

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERTIE A. WARE and U.S. POSTAL SERVICE,
POST OFFICE, Fort Wayne, IN

*Docket No. 00-2508; Submitted on the Record;
Issued November 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has more than a 30 percent permanent impairment of her left upper extremity for which she received a schedule award; and (2) whether appellant has more than a 17 percent permanent impairment of her right upper extremity for which she received a schedule award.

The Board has duly reviewed the evidence of record in this appeal and finds that appellant does not have more than a 30 percent permanent impairment of the left upper extremity, for which she has received a schedule award.

On June 12, 1996 appellant, a window clerk, filed a claim alleging that she had injured her thumb the previous day when she lifted a bundle of magazines overhead and lost her grip. The Office of Workers' Compensation Programs assigned the claim as claim number A09-416853 and accepted the conditions of contusion/sprain of the right thumb, right trigger thumb, and the surgical release of the right trigger thumb.

On July 28, 1996 appellant filed another claim alleging that, because of the thumb pain in her right hand, she used her left hand more and, given the repetitive nature of her work duties, she had swelling and pain in her left hand. The Office assigned the claim as claim number A09-418614 and accepted the conditions of bilateral carpal tunnel syndrome. The Office authorized surgical release of both hands. The Office further merged the two claim numbers, into the present claim.

Appellant submitted a claim for a schedule award on February 17, 1998 and on July 14, 1998.

By letter dated December 18, 1998, the Office advised appellant to have her treating physician calculate the percentage of impairment for each wrist based upon the American Medical Association, (A.M.A.) *Guides to the Evaluation of Permanent Impairment* (Fourth

Edition). An outline of the specific information needed to provide an impairment rating was attached.

In a January 25, 1999 report, Dr. Steven A. Cremer, Board-certified in physical medicine and rehabilitation, provided his examination findings of appellant's hands. He opined that appellant had a 31 percent left upper extremity impairment and an 18 percent right upper extremity impairment. Dr. Cremer stated that the left dorsiflexion of the wrist was 40 degrees, palmar flexion was 50 degrees, radial deviation was less than 5 and ulnar deviation was 30 degrees. The thumb had limited range of motion with 70 degrees interphalangeal joint flexion and carpometacarpal adduction of 6 centimeters (cm). Contralateral measures were not beneficial as both hands were effected. Other measurements were noted to be within the normal limits per the A.M.A., *Guides*. Employing the range of motion measures to the thumb, Dr. Cremer found a 9 percent impairment to the thumb, which equated to a 4 percent impairment to the hand or a 4 percent upper extremity impairment. Applying a 20 percent impairment for the median nerve entrapment consistent with portions of causalgia and decreased sensation with 20 millimeters (mm) two-point discrimination in the median distribution and using the criteria outlined for Table 16, page 57, of the A.M.A., *Guides*, Dr. Cremer found a 20 percent impairment of the upper extremity or moderate carpal tunnel. Combining the 20 percent impairment for carpal tunnel, 9 percent upper extremity wrist range of motion impairment and 4 percent upper extremity impairment for the thumb, Dr. Cremer found that the total combined upper extremity impairment for the left upper extremity equaled 31 percent.

On the right side, Dr. Cremer stated wrist dorsiflexion was 50 degrees, with palmar flexion 60 degrees, radial deviation 5 degrees and ulnar deviation 30 degrees. He found that this was equivalent to a 5 percent upper extremity impairment. Utilizing Table 16, Dr. Cremer found that the functional limitation denoted a mild carpal tunnel or a 10 percent upper extremity impairment. The thumb had an abnormal carpometacarpal adduction of 6 cm which equated to an 8 percent impairment of the thumb which is equivalent to a 3 percent impairment of the hand or a 3 percent upper extremity impairment. Dr. Cremer combined the three upper extremity impairment ratings to find a total right upper extremity impairment of 18 percent.

The Office referred the case record to an Office medical adviser to determine the extent of appellant's impairment based on the fourth edition of the A.M.A., *Guides*. In a June 9, 1999 medical report, the Office medical adviser opined that appellant had a 30 percent impairment of the left upper extremity and a 17 percent impairment of the right upper extremity. Utilizing the figures derived from Dr. Cremer's January 25, 1999 report and the A.M.A., *Guides*, the Office medical adviser calculated appellant's impairment rating. For the left upper extremity, the left wrist impairment was calculated as being a 9 percent upper extremity impairment. Utilizing Figure 26, page 36, dorsiflexion (extension) to 40 degrees equaled a 4 percent upper extremity impairment and palmer flexion (flexion) to 50 degrees equaled a 2 percent upper extremity impairment. Utilizing Figure 29, page 38, a radial deviation to less than 5 degrees equaled a 3 percent upper extremity impairment, while ulnar deviation to 30 degrees equaled a 0 percent impairment. The percentages were totaled to derive at a 9 percent left wrist impairment. The left thumb impairment was calculated as being a 4 percent upper extremity impairment. Utilizing Figure 10, page 26, the interphalangeal joint 0 to 70 degrees equaled a 1 percent impairment of the thumb. Under Table 5, page 28, 6 cm adduction equaled an 8 percent impairment of the thumb. The total impairment of the left thumb equaled 9 percent which, under

Table 1, page 18, equated to a 4 percent hand impairment. Under Table 2, page 19, a 4 percent hand impairment equated to a 4 percent upper extremity impairment. Under Table 16, page 57, appellant's carpal tunnel syndrome of the left side was moderate which equaled a 20 percent upper extremity impairment. Utilizing the Combined Values Chart on page 322, the Office medical adviser found that 9 combined with 4 and with 20 equaled a 30 percent left upper extremity impairment.

