U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. SIMO and DEPARTMENT OF THE NAVY,
AIR SYSTEMS COMMAND, San Diego, CA

Docket No. 00-317; Submitted on the Record;
Issued January 8, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a 20 percent permanent impairment to each of her upper extremities for which she received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome and right surgical release on September 29, 1994 and December 6, 1997, respectively. In a report dated July 11, 1995, an Office medical consultant, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, using Table 16, page 47 of the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), determined that due to entrapment neuropathy, appellant had moderate carpal tunnel syndrome resulting in a 20 percent impairment to each of her upper extremities. By decision dated August 16, 1995, the Office granted appellant a schedule award for a 20 percent permanent impairment to each upper extremity for a combined 40 percent of the bilateral upper extremity. On July 1, 1996 the Office further accepted that appellant had residuals from the previously accepted bilateral carpal tunnel syndrome.

On August 21, 1996 appellant filed a claim for an additional schedule award. She submitted several reports from her treating physician, Dr. Arnold Markman, a Board-certified family practitioner and preventive medicine specialist, who in his June 5, 1996 report, diagnosed, *inter alia*, bilateral carpal tunnel syndrome and stated that the April 19, 1996 nerve conduction study showed no interval worsening since February 1995. In his report dated June 12, 1996, Dr. Markman opined that appellant had a temporary flare-up of her symptoms due to the fact that she had an increased workload and was keyboarding more than 20 percent of the time. He stated that appellant's status had returned to permanent and stationary without any additional disability.

By decision dated November 4, 1996, the Office denied appellant's claim. By letter dated March 3, 1997, appellant requested reconsideration of the Office's decision and submitted a report dated December 16, 1996 from her treating physician, Dr. Richard Greenfield, a Board-certified orthopedic surgeon, stating that appellant required additional surgery for bilateral decompression of the right medial and ulnar nerve. On March 12, 1997 the Office denied

appellant's request for merit review. On December 6, 1997 appellant underwent decompression of recurrent right carpal tunnel syndrome.

On December 30, 1997 and March 30, 1998 appellant filed claims for an additional schedule award.

In a report dated March 26, 1998, Dr. Greenfield performed a physical examination and noted that appellant had wrist flexion of 70 degrees bilaterally and wrist extension of 60 degrees bilaterally. He stated that ulnar deviation was 20 degrees bilaterally and radial deviation was 25 degrees bilaterally. Dr. Greenfield stated that appellant had decreased sensation in the median distribution of her right hand and full range of motion of her fingers. He stated that appellant's subjective complaints were slight intermittent pain in her hands, which became moderate intermittent pain with repetitive grasping, twisting, pushing and pulling. Dr. Greenfield stated that, using Table 16, page 57 of the A.M.A., *Guides*, although not specifying the edition, appellant had a moderate impairment of her right wrist as a result of her median neuropathy resulting in a 20 percent impairment of the right upper extremity.

In a report dated May 18, 1998, Dr. Harris reiterated the diagnosis of chronic bilateral carpal tunnel syndrome and status post open carpal tunnel release of September 29, 1994 and additionally diagnosed status post decompression of recurrent right carpal tunnel syndrome of December 6, 1997. He opined that there did not appear to be significant change in the condition of appellant's right upper extremity on January 18, 1995. Dr. Harris stated that appellant's residual symptoms were consistent with moderate median nerve entrapment at the wrist or carpal tunnel resulting in a 20 percent impairment of the right upper extremity, using Table 16, page 57 of the A.M.A., *Guides* (4th ed. 1993). He also concluded that there did not appear to be any change in appellant's left upper extremity since January 11, 1995. Dr. Harris concluded that appellant continued to have a 20 percent impairment to each of her upper extremities.

By decision dated June 11, 1998, the Office denied appellant's claim.

In a report dated August 2, 1998, Dr. Greenfield stated that after reviewing appellant's "situation," he felt that the median nerve dysfunction at the right wrist "would be better characterized as severe" and that using Table 16, page 57 of the A.M.A., *Guides* (4th ed. 1993), appellant had a 40 percent impairment of the right upper extremity.

