U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATIE M. SCOTT and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Montgomery, AL

Docket No. 03-556; Submitted on the Record;
Issued May 27, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On February 6, 2002 appellant, then a 40-year-old nurse, filed a claim for occupational disease. The Office of Workers' Compensation Programs accepted appellant's February 6, 2002 claim for right cubital tunnel syndrome and authorized physical therapy.

On March 19, 2002 appellant filed a claim for a schedule award. Her treating physician, Dr. Roland Rivard, an orthopedic surgeon, stated on September 18, 2002, that appellant had reached maximum medical improvement and reported appellant's findings relative to her right upper extremity for schedule award purposes. The Office medical adviser reviewed appellant's physical findings on November 27, 2002 and found that she had a five percent impairment of her right upper extremity. On December 4, 2002 the Office granted appellant a schedule award for a five percent impairment of her right upper extremity.

The Board finds that appellant has no more than a five percent impairment of the right upper extremity for which she is entitled to a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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*

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

Evaluation of Permanent Impairment has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[3]

In his report dated September 18, 2002, Dr. Rivard, an orthopedic surgeon, stated that he examined appellant that day and reported findings. He noted that appellant related "a constant dull ache in the right elbow area mostly medial and the pain radiates to the right wrist and sometimes to the upper arm," but had reached maximum medical improvement. Dr. Rivard's upper extremity findings for weakness was a Grade 4 plus for shoulder abduction and external rotation on the right side. He also noted decreased sensation on the medial aspect of the right forearm when tested with a pinwheel. Dr. Rivard further reported that there was:

> "[S]ome indication of ulnar neuropathy at the elbow with a positive Tinel's sign. The ulnar neuropathy has been confirmed by two EMG [electromyography] [and] NCV [nerve conduction velocity] tests. She presents some weakness of grip of the right upper extremity and also some weakness with abduction of the [fourth] and [fifth] finger. According to Table 16-15, page 492 of the [A.M.A.,] *Guides*, the maximum upper extremity impairment due to motor deficit is 46 percent of the upper extremity and, in my opinion, her impairment is 5 percent of the upper extremity…."

The Office medical adviser reviewed this report on November 27, 2002 and applied the fifth edition of the A.M.A., *Guides*. He noted that appellant had a 5 percent impairment of the right upper extremity "for ulnar nerve impairment (partial) of appellant's upper extremity, per the A.M.A., *Guides,* 5th ed., p. 492, Table 16-15."[4] The Office medical adviser noted that appellant's date of maximum medical improvement was September 18, 2002.[5] Furthermore, while the Office medical adviser did not allow appellant any additional percentages for pain, the Board notes that this is also consistent with the A.M.A., *Guides,* which provides that "the impairment ratings in the body system organ chapters make allowance for any accompanying pain."[6] While additional impairments may be granted for chronic pain, appellant's treating physician, Dr. Rivard, did not characterize her pain as chronic, but rather related appellant's subjective complaint of pain in the right wrist and intermittently to the upper arm.[7] As the Office medical adviser's report conforms with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[8]

---

[3] *Id*.

[4] A.M.A., *Guides,* 492, Table 16-15 (5th ed. 2001).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

[6] A.M.A., *Guides,* 20, Chapter 2.5e.

[7] Chapter 18 of the fifth edition of the A.M.A., *Guides*, which provides for the assessment of chronic pain, states that "Examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of body and organ impairment rating systems given in other chapters of the A.M.A., *Guides.*" A.M.A., *Guides,* 571, Chapter 18.3b.

[8] *Lena P. Huntley*, 46 ECAB 643 (1995); *Michael C. Norman*, 42 ECAB 768 (1991).

There is no medical evidence in the record establishing that appellant has more than a five percent impairment of her right upper extremity. Therefore, the Board finds that appellant has no more than a five percent impairment of her right upper extremity.

The December 4, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 27, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member