

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN L. HONEYCUTT and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Leavenworth, KS

*Docket No. 00-426; Submitted on the Record;  
Issued March 26, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has more than a 13 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity for which she received schedule awards; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing pursuant to section 8124 of the Federal Employees' Compensation Act.<sup>1</sup>

On May 27, 1988 appellant, then a 55-year-old seamstress, filed an occupational disease claim for her hand and wrist conditions. The claim was approved for bilateral carpal tunnel syndrome and tenosynovitis. She received appropriate compensation for all requisite periods. Appellant retired effective December 26, 1996.

In a decision dated April 6, 1995, the Office granted appellant a schedule award for a 10 percent permanent impairment of each upper extremity. Following a second surgical procedure, the Office further developed the case. By decision dated July 1, 1999, the Office granted appellant an additional three percent for her right upper extremity but found no increased impairment in the left upper extremity. The period of the award ran from July 22 to September 26, 1997. By letter dated August 1, 1999 and postmarked August 4, 1999, appellant requested a hearing and submitted additional evidence. In a letter decision dated August 27, 1999, the Office denied appellant's request as untimely filed.

The Board finds that appellant has no more than a 13 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity.

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<sup>1</sup> 5 U.S.C. §§ 8101-8124.

Under section 8107 of the Act<sup>2</sup> and section 10.304 of the implementing regulations,<sup>3</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>4</sup>

In this case, appellant's treating physician Dr. John Michael Quinn stated on January 29, 1998 that appellant had reached maximum medical improvement following the right hand surgery of July 23, 1996. Utilizing the A.M.A., *Guides* (4<sup>th</sup> ed.), Dr. Quinn found that, according to Table 16 on page 57 of the A.M.A., *Guides*, appellant had a 20 percent impairment of the right upper extremity and a 15 percent impairment of the left upper extremity. He released appellant from his care with restrictions of no lifting, pushing or pulling more than 15 pounds and no repetitive wrist motion.

In a May 16, 1999 letter, the Office medical adviser reviewed Dr. Quinn's January 29, 1998 report and found the suggested impairment ratings to be unacceptable. Dr. Quinn reported no physical examination findings in his January 29, 1998 report and offered no input on residual weakness or chronic pain. The Office medical adviser recommended that appellant be seen by a physician skilled in the use of the fourth edition of the A.M.A., *Guides*.

The Office subsequently referred appellant to Dr. James S. Zarr, Board-certified in physical medicine and rehabilitation. In a June 21, 1999 report, Dr. Zarr diagnosed bilateral wrist and hand pain secondary to bilateral carpal tunnel syndrome, status post right carpal tunnel surgical releases times two and status post left carpal tunnel surgical release times one. He applied his findings upon physical examination to the A.M.A., *Guides* (4<sup>th</sup> ed.). For the right wrist impairment rating, Dr. Zarr stated that pages 36 and 38 were used to determine range of motion measurements. A 60 degree flexion equated to a 0 percent impairment; a 55 degree extension equated to a 1 percent impairment; a 15 degree radial deviation equated to 1 percent impairment; a 30 percent ulnar deviation equated to a 0 percent impairment. This totaled to a two percent range of motion impairment. No weakness was documented, so that equated to a zero percent impairment.

As appellant's right wrist pain interfered with activity, Table 11 on page 48 provided for a 30 percent grade in the distribution of the median nerve below the mid-forearm level. Table 15 page 54 provided the maximum impairment for the median nerve below the mid-forearm level to be 38 percent. As 38 percent times 30 percent equated 11.4 percent, this was rounded down to a 11 percent impairment for pain. Dr. Zarr stated that the Combined Values Chart was then used to combine an 11 percent pain impairment with a 2 percent range of motion impairment to achieve a 13 percent impairment of the right upper extremity.

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> *James R. Bradford*, 48 ECAB 320, 324 (1997); *Henry G. Flores, Jr.*, 43 ECAB 901 (1992).

The same process was used to determine an impairment rating for the left upper extremity. For range of motion ratings, pages 36 and 38 were used. A 60 degree flexion, 65 degree extension and 30 degree ulnar deviations resulted in 0 percent impairment, while a 15 degree radial deviation provided a 1 percent impairment. No weakness or vascular changes were documented on appellant's left side. Using Table 11, page 48, Dr. Zarr noted that appellant's left wrist pain was not as severe as the right, was less tender on palpation and yielded a 20 percent grade in the distribution of the median nerve below the mid-forearm level.

According to Table 15, page 54, the maximum impairment for the median nerve below the mid-forearm level was 38 percent. Multiplying the 38 percent times 20 percent pain values, a 7.6 percent or 8 percent impairment for pain was calculated. Combining the eight percent pain impairment with the one percent range of motion impairment under the Combined Values Chart resulted in a nine percent impairment for the left wrist. The date of maximum medical improvement for the right wrist was June 2, 1993 and July 23, 1997 for the left wrist.

In a June 27, 1999 letter, the Office medical adviser noted that Dr. Zarr considered all the relevant factors of assessment and cited the appropriate Figures and Tables in the A.M.A., *Guides*. He agreed with Dr. Zarr's impairment ratings of 13 percent of the right upper extremity and 9 percent of the left upper extremity. Appellant had previously received a 10 percent schedule award for her right upper extremity and a 10 percent schedule award for her left upper extremity due to carpal tunnel syndrome after the first surgical procedure. The Office medical adviser stated that appellant was thus entitled to a three percent increase award for the right upper extremity and zero percent increase for the left.

In this case, the Office properly referred appellant to Dr. Zarr after the Office medical adviser noted that Dr. Quinn's impairment ratings were at odds with the values contained within the A.M.A., *Guides* and the lack of physical examination findings made it impossible for an impairment calculation to be rendered. Dr. Zarr's impairment ratings represent the weight of the evidence because it was calculated in accordance with the A.M.A., *Guides*. Moreover, the Office medical adviser agreed with Dr. Zarr's impairment ratings and properly incorporated appellant's previously awarded schedule award of 10 percent impairment to each of her left and right arms to arrive at the additional 3 percent right upper extremity impairment and no additional impairment for the left upper extremity.

The Board also finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>5</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitations for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>6</sup>

In this case, the Office issued its last merit decision on July 1, 1999. Subsequently, appellant requested an oral hearing in a letter postmarked August 4, 1999. A claimant is not

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<sup>5</sup> 5 U.S.C. § 8124(b)(1).

<sup>6</sup> *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.<sup>7</sup> Inasmuch as appellant did not request a hearing within 30 days of the Office's July 1, 1999 decision, she is not entitled to a hearing under section 8124 as a matter of right.

Even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion. In this case, the Office advised appellant that it considered her request in relation to the issue involved and the hearing was denied on the basis that she could address this issue by submitting evidence which showed that she had sustained a greater permanent partial impairment than that already awarded. Appellant was advised that she may request reconsideration with additional evidence.

The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>8</sup> There is no evidence of an abuse of discretion in the denial of a hearing in this case.

The decisions of the Office of Workers' Compensation Programs dated August 27 and July 1, 1999 are hereby affirmed.

Dated, Washington, DC  
March 26, 2001

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>7</sup> 20 C.F.R. § 10.616(a).

<sup>8</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).