

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Birnamwood, WI, Employer**

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**Docket No. 07-1462  
Issued: February 8, 2008**

*Appearances:*  
*Appellant, pro se*  
*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 March 9, 2007 appellant filed a timely appeal from January 18, 2007 merit decisions of the Office of Workers' Compensation Programs denying her claim for a schedule award.<sup>1</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.<sup>2</sup>

**ISSUE**

The issue is whether appellant has a permanent impairment of the upper extremities.

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<sup>1</sup> The Office issued two nearly identical decisions on January 18, 2007 denying appellant's claim for a schedule award.

<sup>2</sup> In a decision dated January 8, 2007, the Office reduced appellant's compensation on the grounds that her actual earnings as a modified clerk effective May 18, 2007 fairly and reasonably represented her wage-earning capacity. Appellant has not appealed this decision and therefore it is not before the Board at this time.

## **FACTUAL HISTORY**

On March 11, 2004 appellant, then a 31-year-old part-time flexible clerk, filed an occupational disease claim alleging that she sustained tennis elbow of the right forearm due to factors of her federal employment. The Office accepted her claim for right forearm tendinitis. Appellant sustained intermittent periods of disability until August 20, 2004 when she stopped work. On October 19, 2004 she returned to light-duty employment but stopped work on May 4, 2005 and did not return. Appellant underwent a right carpal tunnel release on August 5, 2005 and a left carpal tunnel release on September 16, 2005. The Office expanded acceptance of the claim to include bilateral carpal tunnel syndrome, thoracic outlet syndrome, neck strain and bilateral elbow epicondylitis. It also authorized a right first rib resection, performed by Dr. William Turnipseed, a Board-certified surgeon, on October 25, 2005.

An electromyogram (EMG) obtained on January 13, 2006 revealed abnormal findings with “b[i]lateral median neuropathies of the wrists, sensory and demyelinating, minimal.” Appellant returned to work with restrictions in April 2006.

In a report dated May 15, 2006, Dr. Timothy C. Romang, a physiatrist, indicated that he treated appellant until November 29, 2004 for employment-related bilateral paracervical and upper trapezius tension myalgia and upper limb lateral and medial epicondylitis. He found that she had a 10 percent impairment of right elbow due to pain and loss of repetitive hand use and a 7.5 percent impairment of the left elbow for pain and loss of repetitious hand use. Dr. Romang recommended an additional .5 percent impairment for myalgia. He noted that appellant underwent electrodiagnostic treatment on July 11, 2005 which revealed moderate to severe carpal tunnel syndrome on the right side and borderline carpal tunnel syndrome on the left side. Dr. Romang declined to provide an impairment rating due to carpal tunnel syndrome as he was not involved in the treatment of this condition.

By letter dated June 20, 2006, the Office requested that appellant submit an impairment evaluation from her attending physician pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001). The Office enclosed forms from the A.M.A., *Guides* for the attending physician to complete.

On July 27, 2006 Dr. Turnipseed recommended repeat EMG testing based on appellant’s complaints of continued ulnar symptoms. The Office accepted that she sustained a recurrence of disability on August 30, 2006.

In an impairment evaluation dated September 15, 2006, Dr. Susan M. Schneider who specializes in family practice, completed the forms from the A.M.A., *Guides* provided by the Office. She based her findings on an August 14, 2006 physical therapist’s report. The physical therapist listed range of motion measurements for the elbows, wrists and fingers, the results of strength testing for the elbows and wrists and grip strength measurements. The physical therapist found that appellant had normal two-point discrimination and “complain[ts] of pain and paresthesia in the fifth digit, elbow and shoulder with Phalen’s testing.” Dr. Schneider provided the range of motion and grip strength findings from the physical therapist and opined that the date of maximum medical improvement was March 14, 2006. She found no atrophy and full

strength of the elbow, except for left elbow extension. Dr. Schneider further found no atrophy of the hand.<sup>3</sup>

On December 11, 2006 an Office medical adviser discussed appellant's history of right and left carpal tunnel releases. He reviewed the evidence of record, including the physical therapy notes upon which Dr. Schneider based her evaluation. The Office medical adviser noted that appellant had subjective complaints of paresthesia in her fingers bilaterally but had normal sensation and range of motion of the wrists. He found that her grip strength measurements of 33.5 kilograms on the right and 26.8 kilograms on the left did not constitute an impairment under Tables 16-31 and 16-34 of the A.M.A., *Guides*. The Office medical adviser concluded that there was no objective evidence supporting a permanent impairment of the upper extremities.

