

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STEPHEN POYSER and U.S. POSTAL SERVICE,  
PLANT & DISTRIBUTION CENTER, Southeastern, PA

*Docket No. 00-2632; Submitted on the Record;  
Issued December 27, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 26 percent impairment of the right upper extremity, for which he received a schedule award.

On November 13, 1996 appellant, then a 38-year-old mailhandler, filed an occupational disease claim alleging that his stenosing tenosynovitis of the right hand was caused by performance of his job duties.<sup>1</sup>

The Office of Workers' Compensation Programs accepted appellant's claim for stenosing tenosynovitis of the right index finger on March 31, 1997. Appellant received appropriate wage-loss compensation. The Office also authorized surgery for right tenosynovitis release on May 15, 1997.

Appellant returned to a permanent rehabilitation position on June 2, 1997 and on June 3, 1998, filed a claim for a schedule award.

In support of his claim, appellant submitted the April 7, 1998 report of Dr. Ronald J. Potash, a Board-certified surgeon. He reviewed appellant's medical records and concluded that, pursuant to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a 39 percent impairment of the right upper extremity based on loss of grip strength. Dr. Potash calculated this loss using the Jamar Hand Dynameter, which indicated 17 kilograms of force expended in the right hand as opposed to 21 kilograms of force strength in the left hand. He determined that pinch key unit revealed 5 kilograms of force in the right hand versus 7.5 kilograms in the left hand. He determined for the right wrist

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<sup>1</sup> The record reflects that appellant had a previous claim for a right wrist injury, which was accepted for right wrist strain and capsulitis of the right wrist. On April 22, 1991 the Office granted appellant a 23 percent schedule award for impairment of his right upper extremity. The Office combined the claims on July 6, 1999.

arthroplasty, appellant had a 24 percent impairment, for the entrapment, right median nerve at the wrist, a 20 percent impairment, for a total combined impairment of 39 percent.

In a December 21, 1998 report, an Office medical adviser reviewed the findings of Dr. Potash and concluded that appellant had a total of 26 percent permanent impairment for an increase of an additional 3 percent.

Accordingly, on December 23, 1998, the Office granted appellant a schedule award for an additional three percent permanent impairment of the right upper extremity.<sup>2</sup> The award covered 9.36 weeks from April 7 to June 11, 1998.

On December 28, 1998 appellant requested an oral hearing.

On June 4, 1999 an Office hearing representative reviewed the evidence of record and remanded the case for the Office to prepare a statement of accepted facts and refer the claimant and the entire case record for a second opinion examination.

On remand, the Office combined the two case records, prepared a statement of accepted facts and referred appellant to Dr. Frank Mattei, a Board-certified orthopedic surgeon.

In an August 1, 1999 report, Dr. Mattei reported his findings on physical examination. He determined that range of motion of the joints of the hands were all normal and full at the present time with no impairment noted. Dr. Mattei could not elicit any motor or sensory impairment of the right hand or index finger, or neurological deficits associated with bony discomfort or pain. He could not elicit any swelling of the wrist joint or the fingers. Dr. Mattei noted possible de Quervain's disease of the right hand with a basilar arthritis of the thumb area at the metacarpal carpal joint. He concluded that the claimant had a 10 percent permanent impairment of the wrist due to the carpal tunnel condition.

On October 18, 1999 an Office medical adviser reviewed the report and noted that the 10 percent for mild carpal tunnel syndrome was determined according to the A.M.A., *Guides*, and that no other additional schedule award was payable.

By decision dated October 20, 1999, the Office denied the claim for an increased schedule award and found that the weight of the medical evidence of record established that appellant had no more than a 26 percent permanent impairment of the right upper extremity.

On October 26, 1999 appellant requested a hearing, which was held on February 29, 2000.

In a May 11, 2000 decision, the Office hearing representative found that appellant had not provided any further medical evidence to support more than a 26 percent impairment of the right upper extremity.

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

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<sup>2</sup> This was in addition to the 23 percent previously awarded on file number 03-128944.

In this case, there was disagreement between the Office's referral physician, Dr. Mattei, and Dr. Potash regarding the percentage of impairment in appellant's right upper extremity caused by his accepted condition, as well as the proper method of calculation used under the A.M.A., *Guides*. When such conflicts in medical opinion arise, section 8123(a) requires the Office to appoint a third or "referee physician, also known as an "impartial medical examiner."<sup>3</sup> Because the Office did not refer the case to an impartial medical examiner, there remains an unresolved conflict in medical opinion.

Accordingly, the case is remanded to the Office for referral of appellant, the case record and a statement of accepted facts to an appropriate impartial medical specialist selected in accordance with the Office's procedures, to resolve the outstanding conflict in medical evidence regarding the appropriate percentage of impairment in appellant's right arm. On remand, the Office should instruct the impartial medical examiner to provide a well-rationalized opinion, to refer specifically to the applicable tables and standards of the A.M.A., *Guides* in making his findings and rendering his impairment rating and to indicate the specific background upon which he based his opinion. After such further development of the record as it deems necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated May 11, 2000 and October 10, 1999 are hereby set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, DC  
December 27, 2001

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>3</sup> Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part, "[i]f there is a 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." See *Dallas E. Mopps*, 44 ECAB 454 (1993).