

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSE A. KELLY and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

*Docket No. 98-662; Submitted on the Record;
Issued December 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI:

The issues are: (1) whether appellant has more than a 10 percent permanent impairment of the right upper extremity, for which she received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to a schedule award for permanent impairment of the left upper extremity.

On June 2, 1993 appellant, then a 37-year-old automation clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she suffered from carpal tunnel syndrome as a result of her employment. Appellant indicated that she first became aware of her condition on April 1, 1989 and that she subsequently realized the condition was employment related on June 1, 1993. She ceased work on May 23, 1993 and, after undergoing surgery on her right wrist,¹ appellant returned to limited duty on November 12, 1993.² On December 8, 1993 the Office accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral carpal tunnel release. Appellant received appropriate wage-loss compensation.

On June 15, 1994 appellant filed a claim for a schedule award. Although the claim was initially denied after further development of the record as directed by the Branch of Hearings and Review, the Office granted appellant a schedule award on November 27, 1996 for a 10 percent permanent impairment of the right upper extremity.³ Appellant subsequently requested an oral hearing, which was held on July 9, 1997.

In a decision dated September 30, 1997, the Office hearing representative affirmed the November 27, 1996 schedule award. The hearing representative explained that the award was

¹ On July 27, 1993 appellant underwent a right carpal tunnel release, which was performed by Dr. Thomas G. Stackhouse, a Board-certified orthopedic surgeon specializing in hand surgery.

² Appellant resumed her regular duties on March 24, 1995.

³ The schedule award covered a period of 31.2 weeks from July 30 through November 16, 1996.

based on the September 23, 1996 report of the Office medical adviser, which was consistent with the 10 percent impairment rating provided by appellant's treating physician, Dr. Stackhouse.⁴ Additionally, the hearing representative noted that appellant failed to establish that she was entitled to a schedule award for permanent impairment of her left upper extremity.

The Board finds that appellant has no more than a 10 percent permanent impairment of her right upper extremity.

Section 8107 of the Federal Employees' Compensation Act⁵ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.⁶

In order to meet her burden of proof, appellant must submit sufficient medical evidence to show a permanent impairment causally related to employment that is ratable under the A.M.A., *Guides*. Under the procedures promulgated by the Office, the evidence must show that the impairment has reached a permanent and fixed state and indicate the date this occurred, describe the impairment in detail and contain an evaluation of the impairment under the A.M.A., *Guides*.⁷

In the instant case, the Office medical adviser's September 23, 1996 report noted right carpal tunnel syndrome, mild median nerve entrapment and wrist neuropathy. He assigned a 10 percent impairment to appellant's right upper extremity in accordance with Table 16, page 57 of the A.M.A., *Guides* (fourth edition 1993). This rating is consistent with Dr. Stackhouse's

⁴ In a report dated July 30, 1996, Dr. Stackhouse indicated that, on physical examination, appellant reported some paresthesias in the right upper extremity when her shoulder was abducted to 90 degrees. He also noted that appellant's December 1995 electrodiagnostic study of the right and left upper extremities revealed evidence of a "mild carpal tunnel syndrome on the right based on elevated motor and sensory latencies." Dr. Stackhouse commented that this most recent study revealed considerable electrical improvement over a previous study performed in May 1993. He concluded that appellant had reached maximal medical improvement and that in her line of work she could expect to have a certain level of upper extremity symptoms, but that further medical evaluation was not required. Dr. Stackhouse also provided a supplemental report dated September 12, 1996, in which he identified the date of maximum medical improvement as July 30, 1996. He further indicated that appellant had a 10 percent permanent impairment of the right upper extremity "relative to her subjective sensations of paresthesias and some difficulties that she encounters in her activities of daily living." Finally, Dr. Stackhouse noted that he assigned no impairment due to loss of strength or thoracic outlet syndrome.

⁵ 5 U.S.C. § 8107.

⁶ *James J. Hjort*, 45 ECAB 595 (1994).

⁷ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (March 1995).

finding that appellant's most recent electrodiagnostic study revealed evidence of a "mild carpal tunnel syndrome on the right based on elevated motor and sensory latencies."⁸

The record also includes an April 29, 1994 report from Dr. David Weiss, an osteopath, who noted a 20 percent impairment of the right and left upper extremities due to median nerve entrapment at both wrists. Dr. Weiss' report, however, does not explain the basis for his conclusion and it does not contain an evaluation of appellant's impairment under the A.M.A., *Guides* (fourth edition 1993).⁹ Although he noted that he reviewed an "electromyogram [EMG]/NCV [nerve condition velocity]" report, that revealed "right and left carpal tunnel syndrome," Dr. Weiss did not otherwise elaborate on the specific test results or indicate the date of the report he reviewed. Furthermore, Dr. Weiss did not indicate whether appellant had reached maximum medical improvement at the time of her examination in April 1994. As such, the Office hearing representative properly found that Dr. Weiss' report was of little probative value and, therefore, insufficient to overcome or create a conflict with the more recent findings of the Office medical adviser and Dr. Stackhouse.

The Office medical adviser's September 23, 1996 calculation of the percentage of impairment of appellant's right upper extremity conforms to the A.M.A., *Guides* (fourth edition 1993) and, therefore, constitutes the weight of the medical evidence.¹⁰ Consequently, appellant has failed to provide any probative medical evidence that she has greater than a 10 percent permanent impairment of her right upper extremity.¹¹

The Board further finds that appellant did not meet her burden of proof to establish that she is entitled to a schedule award for a permanent impairment of the left upper extremity.

Dr. Weiss' April 29, 1994 report is the only medical evidence of record indicating that appellant has a permanent impairment of the left upper extremity. As previously noted, he reported a 20 percent impairment of the left upper extremity due to entrapment of the median nerve at appellant's left wrist. In contrast, neither the Office medical adviser nor appellant's treating physician, Dr. Stackhouse, found evidence of a permanent impairment of the left upper extremity.

In addition to the previously noted deficiencies in Dr. Weiss' April 29, 1994 report, the Office hearing representative properly determined that this report also lacked probative value in

⁸ Although Dr. Stackhouse similarly concluded that appellant had a 10 percent permanent impairment of the right upper extremity, he did not provide a specific evaluation of the impairment under the A.M.A., *Guides* (fourth edition 1993).

⁹ While Dr. Weiss indicated that his disability assessment was made in accordance with the "A.M.A., impairment rating," he failed to indicate which specific table(s) he relied upon in reaching his conclusion.

¹⁰ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

¹¹ The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1). In the instant case, appellant does not have a total, or 100 percent loss of use of his right arm, but rather a 10 percent loss. As such, appellant is entitled to 10 percent of the 312 weeks of compensation, which is 31.2 weeks.

light of the fact that Dr. Weiss' 1994 assessment was based on median nerve entrapment at the left wrist while appellant's most recent NCV study in December 1995 revealed no such entrapment.¹² In view of the fact that the more recent evidence of record does not establish a permanent impairment of the left upper extremity, the Office properly denied appellant a schedule award for her left upper extremity.

The decision of the Office of Workers' Compensation Programs dated September 30, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 15, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² On December 6, 1995 Dr. David Levy administered an EMG/NCV study and interpreted the results as revealing mild carpal tunnel syndrome on the right and no carpal tunnel syndrome on the left. He further noted that there was no other entrapment, no thoracic outlet syndrome and no cervical radiculopathy. An earlier study conducted on May 27, 1993, was interpreted by Dr. Ted Gallagher as revealing moderate right carpal tunnel syndrome and "possible early left [carpal tunnel syndrome]."