand swelling and stiffness with numbness and tingling in digits one, two and three in both hands. Appellant's left hand had a modestly positive Tinel's sign and Phalen's test with no instability or crepitus and decreased sensation in the median distribution. Dr. Peterson diagnosed bilateral carpal tunnel syndrome and bilateral

[2] American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001).

ganglion cysts. On September 25, 2003 he requested authorization for a left carpal tunnel release.

In a decision dated September 9, 2003, the Office determined that appellant had no more than five percent impairment to the left upper extremity.

On November 3, 2003 Dr. Peterson noted bilateral wrist symptomology including negative Tinel's sign and Phalen's test, with numbness, tingling, weakness and intermittent pain. He noted full range of motion and no instability or crepitus, but a decrease in median distribution.

Appellant returned to her customary work activities as a modified carrier technician on February 2, 2004. In a progress note dated February 4, 2004, Dr. Peterson noted her complaints of a burning sensation in the left shoulder and hand. On July 30, 2004 he noted permanent and stationery work restrictions and opined that appellant's left shoulder difficulties were the result of a work-related incident and of overcompensating for her right shoulder condition. Dr. Peterson noted that the combined nature of her right shoulder injury, right hand, forearm and wrist complaints as well as a left shoulder complaint would warrant continued conservative treatment. Dr. Peterson recommended referral to a pain management specialist to evaluate appellant's pain and medication needs. He did not specifically address her left wrist condition.

On September 27, 2004 appellant filed a claim for a schedule award. In a report dated February 14, 2005, Dr. Peterson treated her for bilateral elbow pain.

On May 4, 2005 the Office referred appellant to Dr. Alan B. Kimelman, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated June 2, 2005, he noted that she described her bilateral carpal tunnel syndrome pain as radiating, throbbing pins and needles with numbness. Physical examination of the left wrist revealed flexion of 70 degrees, extension of 60 degrees, radial deviation of 20 and ulnar deviation of 30 degrees. Dr. Kimelman noted positive Tinel's sign and Phalen's test of the left median nerve. He stated that neurological-diagnostic testing revealed no carpal tunnel syndrome or median, ulnar or radial nerve mononeuropathy. Dr. Kimelman diagnosed appellant as status post carpal tunnel syndrome and minimal bilateral complex regional pain syndrome.

In a report dated June 16, 2005, Dr. Jeffrey A. Metheny, a Board-certified orthopedic surgeon, examined appellant for her right shoulder injury. He noted bilateral wrist pain with normal range of motion findings and a positive Phalen's test and a questionable positive Tinel's sign. Dr. Metheny stated that, if appellant had positive nerve conduction studies, a carpal tunnel release was warranted. He also noted an encompassing and atypical left shoulder, elbow, wrist and hand pain.

On June 23, 2005 the Office referred the case record to the Office medical adviser for review. The Office noted that appellant had a separate claim on the right upper extremity and that the current claim concerned only the left arm.

In a report dated July 18, 2005, Dr. Pichey reviewed Dr. Kimelman's report and noted no impairment due to loss of range of motion. Dr. Pichey noted impairment due to motor and

sensory deficits. She rated the impairment as Grade 4, which affords a 10 percent sensory and motor impairment (Table 16-10 and Table 16-11, pages 482 and 484), noting that maximum combined impairment based on the median nerve was 45 percent (Table 16-15, page 492) which resulted in a "maximum combined impairment" of five percent impairment of the left upper extremity. The date of maximum medical improvement was June 2, 2005.

By decision dated July 19, 2005, the Office determined that the medical evidence in Claim No. 13-2033443, supported an impairment rating of no greater than five percent for the left upper extremity for which she had received a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation,[4] 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 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.[5]

ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome and ultimately granted a 51 percent impairment of the right upper extremity and 5 percent for the left upper extremity. On May 4, 2005 the Office referred appellant's case to Dr. Kimelman, a Board-certified orthopedic surgeon and a second opinion physician, for an evaluation of her upper extremities. On June 2, 2005 Dr. Kimelman submitted a report noting his review of her medical records and provided findings based on range of motion and neurodiagnostic tests and found status post carpal tunnel syndrome and minimal bilateral complex regional pain syndrome.

As Dr. Kimelman did not provide an impairment rating under the A.M.A., *Guides* (5th ed. 2001), the Office properly referred the case to Dr. Pichey, an Office medical adviser, for review. She noted that Dr. Kimelman's examination revealed full range of motion in the left wrist. The reported measurements for flexion, extension, radial deviation and ulnar deviation did not represent any impairment.[6] Dr. Pichey noted evidence of motor and sensory deficit and calculated a five percent impairment of the left upper extremity due to these deficits. In making this estimate, she described the severity of appellant's strength and pain deficits under Table 16-11 as Grade 4, which allows a range of 1 to 25 percent for sensory and motor deficits.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

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

[6] *See* A.M.A., *Guides* 467, Figure 16-28; 469, Figure 16-31.

Dr. Pichey allowed a 10 percent grade for both sensory and motor loss.[7] She then utilized Table 16-15, to characterize the maximum combined impairment of the median nerve as 45 percent. Table 16-15 provides maximum upper extremity impairment due to unilateral sensory or motor deficits or to combine 100 percent deficits of the major peripheral nerves.[8] Rather than providing a rating of sensory deficit based on the 39 percent maximum allowed or a rating of motor deficit based on the 10 percent maximum allowed for the median nerve, Dr. Pichey utilized the 45 percent maximum allowed for "combined motor and sensory deficits" of the median nerve. However, in so doing, she did provide explanation for utilizing this method. Table 16-15 indicates a 45 percent maximum impairment is allowed for combined "100 percent" deficits of the major peripheral nerves. It is not readily apparent from a review of the medical evidence that there is a 100 percent deficit of the affected nerve. For compression neuropathies, the A.M.A., *Guides* direct the rater to the methods described in section 16.B, with the severity of sensory deficits graded at Table 16-10a and motor deficit at Table 16-11a. For each nerve involved, the rater is to find the maximum impairment allowed for specific nerves identified, such as Table 16-15. A rating for carpal tunnel syndrome may also be made, not to exceed five percent, for normal sensibility and opposition strength with chronical sensory and/or motor latencies.[9]

CONCLUSION

This case will be remanded for the Office to recalculate appellant's left upper extremity impairment. On remand the Office medical adviser should be requested to clarify her impairment rating of appellant's left upper extremity under the A.M.A., *Guides*.

[7] *Id*. at 482, Table 16-10 and 483, Table 16-11.

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

[9] *Id*. at page 495.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2005 is set aside and the case is remanded for further action consistent with this decision.

Issued: December 22, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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