United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant	)	
	)	**Docket No. 06-1747**
and	)	**Issued: February 21, 2007**
	)	
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Atlantic City, 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:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 25, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated March 1, 2006 in which a hearing representative affirmed a prior decision granting her a schedule award for five percent permanent impairment of the right arm. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

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

FACTUAL HISTORY

On February 6, 2001 appellant, then a 51-year-old secretary, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome as a result of performing her

secretary duties. She did not stop work at that time. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and later authorized bilateral carpal tunnel releases.

Appellant came under the treatment of Dr. Henry J. Greenwood, a Board-certified orthopedist, from February 8 to December 17, 2001, who diagnosed bilateral carpal tunnel syndrome and recommended surgical intervention. Dr. Greenwood noted performing a right carpal tunnel release on December 17, 2001 and a left carpal tunnel release on February 11, 2002 and diagnosed bilateral carpal tunnel syndrome. In reports dated February 26 to June 26, 2002, he noted that appellant was progressing well post surgery and recommended continued physical therapy. On June 26, 2002 Dr. Greenwood returned appellant to work light duty four hours per day. Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians and also to an impartial medical examiner to determine if appellant was totally disabled from work.

On May 20, 2004 appellant filed a claim for a schedule award. She submitted an electromyograph (EMG) dated July 29, 2003, which revealed right-sided C5, C6 radiculopathy with evidence of denervation with subsequent reinnervation on the right-side bicep and brachioradialis muscles. Appellant also submitted a report from Dr. David Weiss, an osteopath, dated February 16, 2004, who noted that appellant reached maximum medical improvement on February 16, 2004. Dr. Weiss noted that physical examination of the right wrist revealed a well-healed mid palmar surgical scar, positive Tinel's sign, positive Phalen's sign, with normal range of motion for dorsiflexion, palmar flexion, radial deviation and ulnar deviation. Examination of the left wrist revealed a well-healed mid palmar surgical scar, positive Tinel's sign and positive Phalen's sign. Dr. Weiss further noted grip strength testing on the right via Jamar Hand Dynamometer at Level III revealed 12 kilogram (kg) of force strength versus 36 kg of force strength on the left which equated into a 65 percent strength deficit to the right hand. He noted that sensory examination of the left hand revealed no abnormalities but examination of the right hand revealed a marked hyperesthesia to cotton whisk and pinprick sensation involving the palmar service of the right hand and no abnormalities over the median or ulnar nerves. Dr. Weiss diagnosed cumulative and repetitive trauma disorder, bilateral carpal tunnel syndrome, status post bilateral carpal tunnel syndrome release and sympathetic mediated pain syndrome to the right hand. He noted that, based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,*[1] (A.M.A., *Guides*) that appellant had 30 percent impairment on the right for grip strength deficit,[2] 31 percent impairment for sensory abnormality of the right median nerve[3] and 3 percent for pain-related impairment.[4]

Dr. Weiss' report of February 16, 2004 and the case record were referred to the Office's medical adviser. In a report dated July 20, 2004, the Office medical adviser determined that appellant was not entitled to a schedule award for the upper extremities based on Dr. Weiss' report. The medical adviser indicated that carpal tunnel syndrome was a compression

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

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

[3] *Id*. at 482, 492, Table 16-10, 16-15.

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

neuropathy and that Dr. Weiss documented no specific median nerve motor or sensory deficit and only noted a decreased grip strength deficit. The medical adviser indicated that there is no award for grip strength deficit in a compression neuropathy under the A.M.A., *Guides* and Office procedures.

On January 13, 2005 Dr. Weiss' report of February 16, 2004 and the case record were referred to another Office medical adviser. In a report of the same date, the medical adviser noted that Dr. Weiss found a significant sensory deficit; however, he advised that his review did not support this impairment. The medical adviser noted that appellant would be entitled to a five percent permanent impairment of the right upper extremity for mild postoperative residuals as noted on the EMG and for a positive Tinel's sign.[5]

On January 31, 2005 the Office determined that a conflict of medical opinion had been established between Dr. Weiss, appellant's treating physician, and the Office medical adviser, regarding whether appellant sustained a permanent impairment due to her work-related injury. To resolve the conflict, on January 31, 2005, the Office referred appellant to a referee physician, Dr. George P. Glenn, Jr., a Board-certified orthopedic surgeon.