The Office referred appellant to a second opinion physician, Dr. Steve Orcutt, a Board-certified orthopedic surgeon. In a report dated October 1, 1998, Dr. Orcutt considered appellant's history of injury and performed a physical examination. He noted that appellant's dorsiflexion on the right was 50 degrees and on the left 60 degrees. Dr. Orcutt stated that a 35 to 40 grip strength would be normal for appellant but her grip strength was difficult to assess objectively due to appellant's lack of effort on grip strength testing. He, therefore, found that her grip measurements were invalid for estimating impairment. Further, Dr. Orcutt stated that the Phalen's test was mildly positive, bilaterally and appellant had a mild loss of range of motion of the right wrist in dorsiflexion. He stated that subjective complaints included constant minimal discomfort, increasing to a moderate level of pain with any prolonged repetitive use of her hands such as keyboard activities or handwriting for greater than 20 to 30 minutes at a time.

In a report dated November 2, 1998, the Office medical consultant, Dr. Leonard A. Simpson, an orthopedic surgeon, reviewed the relevant medical reports. Relying on Dr. Orcutt's findings, in his October 1, 1998 report, including appellant's invalid grip strength testing, mild loss of range of motion of right wrist dorsiflexion and constant minimal discomfort increasing to a moderate level of pain with any prolonged repetitive use of her hands, he concluded that appellant had no higher than moderate residuals of a right-sided median nerve compression resulting in a 20 percent upper extremity impairment, using Table 16, page 57 of the A.M.A., *Guides* (4th ed. 1993).

By decision dated November 10, 1998, the Office denied appellant's claim for an additional schedule award.

By letter dated October 4, 1999, appellant request reconsideration of the Office's decision and resubmitted Dr. Greenfield's report dated August 2, 1998.

By decision dated October 21, 1999, the Office denied appellant's reconsideration request on the grounds that said request was of a repetitious nature and was insufficient to warrant review.

The Board finds that appellant has no greater than a 20 percent impairment to each of her upper extremities.

The schedule award provision of the Federal Employees' Compensation Act[1] provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies 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 does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.[2] 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.[3]

In the present case, the only evidence appellant submitted to establish that she had greater than a 20 percent impairment of the right upper extremity was Dr. Greenfield's August 2, 1998 report. In that report, he revised his finding in his March 26, 1998 report that appellant's impairment to her wrist was moderate and stated that the median nerve dysfunction at the right wrist would be better characterized as severe. Using Table 16, page 57 of the A.M.A., *Guides* (4th ed. 1993), he opined that appellant had a 40 percent impairment to her upper right extremity.

In his referral opinion dated October 1, 1998, Dr. Orcutt made numerous findings as to why he felt appellant had a moderate impairment including that she had a mild loss or range of

[1] 5 U.S.C. § 8107 *et seq.*

[2] *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

[3] *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

motion of the right wrist in dorsiflexion, her complaints of pain in her right wrist increased to a moderate level with prolonged repetitive activity and the Phalen's test was mildly positive, bilaterally. He found that appellant's dorsiflexion on the right was 50 degrees and on the left 60 degrees and that appellant's normal grip strength would be 35 to 40 pounds but was difficult to assess due to her lack of effort on the grip strength testing. Dr. Orcutt did not provide an impairment rating. In his November 2, 1998 report, based on his findings, the Office medical consultant, used Table 16, page 57 of the A.M.A., *Guides* (4th ed. 1993) and concluded that appellant had no greater than moderate residuals of a right-sided median nerve compression resulting in a 20 percent upper right extremity impairment. Dr. Simpson properly used the A.M.A., *Guides* (4th ed. 1993) and relied on Dr. Orcutt's findings. In contrast, Dr. Greenfield did not explain in his August 2, 1998 report, why he changed his opinion from his March 26, 1998 report that appellant had a severe impairment to her right wrist. His findings in his March 26, 1998 report support that appellant had a moderate impairment to her right wrist. As the Office medical consultant, Dr. Simpson's opinion, which is complete and well rationalized, constitutes the weight of the evidence.[4] Appellant has, therefore, failed to establish her claim.

The decision of the Office of Workers' Compensation Programs dated October 21, 1999 is null and void.[5] The November 10, 1998 decision is hereby affirmed.

Dated, Washington, DC
January 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member

[4] *See Robert G. Morris*, 48 ECAB 238-39 (1996).

[5] *See Douglas E. Billings*, 41 ECAB 880 (1990) in which the Board held that the Board and the Office may not exercise concurrent jurisdiction over the same issue in the same claim.