United States Department of Labor
Employees' Compensation Appeals Board

T.D., Appellant	)	
and	)	**Docket No. 09-683**
	)	**Issued: September 28, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Tiburon, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 12, 2009 appellant filed a timely appeal from November 6, 2008 schedule award decisions of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determinations in this case.

ISSUE

The issue is whether appellant has more than an 11 percent impairment of the right arm or 8 percent impairment of the left arm, for which she received schedule awards.

On appeal appellant contends that the opinion of Dr. Cynthia H. Goodman, an attending Board-certified plastic surgeon, who found 40 percent impairment should be credited with the weight of medical opinion.

FACTUAL HISTORY

On September 13, 2005 appellant, then a 49-year-old letter carrier, injured her left thumb in the performance of her federal duties.[1] She stopped work that day and returned on September 15, 2005. On December 12, 2005 the Office accepted that appellant sustained employment-related left trigger finger (acquired) and left radial styloid tenosynovitis. On May 1, 2006 appellant filed a traumatic injury claim, alleging that she smashed her right middle finger that day in the door of her postal vehicle. On September 28, 2006 Dr. Cynthia Goodman, a surgeon, performed release of the left first dorsal compartment, left ring finger A1 pulley release, and right middle trigger finger steroid injection. Following surgery, appellant returned to limited duty on December 8, 2006 and to full duty on January 3, 2006. On June 7, 2007 Dr. Goodman performed an open release of bilateral middle trigger fingers. Appellant returned to full-time modified duty on August 21, 2007.

On February 5, 2008 appellant filed a schedule award claim. In reports dated January 21 and 22, 2008, Dr. Goodman provided bilateral finger and thumb range of motion and grip strength measurements. She advised that appellant had 40 percent loss of strength in both hands and no longer had hand or finger pain. The Office referred Dr. Goodman's reports to an Office medical adviser. On March 17, 2008 the medical adviser provided an impairment analysis for both upper extremities in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[2] By decision dated November 6, 2008, the Office granted appellant a schedule award for an 11 percent loss of use of the right arm, or 34.32 weeks from January 21 to September 17, 2008. In a second November 6, 2008 schedule award decision, appellant was granted an 8 percent impairment for loss of use of the left arm, or 24.96 weeks from January 21 to July 13, 2008. The date of maximum medical improvement was January 21, 2008 for both awards.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[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. The Act, however, 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 regulations as the appropriate standard for evaluating schedule losses.[5] Chapter 16

[1] Appellant indicated that she had a previous carpal tunnel claim.

[2] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[3] 5 U.S.C. §§ 8101-8193.

[4] 20 C.F.R. § 10.404.

[5] *Ronald R. Kraynak*, 53 ECAB 130 (2001).

of the fifth edition of the A.M.A., *Guides* provides the framework for assessing upper extremity impairments.[6]

Office procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[7]

ANALYSIS

Appellant received schedule awards for an 11 percent impairment of the right arm and 8 percent impairment of the left arm. On appeal she contends that Dr. Goodman's 40 percent rating for loss of strength should be given the weight of medical opinion. The A.M.A., *Guides* do not encourage the use of grip strength in an impairment rating because strength measurements are functional tests influenced by subjective factors that are difficult to control, and the A.M.A., *Guides*, for the most part, is based on anatomic impairment. Thus, the A.M.A., *Guides* does not assign a large role to such measurements. Only in rare cases should grip strength be used, and only when it represents an impairing factor that has not been otherwise considered adequately.[8] It is the responsibility of the evaluating physician to explain in writing why a particular method in determining impairment was chosen.[9] Dr. Goodman did not offer any medical reasoning to explain why she based impairment on appellant's loss of hand strength. She did not reference the A.M.A., *Guides* in her reports of January 21 and 22, 2008. Appellant is not entitled to an impairment rating for diminished grip strength of either upper extremity because Dr. Goodman's impairment evaluation is not in accordance with the A.M.A., *Guides* and is of limited probative value.[10]

In a March 17, 2008 report, the Office medical adviser reviewed Dr. Goodman's report to determine the impairments of appellant's right and left upper extremities in accordance with the A.M.A., *Guides*. However, the Office medical adviser's report does not adequately explain how the range of motion measurements noted by Dr. Goodman resulted in the noted impairment ratings.[11] Some of the Office medical adviser's table and figure references do not conform to the A.M.A., *Guides*. For example, in her analysis of fingers of the right and left hand, she referenced Figures 19, 21 and 23 for determining impairments of the metacarpal phalangeal (MP), proximal interphalangeal (PIP) and distal interphalangeal (DIP) joints. The proper figures to be used in such analyses are Figures 16-25, 16-23, and 16-21 respectively.[12] The Office

[6] A.M.A., *Guides* 433-521.

[7] Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *Frantz Ghassan*, 57 ECAB 349 (2006).

[8] A.M.A., *Guides* 507; *Cerita J. Slusher*, 56 ECAB 532 (2005).

[9] *Tara L. Hein*, 56 ECAB 431 (2005).

[10] *See Carl J. Cleary*, 57 ECAB 563 (2006).

[11] *See V.G.*, 59 ECAB ___ (Docket No. 07-2179, issued July 14, 2008).

[12] A.M.A., *Guides* 461, 463, 464.

medical adviser also referenced Tables 1 and 2 on pages 18 and 19 of the A.M.A., *Guides* as the appropriate tables to be used for converting impairments of the digit to impairments of the hand and impairments of the hand to the upper extremity. Under the fifth edition of the A.M.A., *Guides*, Tables 16-1 and 16-2, at pages 438 and 439 represent the conversion tables.[13] While it is possible to extrapolate some of Dr. Goodman's range of motion findings for the thumbs and fingers to the appropriate figures and tables, enough discrepancies to warrant additional development of the extent of impairment to appellant's right and left upper extremities.[14]

On remand, the Office should further develop the medical evidence and obtain an opinion on the impairment to appellant's upper extremities that conforms to the Office's procedures and the A.M.A., *Guides*. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

CONCLUSION

The Board finds this case is not in posture for decision regarding the impairment ratings for appellant's right and left upper extremities.

[13] *Id*. at 438, 439.

[14] Dr. Goodman found 71 degrees of thumb flexion on the left and 74 degrees on the right. Figure 16-12 provides that, for 70 to 80 degrees of thumb flexion, the impairment rating can range from 0 to 1 percent, and the Office medical adviser assessed the rating at 0 percent. A.M.A., *Guides* 456. For the middle finger PIP joint, Dr. Goodman found 90 degrees of flexion on the right. Figure 16-23 provides that, for 90 degrees of PIP joint flexion, the impairment rating is six percent, yet the Office medical adviser found three percent. A.M.A., *Guides* 463. For the small finger PIP joint, Dr. Goodman found 87 degrees of flexion on the left. Figure 16-23 provides that, for 80 to 90 degrees of PIP joint flexion, the impairment rating is a range from 6 to 12 percent, yet the Office medical adviser found 2 percent. A.M.A., *Guides* 502. For the small finger DIP joint, Dr. Goodman found 56 degrees of flexion on the right. Figure 16-21 provides that, for 50 to 60 degrees of DIP joint flexion, the impairment rating is a range from 5 to 10 percent, yet the Office medical adviser found 3 percent. A.M.A., *Guides* 461.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 6, 2008 be vacated and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: September 28, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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