

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GRACE U. HARLEY and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 01-1397; Submitted on the Record;
Issued February 27, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a 40 percent permanent impairment to the left arm.

The Office of Workers' Compensation Programs accepted that appellant sustained a bilateral carpal tunnel syndrome causally related to her federal employment. By decision dated March 20, 2000, the Office issued a schedule award for 40 percent permanent impairment to the left arm and 20 percent to the right arm. In a decision dated January 16, 2001, an Office hearing representative affirmed the prior decision.¹

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

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In a report dated October 1, 1999, Dr. Nicholas Diamond, an osteopath, calculated that appellant had a 51 percent impairment to the left arm; he combined a 40 percent impairment

¹ Appellant has not contested the 20 percent permanent impairment award for the right arm on appeal.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

under Table 16⁴ for severe median nerve entrapment with loss of wrist range of motion, based on Figures 26 and 29.⁵ In a report dated January 5, 2000, an Office medical adviser noted that there was “no bone or joint pathology” on x-rays and “any loss of motion is attributed to the median nerve pathology” under Table 16. The medical adviser concluded that appellant had a 40 percent left arm impairment.

Under the A.M.A., *Guides*, impairments secondary to entrapment neuropathy may be derived by measuring sensory and motor deficits (Tables 10-15), or alternatively by use of Table 16. It is clear that “the evaluator shall not use both methods.”⁶ The hearing representative apparently concluded that the prohibition against combining Table 16 with sensory and motor deficits also precluded the use of loss of range of motion figures. The A.M.A., *Guides* do not, however, prohibit the combining of Table 16 impairments with loss of range of motion impairments. The discussion of peripheral nerve impairments clearly indicates that motion impairments can be combined with peripheral nerve impairments in some cases.⁷ It appears that the A.M.A., *Guides* allow the evaluator to determine whether loss of range of motion may be a duplication of an impairment already calculated.

The Board therefore finds that there are conflicting opinions as to the degree of permanent impairment to the left arm in this case. Dr. Diamond found that it was appropriate to combine Table 16 with loss of wrist range of motion impairments, while the Office medical adviser found that Table 16 represented the entire left arm impairment. Section 8123(a) of the Act provides that when there is a disagreement between the physician for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁸ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁹

The case will be remanded to the Office to secure medical evidence that properly resolves the conflict. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁴ A.M.A., *Guides*, (4th ed. 1995) 57, Table 16, provides impairments due to entrapment neuropathy.

⁵ *Id.* at 36, 38.

⁶ *Id.* at 56.

⁷ *Id.* at 46, discusses combining motion impairments with sensory and motor deficit impairments. The Board notes that the Office Procedure Manual lists certain tables that are incompatible with use of Table 16; it does not indicate that Figures 26 and 29, or other loss of range of motion measurement figures, are incompatible with Table 16. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 Exhibit 4 (October 1995).

⁸ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁹ *William C. Bush*, 40 ECAB 1064 (1989).

The decision of the Office of Workers' Compensation Programs dated January 16, 2001 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
February 27, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member