

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

B.W., Appellant

and

**DEPARTMENT OF THE JUSTICE, FEDERAL
BUREAU OF INVESTIGATION,
Washington, DC, Employer**

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**Docket No. 07-1087
Issued: November 7, 2007**

Appearances:
Appellant, pro se
no appearance, for the Director

Oral Argument October 3, 2007

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2007 appellant filed a timely appeal from a February 23, 2007 merit decision of the Office of Workers' Compensation Programs affirming the denial of her schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she has a ratable permanent impairment of the left upper extremity.

FACTUAL HISTORY

On August 1, 2004 appellant, then a 54-year-old human resources specialist, filed an occupational disease claim stating that she developed trigger finger and carpal tunnel syndrome

in the performance of duty.¹ She first became aware of her condition and related it to her employment on December 1, 1998. After appropriate development, the Office accepted appellant's claim for trigger finger of the left hand (middle and ring fingers). Appellant retired from the employing establishment effective September 2, 2005.

In an October 4, 2004 report, Dr. Rida Azer, an orthopedic surgeon, diagnosed left middle and ring trigger finger with an associated nodule in the fibrous flexor tendon sheath. On February 15, 2005 he performed a release of left middle and ring finger trigger deformity with tenolysis and recorded preoperative and postoperative diagnoses of left middle and ring finger trigger deformity. Dr. Azer provided follow-up reports detailing appellant's postsurgery progress. One year post surgery, he reported that appellant's range of motion and grip strength were normal.

On February 17, 2006 appellant claimed a schedule award.

In a May 12, 2006 report, Dr. Hampton Jackson, Jr., an orthopedic surgeon and an associate of Dr. Azer, provided an impairment rating. He noted appellant's complaints of persistent pain and weakness in her palm and throughout her middle and ring fingers. Dr. Jackson indicated that appellant had diminished flexion of the metacarpophalangeal joints but no "true triggering." He concluded that she had a 43.74 pain-related impairment score based on Table 18-6 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² Dr. Jackson also found that appellant had 30 percent grip strength loss index related to her left middle and ring fingers, equaling 10 percent arm impairment. He found that appellant had 25 percent impairment due to loss of pinch strength, which also translated to 10 percent upper extremity impairment. Using the Combined Values Chart,³ Dr. Jackson concluded that appellant had 55 percent impairment of the left arm. He stated that she reached maximum medical improvement on May 12, 2006.

In a June 21, 2006 report, the Office medical adviser reviewed Dr. Jackson's impairment rating. He concluded that the rating did not conform to the A.M.A., *Guides*. The Office medical adviser explained that Dr. Jackson's impairment rating was based on loss of grip strength and pinch strength, but a trigger finger release would not have affected any of the muscles of appellant's hand. If anything, he concluded, the trigger finger release would ultimately result in increased strength. The Office medical adviser concluded that appellant had no percent impairment of the left upper extremity.

The Office found a conflict in the medical opinion between Dr. Jackson and the Office medical adviser. On July 17, 2006 it referred appellant, together with a statement of accepted facts, to Dr. David Dorin, a Board-certified orthopedic surgeon, for an impartial medical examination. In a July 28, 2006 report, Dr. Dorin noted appellant's history of trigger finger release and explained that her treating physician documented her progress and improvement,

¹ The record reflects that appellant had previously filed a claim which was assigned file number 250540519, which was accepted for left carpal tunnel syndrome.

² A.M.A., *Guides* 584, Table 18-6.

³ *Id.* at 604-605.

showing that by one year postsurgery she had satisfactory grip, range of motion and sensation and no triggering. He performed a physical examination, finding that she had a full and complete range of motion of the left wrist, middle and ring fingers, as well as good stability and no specific local tenderness. Dr. Dorin also found that appellant had a full range of motion of the left middle and ring fingers, good resistive motion in flexion and extension, no swelling and no synovitis or specific tenderness. He measured her grip strength using a Jamar Dynamometer and concluded that she did have some diminished grip strength, which he attributed either to voluntary lack of effort or to her history of carpal tunnel release surgeries, but which he determined was not related to her trigger finger release. Dr. Dorin explained that he was unable to reconcile appellant's subjective complaints of pain with her normal physical examination findings. He concluded that she had reached maximum medical improvement and had no impairment of the left arm. Dr. Dorin was unable to find a basis on which to rest an impairment rating consistent with the A.M.A., *Guides*.

