United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 07-8**
	)	**Issued: February 14, 2007**
U.S. POSTAL SERVICE, POST OFFICE, St. Paul, MN, 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 September 28, 2006 appellant filed a timely appeal from a July 7, 2006 Office of Workers' Compensation Programs' decision granting 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 a 22 percent impairment of her right upper extremity or more than a 16 percent impairment of her left upper extremity causally related to her federal employment.

FACTUAL HISTORY

On September 19, 2002 appellant, then a 38-year-old letter carrier, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome due to repetitive motion tasks, including casing, pulling and delivering mail. The Office accepted her claim for bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on December 11, 2002 and a left carpal tunnel release on April 9, 2003. She returned to work

without restrictions on August 5, 2003. On December 22, 2005 appellant filed a claim for a schedule award.

In a November 10, 2005 impairment rating, Dr. Margit L. Bleecker, a Board-certified neurologist, provided findings on physical examination and stated:

> "[Appellant's] hands show bilateral thenar atrophy with 4/5 strength in the abductor pollicis brevis [muscle]. Grip strength with the Jamar dynamometer is 80-pound force on the right and 75-pound force on the left. Pin[prick] sensation is diminished in the median nerve distribution when compared to the ulnar nerve distribution. Temperature perception is also altered in the median nerve distribution. Phalen['s sign] is positive bilaterally….
>
> "Nerve conduction studies found median sensory distal latencies prolonged left greater than right and left mid-palmar latency is significantly prolonged. Findings show bilateral distal median neuropathy compatible with carpal tunnel syndrome."

Dr. Bleecker found that appellant had a 29 percent impairment of her right upper extremity, including 3 percent for motor deficit, based on Table 16-11 at page 484 and Table 16-15 at page 492 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[1] (a Grade 4 deficit of 25 percent multiplied by maximum motor deficit of 10 percent of the median nerve and 27 percent for sensory deficit, based on Table 16-10 at page 482 and Table 16-15 at page 492 (Grade 2 deficit of 70 percent multiplied by maximum sensory deficit of 39 percent for the median nerve). She combined the 3 percent impairment for motor deficit and the 27 percent for sensory deficit using the Combined Values Chart at page 604, calculating a 29 percent impairment of the right upper extremity. Dr. Bleecker found that appellant had a 16 percent impairment of her left upper extremity for a Grade 3 sensory deficit, based on Table 16-10 at page 482 and Table 16-15 at page 492 (a Grade 3 sensory deficit of 40 percent multiplied by maximum sensory deficit of 39 percent for the median nerve). She found no motor deficit in appellant's left hand.

On March 30, 2006 the Office medical adviser found that appellant had a 22 percent impairment of the right upper extremity, including 19.5 percent (rounded to 20 percent) for a Grade 3 sensory deficit of the median nerve (50 percent multiplied by 39 percent), based on Table 16-10 at page 482 and Table 16-15 at page 492 and 2 percent for a Grade 4 motor deficit of the median nerve (20 percent multiplied by 10 percent), based on Table 16-11 at page 16-11 at page 484 and Table 16-15 at page 492. Using the Combined Values Chart at page 604, he found that she had a 22 percent right upper extremity impairment for combined motor and sensory deficit. The Office medical adviser found that appellant had a 16 percent impairment of the left upper extremity for a Grade 4 sensory deficit, based on Table 16-10 at page 482 and Table 16-15 at page 492 (40 percent multiplied by a 39 percent maximum for the median nerve equals 15.6 percent (rounded to 16 percent).

