United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 10-1867**
	)	**Issued: April 20, 2011**
DEPARTMENT OF THE NAVY, NAVAL AIR SYSTEMS COMMAND, San Diego, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 7, 2010 appellant filed a timely appeal from the June 8, 2010 merit decision of the Office of Workers' Compensation Programs concerning entitlement to schedule award compensation. Pursuant to the Federal Employees' Compensation Act[1] and 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 her burden of proof to establish that she has more than a two percent permanent impairment of her right arm and a two percent permanent impairment of her left arm, for which she received schedule awards.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

In July 1999, the Office accepted that appellant, then a 36-year-old office automation assistant, sustained bilateral carpal tunnel syndrome due to her repetitive work duties over time. Appellant stopped work in June 1999 and returned to light-duty work on a full-time basis in February 2000. She stopped work for various periods and the Office paid her compensation for disability.

On September 15, 2000 Dr. Dori Cage, an attending Board-certified orthopedic surgeon, performed a left carpal tunnel release. Appellant had a right carpal tunnel release on August 2, 2005 and a repeat left carpal tunnel release on March 7, 2006. These surgical procedures were authorized by the Office.

In a June 20, 2007 report, Dr. Charles Nicol, a Board-certified neurologist serving as an Office referral physician, stated that appellant had no specific neurologic abnormality. He thought that her symptoms were masked by her anxiety depressive neurosis.

In an October 29, 2007 report, Dr. Craig E. Weil, an attending Board-certified hand surgeon, stated that appellant continued to complain of aching, cramping and numbness in both hands. Appellant had a long history of bilateral carpal tunnel syndrome, but there was no evidence of chronic complex regional pain syndrome and the findings of neurologic testing after her surgeries were negative. Dr. Weil recommended that she schedule a return visit if she felt it necessary and stated, "She does appear to have eight percent impairments (sic) of each hand, based on neurologic symptoms and pain."[2] After a July 14, 2008 visit, he stated, "[Appellant] may be able to return to full duty. An [functional capacity evaluation] might be helpful to establish full work ability."

In February 2010, the Office referred appellant to Dr. David Whitcomb, a Board-certified neurologist, for evaluation of her arms. The record reveals that she had undergone limited medical treatment for her arms since late 2007.

In a March 1, 2010 report, Dr. Whitcomb stated that appellant related that she continued to have intermittent pain and swelling in both hands. On physical examination, appellant had full range of arm motion with some pain, especially the wrists. There were well-healed incisions on both volar wrists and there was no significant atrophy or edema. Appellant's motor power in the arms showed no arm drift, muscle tone was normal and power was normal except for 4-4+/5 weakest with right thumb abduction and slightly diminished power with left thumb abduction. Dr. Whitcomb stated that sensation was intact to light touch, but there was a spotty decrease of pinprick sensation in both hands, probably in the median nerve distribution. He diagnosed bilateral carpal tunnel syndrome with past surgeries and asserted it was likely that some component of appellant's chronic pain was due to other musculoskeletal problems such as arthritis or myofascial pain. Dr. Whitcomb indicated that appellant had obvious continued pain and numbness in both hands and posited that the numbness, at least, was undoubtedly due to residual damage to the median nerves from her carpal tunnel syndrome. He indicated that

[2] On August 13, 2007 Dr. Weil advised that appellant could return to work on a full-time basis with restrictions including limited use of her right arm and hand.

appellant had obtained maximum treatment for her carpal tunnel syndrome and had permanent residuals of her work injury in that her arm symptoms were unlikely to improve. Appellant could work on a full-time basis with restrictions such as using a special computer mouse.

In a March 26, 2010 report, Dr. William Pujadas, a Board-certified orthopedic surgeon serving as an Office medical adviser, reviewed the medical evidence of record, including the March 1, 2010 report of Dr. Whitcomb. He concluded that appellant had a two percent permanent impairment of her right and left arms under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). Dr. Pujadas stated that it was medically probable that appellant continued to experience permanent residuals of her work-related bilateral carpal tunnel syndrome including symptoms that usually worsened with greater use of the hands. He noted that diagnostic testing from August 1999 showed very mild bilateral carpal tunnel syndrome and indicated that appellant complained of pain, numbness and decreased sensation along the median nerve distribution in both arms and hands. The date of maximum medical improvement was March 1, 2010, the date of Dr. Whitcomb's evaluation. Dr. Pujadas rated appellant's arm impairment under Table 15-23 (Entrapment/Compression Neuropathy Impairment). For each arm appellant fell under grade modifier 1 for the test findings category (due to a conduction delay), grade modifier 1 for history (mild intermittent symptoms), and grade modifier 2 for physical findings (decreased sensation). Averaging these grade modifier values yielded a 1.3 value which, when rounded down, meant that she fell under grade modifier 1 with a default value of two percent. For functional scale, appellant fell under grade modifier 1 (average score) and therefore there was no change from the default value of two percent in each arm. Dr. Pujadas stated that Dr. Weil did not apply the standards of the sixth edition of the A.M.A., *Guides* and posited that Dr. Whitcomb's evaluation carried more weight than the less recent evaluation of Dr. Nicol.

