

Appellant received a schedule award for 34 percent impairment of the left upper extremity on May 30, 2003.

On June 26, 2003 appellant filed a claim for bilateral carpal tunnel syndrome causally related to factors of his employment. The Office accepted appellant's claim for bilateral carpal tunnel syndrome.¹ It authorized surgery for bilateral carpal tunnel releases, which were performed by Dr. J. Craig Merrell, Board-certified in orthopedic surgery on October 7, 2003.²

In an April 18, 2005 report, Illeana Rosario, an occupational therapist, stated that appellant had a 24 percent right upper extremity impairment. This was based on a 20 percent impairment for decreased grip strength and a four percent right upper extremity impairment due to sensory deficit under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition). The report was cosigned by Dr. Merrell.

On June 15, 2005 appellant filed a Form CA-7 claim for a schedule award based on loss of use of his right and left upper extremities.

On March 14, 2006 the Office referred appellant for updated electromyogram testing and nerve conduction studies which were administered by Dr. Eric Goldberg, a radiologist, on March 24, 2006. He concluded:

“There is electrophysiologic evidence of entrapment of both median nerves at the level of the wrist affecting both motor and sensory fibers. This is consistent with a diagnosis of moderate to severe bilateral carpal tunnel syndrome. There is no electrophysiologic evidence of peripheral neuropathy or cervical radiculopathy.”

In an impairment evaluation dated April 27, 2006, an Office medical adviser found that appellant had a four percent impairment of his right upper extremity and a five percent impairment of his left upper extremity under the A.M.A., *Guides*. He stated:

“I have been provided with an alleged impairment rating from ... Dr. Merrell. The report indicates that there is a four percent impairment to the right upper extremity due to sensory deficit. No percent was given to the left hand due to any sensory deficit. Please note that I must state that based on the A.M.A., *Guides*, even though there are no deficits if an individual had persistent symptoms of carpal tunnel syndrome on electromyogram [EMG] and nerve conduction studies, then a rating of up to five percent impairment is allowable. I am therefore recommending a five percent impairment to the left upper extremity based solely on the positive EMG and nerve conduction studies which were performed on March 24, 2006. I am in agreement with the four percent impairment to the right upper extremity which was provided by the treating physician.

¹ This case file pertaining to this File No. 250558170, which was combined with the instant File No. 252031741, is not contained in the instant record. However, these facts cited by the Office are not in dispute.

² Appellant underwent carpal tunnel release surgery for left carpal tunnel release on May 22, 2000 and March 18, 2004 and for right carpal tunnel release on October 9, 2003 and May 26, 2004.

“Please note that the alleged impairment rating attempts to rate full weakness of grip strength which is inconsistent with the fifth edition of the A.M.A., *Guides*. This is not allowable for residuals of carpal tunnel syndrome has been treated is neurologic impairments to include sensory deficits and possible weakness in opposition of the thumb but not in grip strength. Once again, the total impairment rating to the right upper extremity is four percent while the total impairment rating to the left upper extremity is five percent.”

The Office medical adviser indicated that he relied on Chapter 16 at page 495 of the A.M.A., *Guides*.

On June 16, 2006 the Office granted appellant a schedule award for a four percent permanent impairment of the right upper extremity for the period March 24 to June 19, 2006 for a total of 12.48 weeks of compensation.

In a letter received by the Office on June 24, 2006, appellant requested reconsideration.

By decision dated July 20, 2006, the Office denied appellant’s request for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated September 29, 2006, appellant requested reconsideration. He submitted an August 14, 2006 report from Ms. Rosario who stated that appellant had an 11 percent bilateral upper extremity impairment due to sensory deficit of the median nerve post carpal tunnel release based on an August 14, 2006 impairment evaluation. The report was cosigned on September 7, 2006 by Dr. Helena Guarda, a specialist in plastic surgery. Appellant underwent several sensory function tests, the results of which were interpreted and rated for impairment under the A.M.A., *Guides*. Ms. Rosario stated:

“According to page 495 of the A.M.A., *Guides*, interpretation of clinical findings and electrical conduction delay, the impairment to residual [carpal tunnel syndrome] is rated following sensory deficits instructions.

“Analysis:

(1) Severity of sensory deficit: Grade III defined as superficial tactile sensibility (diminished light touch and two point discrimination), with some abnormal sensations or slight pain, that interferes with some activities. On the basis of clinical judgment a 28 percent impairment was selected (Table 16-10, page 482).

(2) Maximum impairment of the upper extremity due to sensory deficits or pain of the medial nerve is 39 percent (Table 16-5, page 492).

(3) The results of the multiplication of the percent value for sensory deficits (28 percent) of median nerve (39 percent) equals 10.92, rounded up to 11 percent impairment due to sensory deficit median nerve post carpal tunnel release.”³

On October 3, 2006 an Office medical adviser found that appellant did not have any additional impairment of his right upper extremity. He rejected the August 14, 2006 impairment evaluation because it was not submitted by a physician and therefore did not constitute probative medical evidence under the A.M.A., *Guides*.

In an October 30, 2006 report, Dr. Guarda reviewed appellant’s medical history and stated findings on examination, but did not provide an impairment rating for appellant’s accepted bilateral carpal tunnel condition.

By decision dated December 6, 2006, the Office denied modification of the June 16, 2006 schedule award decision. It stated that appellant did not submit any probative medical evidence which would entitle him to a greater schedule award. The Office noted that the five percent impairment for the left upper extremity recommended by the Office medical adviser was subsumed within the previous 34 percent schedule award from May 2003. The Office found that there was no medical evidence in the record to support an award based on a condition other than the accepted bilateral carpal tunnel syndrome.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act⁴ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁵ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.⁶

ANALYSIS

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

In this case, the Office found a four percent impairment of the right upper extremity for right carpal tunnel syndrome based on the April 18, 2005 impairment evaluation from

³ This report also rated a two percent impairment for ulnar nerve sensory deficit. However, the Office medical adviser previously rejected impairments based on conditions which the Office did not accept.

⁴ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁵ 5 U.S.C. § 8107(c)(19).

⁶ 20 C.F.R. §10.404.

Ms. Rosario, the occupational therapist. The impairment evaluation was cosigned by Dr. Merrell, the attending physician who performed appellant's carpal tunnel release surgeries; the Office relied on this report in its June 26, 2006 schedule award. Appellant requested reconsideration and submitted Ms. Rosario's August 14, 2006 impairment evaluation which calculated an 11 percent impairment based on sensory nerve deficit. This report was cosigned by Dr. Guarda. However, the Office medical adviser found that this report did not constitute medical evidence under section 8101(2) because it was composed by an occupational therapist. Thus, although the Office medical adviser calculated appellant's impairment of the right thumb by referencing the standards of the A.M.A., *Guides* relating to impairment associated with range of motion deficits of right thumb, he did not evaluate the possibility that appellant had additional impairment of his right upper extremity related to his right-sided carpal tunnel syndrome. The report cosigned by Dr. Guarda makes note of pain symptoms and sensory deficits relating to appellant's wrist which suggest that he might have additional permanent impairment related to this area. The report also provides an impairment rating in accordance with specific tables of the A.M.A., *Guides*. Therefore, the Office's December 6, 2006 decision should be set aside and the case remanded to the Office for consideration of the August 14, 2006 report cosigned by Dr. Guarda to obtain a complete assessment of appellant's right upper extremity impairment in accordance with the standards of the A.M.A., *Guides*.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Issued: January 24, 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