By decision dated September 14, 2006, the Office denied appellant's schedule award claim.

On September 23, 2006 appellant requested reconsideration and submitted additional treatment records, some of which were previously of record. In a November 3, 2006 report, Dr. Azer stated that he concurred with Dr. Jackson's impairment rating and that appellant had permanent limitations as a result of her employment-related condition.

By decision dated February 23, 2007, the Office denied modification of its September 14, 2006 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulations⁵ 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 regulation as the appropriate standard for evaluating schedule losses.⁶

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 who shall make an examination.⁷ When the case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical evidence, the

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *See id.*

⁷ 5 U.S.C. § 8123(a); *see Elsie L. Price*, 54 ECAB 734 (2003); *Raymond J. Brown*, 52 ECAB 192 (2001).

opinion of such specialist will be given special weight when based on a proper factual and medical background and sufficiently well rationalized on the issue presented.⁸

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained a ratable impairment of the left upper extremity. The Office accepted her claim for left middle and ring finger trigger deformity and paid appropriate compensation. Appellant has not presented sufficient medical evidence to establish that she is entitled to a schedule award for permanent partial impairment to her left upper extremity.

Dr. Jackson, a treating physician, provided a May 12, 2006 report and impairment rating, concluding that appellant had 55 percent impairment of the left arm due to factors including pain, loss of grip strength and loss of pinch strength following her trigger finger release. As noted by the Office medical adviser, however, this impairment estimate did not conform with the A.M.A., *Guides* and consequently concluded that she had no ratable impairment of the left upper extremity. The Office properly found a conflict in the medical evidence regarding whether appellant had permanent impairment attributable to her trigger finger condition and referred her to Dr. Dorin for an impartial medical examination.

In a July 28, 2006 report, Dr. Dorin concluded that there was no basis for rating appellant's impairment under the A.M.A., *Guides*, as Dr. Azer's reports indicated that appellant's range of motion was normal after the surgery. Physical examination revealed essentially normal grip strength, pinch strength and sensation in her fingers, hand and wrist. Dr. Dorin noted some diminished grip strength with the performance of a Jamar Dynamometer test, but attributed this to a voluntary lack of effort or to lingering effects from appellant's previous carpal tunnel surgeries. He explained that her diminished grip strength, if any, was not related to her trigger finger release. Dr. Dorin concluded that appellant had fully healed from her trigger finger release and advised that he was unable to correlate the physical examination findings with appellant's subjective complaints of pain. He determined that appellant did not have any ratable impairment pursuant to the A.M.A., *Guides*. The Board finds that Dr. Dorin's report is well rationalized. Dr. Dorin explained the basis for his conclusion that appellant did not sustain any ratable impairment to her left upper extremity. Because he is an impartial medical examiner who provided a rationalized medical opinion, his report constitutes the weight of the medical evidence.⁹ The Board finds that the Office properly relied upon Dr. Dorin's report in concluding that appellant does not have any ratable impairment pursuant to the A.M.A., *Guides*.

Subsequent to the receipt of Dr. Dorin's report, appellant submitted Dr. Azer's November 3, 2006 report. Dr. Azer concurred with Dr. Jackson's conclusion on permanent impairment. However, this report is insufficient to establish that appellant has permanent impairment due to her accepted trigger finger conditions as Dr. Azer provided no additional

⁸ See *Bernadine P. Taylor*, 54 ECAB 342 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

⁹ See *id.*

reasoning for his opinion other than stating that he concurred with Dr. Jackson's assessment.¹⁰ As noted, Dr. Jackson was on one side of a medical conflict that was resolved by Dr. Dorin. Without any new findings by Dr. Azer to demonstrate a ratable impairment attributable to the accepted trigger finger conditions, his opinion is insufficient to overcome the report of the impartial medical examiner or to create a new conflict in the medical evidence. Other medical evidence submitted with appellant's request for reconsideration did not specifically address why any permanent impairment of the left arm would be causally related to the accepted condition. Consequently, she has not established that she has any permanent impairment causally related to her accepted trigger finger conditions.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she had ratable permanent partial impairment of the left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2007 and September 14, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 7, 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

¹⁰ See *Barbara Johnsen (James C. Johnsen)*, 54 ECAB 839 (2003) (to be of probative value, the physician must provide rationale for the opinion reached; where no such rationale is present, the medical opinion is of diminished probative value).