United States Department of Labor
Employees' Compensation Appeals Board

BARBARA HOWARD, Appellant	)	
and	)	**Docket No. 05-242**
	)	**Issued: July 11, 2005**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Boston, MA, Employer	)	

Appearances:
Barbara Howard, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 3, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 28, 2004, which denied her claim for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[1]

ISSUE

The issue is whether appellant has more than a 10 percent impairment of the right upper extremity, for which she received a schedule award.

[1] The Board notes that the record also contains a November 7, 2003 decision denying appellant's claim for a September 8, 2003 recurrence of disability. The Board, however, will not review this decision as she has not appealed this decision.

FACTUAL HISTORY

On August 29, 2000 appellant, then a 45-year-old claims examiner, filed an occupational disease claim alleging that she developed bilateral carpel tunnel syndrome in the performance of her federal work. On September 26, 2000 the Office accepted bilateral carpal tunnel syndrome. On October 27, 2000 the Office authorized bilateral carpal tunnel release for which appellant underwent on November 28, 2000 and on January 16, 2001 for her right and left side, respectively.

On June 7, 2001 appellant filed a claim for a schedule award. Following referral to a second opinion physician and review by an Office medical adviser, on September 13, 2001 the Office granted appellant a schedule award for a 10 percent impairment of the right upper extremity and a 5 percent impairment of the left upper extremity. The period of the schedule award was from September 3, 2001 to July 27, 2002.

Due to increased symptoms in her right upper extremity, the Office approved a second surgical procedure on appellant's right side, which she underwent on May 23, 2003. Her treating physician, Dr. Charles S. Day, a Board-certified orthopedic surgeon, released appellant to light-duty work on August 4, 2003 and full-duty work on September 8, 2003.[2]

On March 31, 2004 appellant filed a second claim for a schedule award. To resolve the question of her entitlement to a schedule award for residuals of her work-related injury, the Office referred appellant to Dr. David M. Blaustein, Board-certified in physical medicine and rehabilitation, for a second opinion evaluation.

In a report dated June 10, 2004, Dr. Blaustein noted that an examination of both upper extremities were performed, but only the examination of the right arm would be mentioned as that was the area of concern. Appellant had 60 degrees of wrist extension and 65 degrees of wrist flexion both actively and passively. No thenar atrophy was noted and right sided grip strength was markedly diminished.[3] Strength of the abductor pollicis brevis and opponens pollicis was 4/5. Altered sensation in the third and fourth digits of the right hand to touch and pin were noted with a two point discrimination at ten millimeters. Right sided Tinel's sign caused pain and paresthesias radiating into the third and fourth digits. Carpal compression test was done, but was noted to be difficult to interpret due to appellant's baseline symptoms. Weakness in elbow pronation was noted bilaterally upon flexion and extension, with complaints of pain in the pronator region. There was no cubital tunnel tenderness, no tenderness over the lateral epicondyle and full shoulder range of motion and full radial and ulnar deviation of the right wrist. Dr. Blaustein opined that appellant reached maximum medical improvement in April 2002, when she returned to full work duties following her first carpal tunnel release surgery and that she had essentially worked full duties since that time except for a short period of time following her second and third surgeries. Based on the fifth edition of the American Medical Associations, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),

[2] Appellant subsequently filed a claim for recurrence of total disability beginning September 9, 2003, which the Office denied in a decision dated November 7, 2003. However, as previously noted, this decision was not appealed.

[3] A Jamar dynamometer reading was not available.

Dr. Blaustein opined that appellant had an 11 percent impairment of the right upper extremity. He explained that, although there were several ways to analyze her impairment, he felt the most appropriate was to use Table 16-15 on page 492. Dr. Blaustein stated that appellant had a partial sensory loss due to a loss of sensation over the radial palmar digital nerve of the middle finger, ulnar palmar digital nerve of the middle finger and radial palmar digital nerve of the ring finger and that, although the total sensory loss added to 12 percent, she only had a partial or 6 percent sensory loss. A partial or 5 percent motor deficit due to reduced grip strength of the median nerve was also assessed and combined with the 6 percent sensory loss to get an 11 percent impairment of the right upper extremity. Dr. Blaustein also attributed a 10 percent impairment for loss of strength of the abductor pollicis brevis and opponens pollicis muscles.

In a June 30, 2004 letter, the Office medical adviser advised Dr. Blaustein that his report was not in accordance with the A.M.A., *Guides* and noted how the various tables in the A.M.A., *Guides* were utilized separately and in conjunction with one another. He was asked to provide an addendum report properly utilizing the A.M.A., *Guides* in calculating his impairment rating.

In a July 23, 2004 report, Dr. Blaustein advised that appellant had 22 degrees of radial deviation and 30 degrees of ulnar deviation, both which were within normal limits. He further stated that, although he was aware on how to grade patients for pain, sensory deficit and motor deficits, he did not feel that those categories accurately reflected appellant's deficits as the only consistent objective finding on her examination was the loss of sensation in her right hand. Dr. Blaustein concluded that appellant's impairment rating under Table 16-15, which he had previously calculated was accurate.