On May 18, 2010 appellant filed a claim for a schedule award due to her accepted condition.

In a June 8, 2010 decision, the Office granted appellant a schedule award for a two percent permanent impairment of her left arm and a two percent permanent impairment of her right arm.

LEGAL PRECEDENT

The schedule award provision of the 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. 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 regulations as the

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

appropriate standard for evaluating schedule losses.[5] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[6]

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.[7] In Table 15-23, grade modifier levels (ranging from 0 to 4) are described for the categories test findings, history and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down by one percent based on functional scale, an assessment of impact on daily living activities.[8]

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome due to her repetitive work duties over time. In a June 8, 2010 decision, the Office granted her a schedule award for a two percent permanent impairment of her left and right arms. The award was based on the March 26, 2010 impairment rating of Dr. Pujadas, a Board-certified orthopedic surgeon serving as an Office medical adviser, who evaluated the medical evidence of record including the March 1, 2010 report of Dr. Whitcomb, a Board-certified neurologist serving as an Office referral physician.

The Board finds that Dr. Pujadas provided a proper impairment rating under the standards of the sixth edition of the A.M.A., *Guides* and that appellant did not submit evidence showing that she has more than a two percent permanent impairment of her left arm and a two percent permanent impairment of her right arm.

In his March 26, 2010 report, Dr. Pujadas discussed appellant's medical history, including the course of her arm and hand symptoms and findings on examination and diagnostic testing. He found that the date of maximum medical improvement was March 1, 2010, the date of Dr. Whitcomb's evaluation. Dr. Pujadas evaluated appellant's arm impairment under Table 15-23 (Entrapment/Compression Neuropathy Impairment) and found that for each arm she fell under grade modifier 1 for test findings (conduction delay), grade modifier 1 for history (mild intermittent symptoms), and grade modifier 2 for physical findings (decreased sensation). He averaged these grade modifier values to 1.3 and rounded this value down to 1 which meant that she fell under grade modifier 1. The default value under grade modifier 1 is two percent. Dr. Pujadas indicated that appellant's functional scale fell under grade modifier 1 (average score) and therefore there was no change from the default value of two percent in each arm.[9] He

[5] *Id*.

[6] FECA Bulletin No. 09-03 (issued March 15, 2009).

[7] *See* A.M.A., *Guides* 449, Table 15-23.

[8] *Id.* at 448-50.

[9] Dr. Pujadas indicated that Dr. Whitcomb's evaluation provided a more useful basis for evaluating appellant's impairment than that of Dr. Nicol. The Board notes that this assessment was appropriate as Dr. Whitcomb's evaluation was more recent and more detailed than that of Dr. Nicol.

properly concluded that she had a two percent permanent impairment of her left arm and a two percent permanent impairment of her right arm.

On appeal appellant argued that her impairment rating should be higher because she still had problems with her arms, including limited range of motion. However, the issue of the present case is medical in nature and must be resolved by the medical opinion evidence of record. Appellant also questioned why physicians arrived at different conclusions regarding her impairment. The record contains an October 29, 2007 report in which Dr. Weil, an attending Board-certified hand surgeon, stated that appellant had an eight percent impairment of each hand "based on neurologic symptoms and pain." However, Dr. Weil did not explain how he derived at this impairment rating and it appears to have been made under the standards of the fifth edition of the A.M.A., *Guides*. As the Office's June 8, 2010 decision was issued after May 1, 2009, the effective date of the sixth edition of the A.M.A., *Guides*, it was appropriate for appellant's impairment to be evaluated under the standards of the sixth edition of the A.M.A., *Guides*.

For these reasons, the record does not contain probative medical evidence showing that appellant has more than a two percent permanent impairment of her left arm and a two percent permanent impairment of her right arm.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a two percent permanent impairment of her left arm and a two percent permanent impairment of her right arm, for which she received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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