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

By decision dated July 7, 2006, the Office granted appellant a schedule award for weeks from November 10, 2005 to February 17, 2008 based on a 22 percent permanent impairment of the right upper extremity and a 16 percent impairment of the left upper extremity.[2]

LEGAL PRECEDENT

The schedule award provisions of the 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*[5] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[6]

ANALYSIS

The fifth edition of the A.M.A., *Guides*, regarding carpal tunnel syndrome, 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:
>
> > 1. Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual [carpal tunnel syndrome] is rated according to the sensory and/or motor deficits as described [in Tables 16-10a and 16-11a].
> >
> > 2. Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal [electromyogram] testing of the thenar muscles: a residual [carpal tunnel syndrome] is still present and an impairment rating not to exceed [five percent] of the upper extremity may be justified.
> >
> > 3. Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve

[2] The Office inadvertently omitted the number of weeks of compensation in its decision. The Federal Employees' Compensation Act provides for 312 weeks of compensation for 100 percent loss or loss of use of an arm. 5 U.S.C. § 8107(c)(1).

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[6] 20 C.F.R. § 10.404.

> conduction studies: there is no objective basis for an impairment rating."[7]

The Board has found that the fifth edition of the A.M.A., *Guides* provides that impairment for carpal tunnel syndrome be rated on motor and sensory deficits only.[8]

Regarding appellant's left upper extremity, Dr. Bleecker found that she had a 16 percent impairment for a Grade 3 sensory deficit, based on Table 16-10 at page 482 and Table 16-15 at page 492 (Grade 3 sensory deficit of 40 percent multiplied by maximum sensory deficit of 39 percent for the median nerve). She found no motor deficit in appellant's left hand. The Office medical adviser's left upper extremity rating was the same as that of Dr. Bleecker. There is no medical evidence establishing that appellant has more than a 16 percent impairment of her left arm.

Regarding appellant's right upper extremity, Dr. Bleecker determined that she had a 29 percent permanent impairment. The Office medical adviser determined that appellant had a 22 percent right upper extremity impairment. Dr. Bleecker found that appellant had a 3 percent impairment for motor deficit, based on Table 16-11 at page 484 and Table 16-15 at page 492 of the A.M.A., *Guides* (a Grade 4 deficit of 25 percent multiplied by maximum deficit of 10 percent of the median nerve. The Office medical adviser found that appellant had a 2 percent impairment for a Grade 4 motor deficit of the median nerve (20 percent for Grade 4 multiplied by 10 percent maximum for motor deficit for the median nerve). However, the Office medical adviser provided insufficient rationale as to why he selected 20 percent for a Grade 4 deficit from Table 16-11 at page 484 as opposed to the 25 percent for Grade 4 found by Dr. Bleecker[9] who found that appellant had 27 percent for sensory deficit, based on Table 16-10 at page 482 and Table 16-15 at page 492 (Grade 2 deficit of 70 percent multiplied by maximum sensory deficit of 39 percent for the median nerve). The Office medical adviser found that appellant had a 19.5 percent impairment (rounded to 20 percent) for a Grade 3 sensory deficit of the median nerve (50 percent multiplied by 39 percent), based on Table 16-10 at page 482 and Table 16-15 at page 492. However, he provided insufficient explanation as to why he found a Grade 3 impairment for sensory deficit as opposed to the Grade 2 classification found by Dr. Bleecker.[10]

The Board finds that there is a conflict between Dr. Bleecker and the district medical adviser as to the impairment of appellant's right upper extremity. Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician

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

[8] *Kimberly M. Held*, 56 ECAB ___ (Docket No. 05-1050, issued August 16, 2005).

[9] Grade 4 includes a range of 1 to 25 percent. A.M.A., *Guides* 484, Table 16-11.

[10] For Grade 3, there is a range of 26 to 60 percent. For Grade 2, there is a range of 61 to 80 percent. A.M.A., *Guides* 482, Table 16-10.

who shall make an examination.[11] Accordingly, the case will be remanded for further development of the medical evidence regarding appellant's right upper extremity.

On remand, the Office should refer appellant, together with the case record and statement of accepted facts, to an appropriate Board-certified specialist for an evaluation to resolve the issue of appellant's impairment of her right upper extremity. After such further development as it deems necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for a decision due to a conflict in the medical opinion evidence. Further development of the medical evidence is required.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 7, 2006 be affirmed as to the schedule award for appellant's left upper extremity. The case is set aside and remanded for further development consistent with this decision on the issue of appellant's right upper extremity impairment.

Issued: February 14, 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

[11] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).