

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHERIL D. THOMPSON and U.S. POSTAL SERVICE,  
POST OFFICE, Springfield, MO

*Docket No. 03-581; Submitted on the Record;  
Issued September 4, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has more than a 21 percent permanent impairment of the right upper extremity for which she received a schedule award.

On February 16, 1999 appellant, a 33-year-old mailhandler, injured her right hand and right arm when she jammed her right hand on a heavy mailbag. The Office of Workers' Compensation Programs accepted appellant's claim for chip fracture of the hamate bone of the right hand and wrist, with contusion of the metatarsophalangeal joint of the right small finger.

On January 14, 2000 Dr. Michael B. Grillot, a Board-certified orthopedic surgeon, performed arthroscopic surgery and ulnar nerve transposition on appellant's right wrist, which was authorized by the Office.

In an impairment evaluation dated December 12, 2000, Dr. Grillot found that appellant had 25 percent impairment of her right upper extremity pursuant to the American Medical Association, *Guides for the Evaluation of Permanent Impairment* (fourth edition).

On July 19, 2001 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right upper extremity.

In a memorandum dated November 19, 2001, the Office medical adviser found that Dr. Grillot's December 12, 2000 report was based on the fourth edition of the A.M.A., *Guides*. The Office medical adviser noted that impairment ratings were calculated in accordance with the fifth edition of the A.M.A., *Guides*; therefore, Dr. Grillot's findings and impairment rating was not a basis for a schedule award.

On December 5, 2001 the Office referred appellant for an impairment evaluation with Dr. Ronald J. Pak, a specialist in physical medicine and rehabilitation. In a report dated January 28, 2002, Dr. Pak found that appellant had a 21 percent permanent impairment of the right upper extremity pursuant to the A.M.A., *Guides*. Dr. Pak found, pursuant to Chapter 16,

Figure 16-9 at page 451, that appellant had a six percent impairment of the right wrist based on two percent impairment extension, two percent impairment of flexion and two percent impairment of radial deviation; and a two percent impairment of the right elbow based on one percent impairment of extension and a one percent impairment pronation. These findings, combined at page 604, amounted to an eight percent impairment for decreased range of motion of the right upper extremity.

Dr. Pak further found that appellant had a 14 percent impairment for residual ulnar nerve dysfunction pursuant to section 16, at page 480. He found that appellant had a sensory deficit rated a Grade 4, which equated to a 25 percent loss, which when multiplied by 7 percent, the maximum upper extremity impairment due to ulnar nerve sensory deficit at Table 16.15, page 492, equaled a 2 percent impairment. Dr. Pak found that the motor deficit was a Grade 4, which equated to a 25 percent loss, which, when multiplied by 46 percent, the maximum upper extremity impairment due to ulnar motor deficit at Table 16-15 equaled a 12 percent impairment. Dr. Pak determined that, combining right arm impairment for range of motion, 8 percent and ulnar nerve dysfunction, 14 percent, appellant had a 21 percent impairment of the right upper extremity at page 604.

In a supplemental report received by the Office on August 7, 2002, Dr. Pak stated, “the report of mild decrease in two point discrimination in the ulnar distribution should not have been reported as such, since six millimeter is normal per A.M.A., *Guides*. The sensory deficit is still considered to be Grade 4, however, and the final rating is not changed.”

In a report dated September 6, 2002, an Office medical adviser reviewed Dr. Pak’s findings and conclusions and agreed that appellant had a 21 percent permanent impairment of the right upper extremity. The Office medical adviser relied on Dr. Pak’s measurements and findings on examination but utilized his own method for calculating the impairment in appellant’s right elbow. He stated that appellant had a 2 percent impairment for range-of-motion restriction, 2 percent impairment for pain and 12 percent impairment for weakness in the elbow. Using the Combined Values Chart at pages 604-06, the Office medical adviser found that these findings yielded a 16 percent impairment of the right elbow. The Office medical adviser relied on Dr. Pak’s finding of a 6 percent range-of-motion impairment of the right wrist, which, when combined with the 16 percent right elbow impairment, equaled a 21 percent impairment.

On September 24, 2002 the Office granted appellant a schedule award for a 21 percent permanent impairment of the right upper extremity for the period January 11, 2001 to April 17, 2002, for a total of 65.52 weeks of compensation.

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

The schedule award provisions of the Federal Employees’ Compensation Act<sup>1</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>2</sup> However, the Act

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 5 U.S.C. § 8107(c)(19).

does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.<sup>3</sup>

In this case, the Office medical adviser determined that appellant had a 21 percent permanent impairment of her right upper extremity by taking Dr. Pak's measurements and findings on examination pertaining to her right elbow and calculating a 16 percent right elbow impairment based on loss of range of motion, pain and weakness of the right elbow. He then combined this total with the six percent impairment of the right wrist found by Dr. Pak. The Office medical adviser then applied these findings to the applicable figures of the A.M.A., *Guides* to arrive at the total percentage of impairment in appellant's right upper extremity.

However, the Office medical adviser failed to consider that Dr. Pak calculated 125 degrees of right elbow flexion, which, pursuant to Figure 16-34 at page 472 of the A.M.A., *Guides*, reflects a one to two percent impairment of the elbow based on loss of flexion. Neither Dr. Pak nor the Office medical adviser accorded any additional impairment based on right elbow flexion. The Board will therefore set aside the Office's September 24, 2002 decision for the Office medical adviser to consider whether appellant is entitled to any additional impairment pursuant to the A.M.A., *Guides* based on Dr. Pak's finding of 125 degrees of right elbow flexion.

The decision of the Office of Workers' Compensation Programs dated September 24, 2002 is set aside and remanded in accordance with this opinion.

Dated, Washington, DC  
September 4, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>3</sup> 20 C.F.R. § 10.404.