In decisions dated January 18, 2007, the Office denied appellant's claim for a schedule award on the grounds that the evidence was insufficient to show that she had a permanent impairment of the upper extremities.

### **LEGAL PRECEDENT**

The schedule award provisions of the Federal Employees' Compensation Act,<sup>4</sup> and its implementing federal regulations,<sup>5</sup> 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>6</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>7</sup>

The A.M.A., *Guides* provides that after an optimal recovery time following surgical decompression of carpal tunnel syndrome, three scenarios are possible: if positive clinical findings of median nerve dysfunction are present, impairment is rated according to sensory or motor deficits; with normal sensibility and opposition strength or abnormal sensory or motor latencies or abnormal EMG testing, an impairment rating not to exceed five percent may be justified; finally, with normal sensibility, opposition strength and nerve conduction studies, there is no objective basis for an impairment rating.<sup>8</sup>

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<sup>3</sup> Dr. Schneider's remaining findings relevant to the hand are nearly illegible.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> 20 C.F.R. § 10.404(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>8</sup> A.M.A., *Guides* 495.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.<sup>9</sup>

### ANALYSIS

The Office accepted that appellant sustained right forearm tendinitis, bilateral carpal tunnel syndrome, thoracic outlet syndrome, bilateral epicondylitis and neck strain causally related to factors of her federal employment. She underwent a right carpal tunnel release on August 5, 2005 and a left carpal tunnel release on September 16, 2005. Dr. Turnipseed performed a right rib resection on October 25, 2005.

In an impairment evaluation dated May 15, 2006, Dr. Romang opined that appellant had a 10 percent impairment of the right elbow due to pain and loss of use of repetitive hand use, a 7.5 percent impairment of the left elbow for pain and loss of repetitious hand use and an additional ½ percent impairment for myalgia. He did not, however, reference the A.M.A., *Guides* in reaching his impairment determination. As Dr. Romang's report does not conform to the A.M.A., *Guides*, it is of diminished probative value.<sup>10</sup>

Dr. Schneider, in an impairment evaluation dated September 15, 2006, reviewed the August 14, 2006 findings from a physical therapist. She listed range of motion measurements for the elbows, wrists and fingers, the results of strength testing for the elbows and wrists and grip strength measurements. Dr. Schneider found no atrophy of the elbow or hand and loss of left elbow strength on extension. She found that appellant reached maximum medical improvement on March 14, 2006.

An Office medical adviser reviewed the evidence of record. He discussed appellant's complaints of parenthesis in the fingers of both hands. The Office medical adviser found that she had normal sensation and range of motion of the wrists and that appellant's grip strength revealed no impairment under the A.M.A., *Guides*. He concluded that there was no objective evidence supporting a permanent impairment of the upper extremities. It is not clear, however, that the Office medical adviser adequately reviewed the medical evidence in accordance with the relevant standards of the A.M.A., *Guides*. He based his finding that appellant had no impairment on her range of motion of the wrist and grip strength. The Board notes, however, that there generally will be no ratings based on loss of motion or grip strength for carpal tunnel syndrome.<sup>11</sup> The A.M.A., *Guides*, provides that, after an optimal recovery time following surgical decompression of carpal tunnel syndrome, three scenarios are possible: if positive clinical findings of median nerve dysfunction are present, impairment is rated according to sensory or motor deficits; with normal sensibility and opposition strength or abnormal sensory or motor latencies or abnormal EMG testing, an impairment rating not to exceed five percent may be justified; finally, with normal sensibility, opposition strength and nerve conduction studies,

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<sup>9</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>10</sup> *Mary L. Henninger*, 52 ECAB 408 (2001).

<sup>11</sup> A.M.A., *Guides* 494-95.

there is no objective basis for an impairment rating.<sup>12</sup> Appellant underwent bilateral carpal tunnel releases in August and September 2005. The most recent EMG, obtained on January 13, 2006 showed sensory and demyelinating minimal median neuropathies of the wrists bilaterally. The Office medical adviser did not discuss the January 13, 2006 diagnostic study suggesting that appellant had medial nerve dysfunction or explain why the second scenario for determining impairment due to carpal tunnel syndrome on page 495 of the A.M.A., *Guides* was inapplicable.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>13</sup> The case, consequently, will be remanded to the Office for a determination regarding the extent of appellant's upper extremity impairment. After such development as it deems necessary, the Office should issue an appropriate decision.

### CONCLUSION

The Board finds that the case is not in posture for decision.

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<sup>12</sup> *Id.* at 495.

<sup>13</sup> See *Jimmy A. Hammonds*, *supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 18, 2007 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 8, 2008  
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