For the right upper extremity, the right wrist impairment was calculated as being a 5 percent upper extremity impairment. Utilizing Figure 26, page 36, dorsiflexion (extension) to 50 degrees equaled a 2 percent upper extremity impairment and palmer flexion (flexion) to 60 degrees equaled a 0 percent impairment. Utilizing Figure 29, page 38, radial deviation to 5 degrees equaled a 3 percent upper extremity impairment and ulnar deviation to 30 degrees equaled a 0 percent impairment. The percentages were totaled to derive at a 5 percent right wrist impairment. The right thumb impairment was calculated as being a 3 percent upper extremity impairment. Utilizing Table 5, page 28, 6 cm adduction equaled an 8 percent impairment of the thumb. Under Table 1, page 18, an 8 percent impairment of the thumb equaled a 3 percent impairment of the hand. Under Table 2, page 19, a 3 percent impairment of the hand equaled a 3 percent upper extremity impairment. Under Table 16, page 57, appellant's carpal tunnel syndrome of the right side was mild which equaled a 10 percent impairment of the upper extremity. Utilizing the Combined Values Chart on page 322, the Office medical adviser found that 5 combined with 3 and with 10 equaled a 17 percent right upper extremity impairment.

On June 22, 1999 the Office granted appellant a schedule award for a 30 percent permanent impairment of the left upper extremity and a 17 percent permanent impairment of the right upper extremity for the period January 25, 1999 to November 16, 2001. By decision dated May 22, 2000, an Office hearing representative affirmed the prior decision.

The schedule award provision of the Act¹ and its implementing regulation² 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.

In this case, Dr. Cremer stated in his January 25, 1999 medical report that, based on the fourth edition of the A.M.A., *Guides*, appellant had a 31 percent impairment of the left upper extremity and an 18 percent impairment of the right upper extremity. The Board finds that Dr. Cremer failed to explain how he applied the A.M.A., *Guides* in reaching his impairment rating as very few cites to the tables of the A.M.A., *Guides* were provided. The Office, in this case, based its assessment of the impairments of appellant's left and right upper extremities on the Office medical adviser's June 9, 1999 medical report, which found that appellant had a 30

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

percent left upper extremity impairment and a 17 percent impairment of the right upper extremity.

Regarding the left upper extremity, the Office medical adviser properly noted Dr. Cremer's examination from his January 25, 1999 medical report and utilizes those values concerning appellant's wrist and thumb in finding a 9 percent upper extremity impairment of the wrist. He properly found that the 9 percent impairment of the thumb was equivalent to a 4 percent hand impairment which equated to a 4 percent upper extremity impairment. Additionally, Dr. Cremer's finding of a moderate carpal tunnel syndrome equated to a 20 percent upper extremity impairment under Table 16, page 57. The Office medical adviser properly utilized the Combined Values Chart in finding that a 30 percent upper extremity impairment existed. The Board has reviewed the Office medical adviser's calculations of the left upper extremity and finds that the Office medical adviser properly applied the A.M.A., *Guides* in determining that appellant had no more than a 30 percent impairment of the left upper extremity for which she has received a schedule award.

The Board, however, finds that appellant has an 18 percent impairment of the right upper extremity.

Again utilizing the figures from Dr. Cremer's examination of January 25, 1999 concerning appellant's right wrist and thumb, the Office medical adviser properly found a 5 percent upper extremity impairment of the right wrist. He also properly found that an 8 percent impairment of the thumb was equivalent to a 3 percent impairment of the hand which equated to a 3 percent upper extremity impairment. Additionally, Dr. Cremer's finding of a mild carpal tunnel syndrome equated to a 10 percent upper extremity impairment. The Office medical adviser concluded that based on the Combined Values Chart appellant had a 17 percent right upper extremity impairment. The Board, however, finds that, based on the Combined Values Chart on page 322 of the fourth edition of the A.M.A., *Guides*, appellant had an 18 percent impairment of the right upper extremity. Therefore, appellant is entitled to a schedule award for an 18 percent impairment of the right upper extremity.

The decision of the Office of Workers' Compensation Programs dated May 22, 2000 is hereby affirmed in part regarding the Office's finding that appellant was entitled to a 30 percent permanent impairment of the left upper extremity. The decision is affirmed as modified to reflect that appellant has an 18 percent permanent impairment of the right upper extremity. Upon return of the case record, the Office should issue a schedule award which reflects this greater percentage of impairment.³

Dated, Washington, DC
November 9, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

³ The Board notes that, subsequent to filing her appeal with the Board, postmarked July 24, 2000, appellant requested the Office's Branch of Hearings and Review to review a decision dated July 12, 2000 that does not concern entitlement to a schedule award. The Office's Branch of Hearings and Review has proper jurisdiction over the July 12, 2000 decision. *See Douglas E. Billings*, 41 ECAB 880 (1990).