In a report dated February 15, 2005, a different Office medical adviser determined that appellant was entitled to a schedule award for 10 percent permanent impairment of the right arm, based on Dr. Weiss' report, due to sensory deficits of the median nerve below the mid forearm.

Dr. Glenn indicated, in a report dated February 24, 2005, that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury and advised that appellant had reached maximum medical improvement on July 29, 2003. Dr. Glenn noted findings upon physical examination on the right of virtually nonexistent grip strength although there did not appear to be any evidence of thenar, hypothenar, intrinsic or forearm atrophy and he opined that appellant was exerting less than maximal effort. He noted that appellant manifested a positive Tinel's sign over the right wrist, the Phalen's test revealed burning in the palm and the third, fourth and fifth digit; however, there was no evidence of coldness, pallor, or increased sweating, the reflexes on both sides were brisk and symmetrical, there was no pathological reflexes and no areas of muscle atrophy. Dr. Glenn indicated that it was not unusual that appellant had residual electrical findings following the bilateral carpal tunnel syndrome surgeries; however, he found appellant's subjective complaints in the ulnar nerve hand distribution disturbing because the postsurgical EMG reported this as completely normal. He opined that he could not explain appellant's persistent subjective complaints on the basis of any residual carpal tunnel syndrome or any physiological reason and believed they were exaggerated. Dr. Glenn noted that appellant's physical findings do not incriminate either sensory or motor deficit involving the median nerve and under the A.M.A. *Guides* the dynametric grip test was invalid. He opined that, in accordance with the A.M.A. *Guides*, page 495, scenario two provides that normal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles infers a residual carpal tunnel syndrome was present and an impairment rating not to exceed five percent may be justified. Dr. Glenn opined that appellant's subjective complaints with regard to the ulnar distribution were not associated with the carpal

[5] *See* 16.5d Entrapment/Compression Neuropathy, Carpal Tunnel Syndrome, page 495, A.M.A. *Guides.*

tunnel syndrome or the treatment thereof. He opined that appellant did not have complex regional pain syndrome, as there were no findings to substantiate such a diagnosis. In a March 17, 2005 addendum, Dr. Glenn noted that he referred appellant for a triple-phase bone scan to completely rule out complex regional pain syndrome and the study revealed no abnormalities.

Dr. Glenn's report of February 24, 2005 and the case record were referred to the Office's medical adviser. In a report dated August 7, 2005, the Office medical adviser concurred in Dr. Glenn's determination that appellant was entitled to a schedule award for five percent permanent impairment of the right upper extremity, in accordance with 16.5d, page 495, of the A.M.A. *Guides.*

In a decision dated August 9, 2005, the Office granted appellant a schedule award for five percent permanent impairment of the right upper extremity. The period of the award was from February 24 to June 13, 2005.

By letter dated August 12, 2005, appellant, through her attorney, requested an oral hearing before an Office hearing representative. The hearing was held on December 19, 2005.

In a decision dated March 1, 2006, the Office affirmed its decision dated August 9, 2005.

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

On appeal appellant alleges that she is entitled to a 55 percent of permanent impairment of the right upper extremity as set forth by Dr. Weiss in his report dated February 16, 2004. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized bilateral carpal tunnel releases on December 17 and February 11, 2002 and paid appellant a schedule award for a five percent impairment of the right upper extremity. The Office determined that a conflict existed in the medical evidence between appellant's attending physician, Dr. Weiss, who disagreed with the Office medical adviser concerning whether appellant had permanent

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999).

[8] *See id*.; *Jacqueline S. Harris,* 54 ECAB 139 (2002).

impairment of the right upper extremity. Consequently, the Office referred appellant to Dr. Glenn to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[9]

The Board finds that, under the circumstances of this case, the opinion of Dr. Glenn is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant has no more than five percent impairment of the right arm.

Dr. Glenn reviewed appellant's history, reported findings and noted an essentially normal physical examination. He noted that appellant reached maximum medical improvement on July 29, 2003. Dr. Glenn noted that his examination of February 24, 2005 revealed well-healed bilateral scars for the carpal tunnel surgical incisions, no tenderness over the incision sites, a positive Tinel's sign over the right wrist, the Phalen's test revealed burning in the palm and the third, fourth and fifth digit; however, there was no evidence of coldness, pallor, or increased sweating; the reflexes on both sides were brisk and symmetrical and there were no areas of muscle atrophy. He opined that he could not explain appellant's persistent subjective complaints on the basis of any residual carpal tunnel syndrome or any physiological reason and believed they were exaggerated. Dr. Glenn further noted that appellant's physical findings did not incriminate either sensory or motor deficit involving the median nerve and under the A.M.A. *Guides* the dynametric grip test was invalid. He determined that appellant's impairment fell within section 16.5d Entrapment/Compression Neuropathy, Carpal Tunnel Syndrome, page 495, of the A.M.A. *Guides*, which provides:

> "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:
>
> > 2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles: a residual CTS is still present, and an impairment rating not to exceed five percent of the upper extremity may be justified."[10]

Dr. Glenn opined that, based on the A.M.A. *Guides*, appellant had a five percent impairment of the right arm. In an addendum report dated March 17, 2005, he noted that he referred appellant for a triple-phase bone scan to completely rule out complex regional pain syndrome and the study revealed no abnormalities.

Dr. Glenn properly applied the A.M.A., *Guides* and reached an impairment rating of five percent of the right upper extremity. His report is reasoned, based on a thorough examination and offers no basis for more than five percent impairment. The Board finds that Dr. Glenn's

[9] *Aubrey Belnavis*, 37 ECAB 206 (1985). *See* 5 U.S.C. § 8123(a).

[10] A.M.A. *Guides* 495.

report is entitled to special weight and establishes that appellant has no more than a five percent of the right upper extremity.

On appeal appellant asserts that Dr. Weiss properly applied the A.M.A., *Guides* and established that appellant sustained 30 percent impairment on the right for lost grip strength,[11] 31 percent impairment for sensory abnormality of the right median nerve[12] and 3 percent for pain-related impairment[13] for a total impairment of 55 percent of the right arm. She asserted that Dr. Glenn identified abnormal sensibility and abnormal apposition strength but failed to factor these abnormalities in to his calculation. The Board finds these arguments without merit. Merely reasserting that the report of Dr. Weiss, who was on one side of the conflict resolved by Dr. Glenn, establishes greater impairment is not persuasive.[14] As noted above, Dr. Glenn explained the reasons for his calculation and the Board found that his opinion is entitled to special weight.

Furthermore, Office procedures[15] specifically 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.[16] Under the fifth edition of the A.M.A., *Guides*, schedule awards for carpal tunnel syndrome are predicated on motor and sensory impairments only.[17] Although Dr. Weiss determined that appellant sustained 31 percent impairment for sensory abnormality of the right median nerve,[18] he did not identify a grade of sensory deficit between 1 and 5 as set forth in the A.M.A., *Guides*[19] and failed to properly explain how he calculated specific impairment values using Table 16-15 on pages 492 of the A.M.A., *Guides.*[20] Regarding Dr. Weiss' finding of 30 percent impairment for grip strength deficit, the Board notes that section 16.5d of the A.M.A., *Guides* provides: "In compression neuropathies, additional impairment values are not given for decreased grip strength."[21] Finally,

[11] *Id*. at 509, Table 16-32, 16-34.

[12] *Id*. at 482,492, Table 16-10, 16-15.

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

[14] *Cf., Kathryn E. Demarsh*, 56 ECAB ___ (Docket No. 05-269, issued August 18, 2005) (a report from appellant's physician reiterating a previously stated opinion, where that physician was one side of the conflict resolved by the impartial medical specialist, is insufficient to create a new conflict where he essentially repeated his opinion).

[15] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards,* Chapter 3.700, Exhibit 4 (June 2003).

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

[17] *Kimberly M. Held*, 56 ECAB ___ (Docket No. 05-1050, issued August 16, 2005); *Robert V. Disalvatore*, 54 ECAB 351 (2003).

[18] A.M.A., *Guides* (5th ed. 2001) at 482, 492, Table 16-10, 16-15.

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

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

[21] *See id*. at 494-95. *See Kimberly M. Held, supra* note 17.

Dr. Weiss attributed three percent impairment for pain for the right arm under Chapter 18 of the A.M.A., *Guides*. This is also without merit as Office procedures state that this chapter should not be used to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.[22]

Consequently, there is not medical evidence conforming with the A.M.A., *Guides* establishing that appellant has more than five percent impairment of her right arm.

CONCLUSION

The Board finds that the Office properly determined that appellant had no more than a five percent permanent impairment of the right upper extremity for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[22] *See supra* note 15; *see also Philip A. Norulak*, 55 ECAB 690 (2004); *Mark A. Holloway*, 55 ECAB 321 (2004).