United States Department of Labor
Employees' Compensation Appeals Board

T.A., Appellant	)	
and	)	**Docket No. 06-1893**
	)	**Issued: February 28, 2007**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Chicago, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 9 and July 17, 2006 merit decisions concerning his entitlement to schedule award compensation. 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 met his burden of proof to establish that he has more than a five percent permanent impairment of both his right and left arms, for which he received a schedule award.

FACTUAL HISTORY

On October 9, 2002 appellant, then a 29-year-old claims examiner, filed an occupational disease claim alleging that he sustained an upper extremity condition due to the repetitive duties

of his job including typing and handling files. The Office accepted that appellant sustained bilateral carpal tunnel syndrome and paid compensation for periods of disability.[1]

The findings of October 11, 2002 electromyogram (EMG) and nerve conduction velocity testing showed delayed latencies of the right and left median nerves, more so on the right. Appellant reported experiencing varying degrees of pain and tingling in his wrists and first three fingers on each hand.

Appellant underwent a revision of his right carpal tunnel release on January 27, 2003. The findings of March 15, 2002 EMG and nerve conduction velocity testing showed normal results in the median nerves. Appellant returned to regular duty a few months after his surgery and his reported upper extremity symptoms lessened for a period. He underwent a revision of his left carpal tunnel release on December 15, 2003 and incurred additional periods of disability. Appellant's reported upper extremity symptoms lessened in the months after the surgery.

In a report dated February 4, 2005, Dr. Jacob Salomon, an attending Board-certified orthopedic surgeon, determined that appellant had a 25 percent permanent impairment of his right arm and a 22 percent permanent impairment of his left arm due to his accepted carpal tunnel syndrome. On examination, appellant exhibited abnormal two-point discrimination test results on both sides and indicated that it was appropriate for him to apply the peripheral nerve deficit procedures found in Chapter 16 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). Dr. Salomon found that appellant had 23 percent median nerve sensory deficit on the right which was derived by multiplying a 60 percent grade times the 39 percent maximum value for such impairment. He then combined this value with a 2 percent median nerve motor deficit on the right which was derived by multiplying a 25 percent grade times the 10 percent maximum value for such impairment.[2] Dr. Salomon found that appellant had a 20 percent median nerve sensory deficit on the left which was derived by multiplying a 50 percent grade times the 39 percent maximum value for such impairment. He then combined this value with a 2 percent median nerve motor deficit on the left which was derived by multiplying a 20 percent grade times the 10 percent maximum value for such impairment.

Appellant applied for a schedule award due to his accepted bilateral carpal tunnel syndrome. On April 20, 2005 Dr. Willie E. Thompson, a Board-certified orthopedic surgeon who served as an Office district medical adviser, stated that Dr. Salomon's evaluation was deficient in that he did not refer to EMG and nerve conduction velocity testing and did not properly apply the standards of the A.M.A., *Guides*. Appellant then underwent such testing on May 13, 2005 and the results showed delayed latencies of the right and left median nerves.

On August 4, 2005 Dr. Thompson indicated that, under the standards found on page 495 of the A.M.A., *Guides*, appellant's "mild residuals of carpal tunnel syndrome without any significant physical results" meant that he had a five percent permanent impairment of his right arm and a five percent permanent impairment of his left arm.

[1] Appellant had bilateral carpal tunnel release surgery in 1997.

[2] The resultant 2.5 percent figure for motor deficit should have been rounded up to 3 rather than down to 2.

In a February 9, 2006 decision, appellant received a schedule award for a five percent permanent impairment of his right arm and a five percent permanent impairment of his left arm.

On October 31, 2005 Dr. Thompson repeated his earlier assertion that Dr. Salomon's evaluation was inadequate. On March 9, 2006 Dr. Salomon claimed that Dr. Thompson did not have all the relevant medical documents for review. Appellant requested a review of the written record. By decision dated and finalized July 17, 2006, an Office hearing representative affirmed the February 9, 2006 decision.

LEGAL PRECEDENT

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

The A.M.A., *Guides* evaluates the permanent impairment caused by carpal tunnel syndrome by determining whether such a condition falls within one of three categories discussed in section 16.5d.[6] Under the first category, if there are positive clinical findings of median nerve dysfunction and an electrical conduction delay, the condition is rated under the standards found earlier in Chapter 16 for evaluating sensory or motor deficits due to peripheral nerve disorders. Under the second category, if there is normal sensibility (evaluated by two-point discrimination and Semmes-Weinstein monofilament testing) and normal opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles, an impairment rating not to exceed five percent of the upper extremity may be justified. Under the third category, if there is normal sensibility, opposition strength, and nerve conduction studies, there is no objective basis for an impairment rating.[7]

It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[8]

---

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id*.

[6] *See* A.M.A., *Guides* 495.

[7] *Id.*

[8] *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome. Based on the opinion of Dr. Thompson, a Board-certified orthopedic surgeon who served as an Office district medical adviser, the Office granted appellant a schedule award for a five percent permanent impairment of his right arm and a five percent permanent impairment of his left arm. The Office found that the opinion of Dr. Salomon, an attending Board-certified orthopedic surgeon, which found a 25 percent impairment on the right and a 22 percent impairment on the left, was not derived in accordance with the relevant standards of the A.M.A., *Guides.*

The Board finds that the case is not in posture for decision. In determining that appellant had a five percent permanent impairment of his right arm and a five percent permanent impairment of his left arm, Dr. Thompson apparently found that appellant's condition fell into the second category found on page 495 of the A.M.A., *Guides* for evaluating impairment due to carpal tunnel syndrome.[9] This second category is applied if there is normal sensibility and normal opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles. However, Dr. Salomon found that there was abnormal two-point discrimination and it is not clear that it was proper to apply the second category. Although Dr. Salomon did not have recent EMG and nerve conduction velocity testing results at the time of his evaluation, such results showing bilateral median nerve delays were obtained shortly after his evaluation. The evidence of record suggests that appellant had both positive clinical findings of median nerve dysfunction and median nerve delays shown by diagnostic testing around the time his impairment was calculated for schedule award purposes. In such case, appellant would fall under the first category for determining impairment due to carpal tunnel syndrome and it would be appropriate to evaluate him, as Dr. Salomon did, under the peripheral nerve deficit procedures found in Chapter 16 of the A.M.A., *Guides.*[10]

Given the above-noted circumstances, additional evaluation is necessary to adequately calculate the permanent impairment of appellant's upper extremities. A determination should be made regarding which category on page 495 of the A.M.A., *Guides* would be appropriate for evaluating appellant's impairment due to carpal tunnel syndrome. After such development its deems necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he has more than a five percent permanent impairment of his right arm and more than a five percent permanent impairment of his left arm.

[9] *See supra* notes 6 and 7 and accompanying test.

[10] If evaluation of appellant's impairment under the peripheral nerve deficit procedures is appropriate, particular attention should be given to Tables 16-10, 16-11 and 16-15. A.M.A., *Guides* 482, 484, 492.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 17 and February 9, 2006 decisions are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: February 28, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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