In an August 29, 2004 report, the Office medical adviser reviewed Dr. Blaustein's reports and noted that the only consistent objective finding was the loss of sensation in appellant's right hand. Citing to section 2.5(c) at page 19, the Office medical adviser opined that the five percent impairment rating for weakness that Dr. Blaustein offered was based on unreliable examination findings and could not be used to access an impairment under the A.M.A., *Guides*. The Office medical adviser noted that Dr. Blaustein's range of motion findings revealed no impairment. He rated the sensory loss by grading appellant as Grade 4 from Table 16-10 or 15 percent. He noted that the maximum percentage of impairment for the median nerve below the midforearm level was 39 percent based on Table 16-15 page 492. This yielded a six percent upper extremity rating. The Office medical adviser opined that there was no basis for an additional schedule award as the 6 percent upper extremity rating was less than the 10 percent award previously given for the right upper extremity.

By decision dated September 28, 2004, the Office denied appellant's claim for an additional schedule award, finding that the medical evidence did not support an increase in the impairment already compensated.[4]

[4] The Office's decision appears to pertain only to the right upper extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulation[6] 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.[7]

ANALYSIS

The Office medical adviser applied the A.M.A., *Guides* to the physical findings of Dr. Blaustein, the second opinion physician, to determine that appellant was not entitled to an additional schedule award and more than the 10 percent previously awarded. Dr. Blaustein, however, opined that appellant had 11 percent right upper extremity impairment.

The Office procedures[8] provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[9]

Regarding carpal tunnel syndrome, the A.M.A., *Guides* provide:

> "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 CT [computerized tomography] [scan] 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 EMG [electromyogram] testing of the thenar muscles: a residual CT [scan] is still present and an impairment rating not to exceed five percent of the upper extremity may be justified.

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[5] 5 U.S.C § 8107.

[6] 20 C.F.R § 10.404 (1999).

[7] *See id*.; *Jacqueline S. Harris*, 54 ECAB ___ (Docket No. 02-203, issued October 4, 2002).

[8] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808 (August 2002) (March 1995).

[9] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr*., 53 ECAB 331 (2002).

> (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."[10]

Section 16.5d of the A.M.A., *Guides* further provides that, in rating compression neuropathies, additional impairment values are not given for decreased grip strength.[11]

With respect to the right upper extremity, Dr. Blaustein opined in a July 23, 2004 report, that appellant's impairment rating was properly calculated under Table 16-15. The Board has carefully reviewed his reports and notes that, while Dr. Blaustein determined that appellant sustained an 11 percent impairment of the right upper extremity, it is not clear how he reached this conclusion under the A.M.A., *Guides*. He cited to Table 16-15 at page 492 to indicate that appellant had a partial sensory loss of six percent. The Board notes that under Table 16-15, a sensory loss for the middle finger over the radial palmar digital nerve is 5 percent and over the ulnar palmar digital nerve is 4 percent and a sensory loss for the ring finger over the radial palmar digital nerve is 3 percent or a total of 12 percent. Dr. Blaustein stated that appellant only had a partial sensory loss and found a six percent sensory impairment rating. He also calculated, under Table 16-15, a partial motor deficit due to median nerve injury of five percent. However, Dr. Blaustein did not properly apply the grading scheme as set forth in the A.M.A., *Guides* using Table 16-11[12] and Table 16-10,[13] respectively to his findings under Table 16-15.[14] Furthermore, he noted a 10 percent impairment for loss of strength of the abductor pollicis brevis and opponens policies muscles; however, the physician failed to explain how his determination was made in accordance with the relevant tables of the A.M.A., *Guides*.[15]

The Office medical adviser applied the A.M.A., *Guides* to the physical findings of Dr. Blaustein to determine that appellant had six percent impairment for the right upper extremity. In an August 29, 2004 report, the Office medical adviser noted that the impairment rating for the right upper extremity should be based on a sensory impairment finding only, noting that he felt the only consistent objective finding made by Dr. Blaustein was the loss of sensation and, thus, the impairment rating for weakness was based on unreliable examination findings. The Office medical adviser further noted that his range of motion findings merited no impairment. The Office medical adviser then properly identified the median nerve from Table 16-15, which provides a maximum of 39 percent impairment and utilized Table 16-10 to rate the impairment as a Class 4 or 15 percent impairment, to find that appellant had a 6 percent upper

[10] *Id*. at 495.

[11] *Id.* at 494.

[12] *Id.* at 484, Table 16-11.

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

[14] Table 16-15 provides that Table 16-10a and Table 16-11a are to be used to grade sensory deficits or pain and motor deficits. The A.M.A., *Guides*, at page 492. The Board additionally notes that in his June 30, 2004 letter, the Office medical adviser had informed Dr. Blaustein of the necessity of providing grades from Table 16-10 and 11.

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

extremity rating. The Board will affirm the finding of the Office medical adviser that she had a six percent upper extremity impairment. Since appellant already received a schedule award for 10 percent impairment the Board finds that she has not shown entitlement to an increased schedule award.

CONCLUSION

The Board finds that appellant is not entitled to greater than a 10 percent impairment of the right upper extremity for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member