

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOREEN A. TETREAULT and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Providence, R.I.

*Docket No. 96-2213; Submitted on the Record;
Issued August 10, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has more than a 28 percent permanent impairment of the right upper extremity, for which she has received a schedule award; and (2) whether appellant has more than an 18 percent permanent impairment of the left upper extremity, for which she has 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 28 percent permanent impairment of the right upper extremity, for which she has received a schedule award.

On March 15, 1993 appellant, then a registered nurse, filed a claim for an occupational disease (Form CA-2) alleging that on August 10, 1992, she first realized that her bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome were caused or aggravated by her employment. Appellant stopped work on December 17, 1992. Appellant returned to light-duty work in 1993 and stopped work in 1994.

On January 4, 1994 the Office of Workers' Compensation Programs accepted appellant's claim for right carpal tunnel syndrome and mild left carpal tunnel syndrome. The Office authorized right cubital release surgery which was performed on March 30, 1993.

By letter dated January 11, 1996, appellant, through her counsel, submitted the October 3, 1994 medical report of Dr. Steven G. McCloy, an internist and appellant's treating physician, indicating that based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a 60 percent impairment of the whole person of the right upper extremity and a 41 percent impairment of the whole person of the left upper extremity. Dr. McCloy concluded that appellant had a 76 percent impairment of the whole person based on the Combined Values Chart of the A.M.A., *Guides*.

By letter dated January 23, 1996, the Office advised appellant to submit a claim for a schedule award (Form CA-7) based on Dr. McCloy's medical report. On February 26, 1996 appellant filed a Form CA-7.

By letter dated April 23, 1996, the Office advised Dr. McCloy to determine the extent of appellant's impairment of the upper bilateral extremities based on the fourth edition of the A.M.A., *Guides*. In response, Dr. McCloy submitted a May 10, 1996 medical report indicating that appellant had a 38 percent impairment of the right and left upper extremities and a 23 percent impairment of the whole person of each upper extremity.

On May 22, 1996 the Office referred the case record to an Office medical adviser to determine the extent of appellant's impairment of the upper extremities based on the fourth edition of the A.M.A., *Guides*. In a May 28, 1996 medical report, the Office medical adviser opined that appellant had a 28 percent impairment of the right upper extremity and an 18 percent impairment of the left upper extremity.

On June 11, 1996 the Office granted appellant a schedule award for a 28 percent permanent impairment of the right upper extremity and an 18 percent permanent impairment of the left upper extremity for the period October 2, 1994 through July 2, 1997. By letter dated June 20, 1996, appellant, through her counsel, requested clarification of the Office's decision specifically regarding the period of disability. In a July 9, 1996 response, the Office clarified its schedule award decision.¹

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation,³ 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 of loss of use.⁴ 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 under the law for 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* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵

¹ The Board notes that subsequent to the Office's June 11, 1996 schedule award decision, appellant, through her counsel, requested reconsideration of the Office's June 11, 1996 decision in a July 3, 1996 letter. Appellant's request was accompanied by her June 20, 1996 letter. In a letter of the same date, appellant, through her counsel, requested an oral hearing before an Office representative. It appears that the Office has not issued a final decision on either request. However, since appellant did not submit any new evidence along with either request, the Board will address appellant's appeal.

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.304.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB

In this case, Dr. McCloy stated in his October 3, 1994 medical report that based on the fourth edition of the A.M.A., *Guides*, appellant had a 60 percent impairment of the right upper extremity and a 41 percent impairment of the left upper extremity. Dr. McCloy concluded that appellant had a 76 percent impairment of the whole person based on the Combined Values Chart of the A.M.A., *Guides*. The Board finds that Dr. McCloy failed to explain how he applied the A.M.A., *Guides* in reaching his impairment rating.

Dr. McCloy indicated in his May 10, 1996 medical report that range of motion of the upper extremities was normal and that appellant had sensation, but that it was diminished in the fingers. Dr. McCloy stated that the fourth edition of the A.M.A., *Guides* did not permit an impairment percentage for pain, but that he would estimate such an impairment percentage to the best of his ability in determining the whole person impairment. Regarding the right upper extremity, Dr. McCloy determined that appellant had a 26 percent impairment of the hand which constituted a 23 percent right upper extremity impairment based on Table 2, page 19 of the fourth edition of the A.M.A., *Guides*. Dr. McCloy further determined that appellant had a 10 percent impairment of the wrist, a 5 percent impairment of the elbow and a 0 percent impairment of the shoulder due to pain based on Table 3, page 301 of the A.M.A., *Guides*. Dr. McCloy further determined that appellant had a 38 percent impairment of the right upper extremity based on his calculations for appellant's right upper extremity and pain. Dr. McCloy concluded that based on the Combined Values Chart on page 322 of the A.M.A., *Guides*, appellant had a 32 percent impairment. The appropriate table for determining impairment of the upper extremity due to pain is Table 11, page 48 of the fourth edition of the A.M.A., *Guides*. Further, based on the Combined Values Chart, appellant has a 34 percent impairment, rather than a 32 percent impairment of the right upper extremity. Therefore, the Board finds that Dr. McCloy failed to properly apply the A.M.A., *Guides* in determining that appellant had a 34 percent impairment of the right upper extremity.

The Office, in this case, based its assessment of the impairment of appellant's right upper extremity on the Office medical adviser's May 28, 1996 medical report. In this report, the Office medical adviser indicated a history of appellant's medical treatment, his findings on physical examination and stated that appellant had reached maximum medical improvement in October 1994. Regarding the right upper extremity, the Office medical adviser stated that based on Table 16, page 57 of the fourth edition of the A.M.A., *Guides*, the median nerve entrapment at the wrist was moderately severe and that appellant had a 20 percent impairment of the right upper extremity. The Office medical adviser further stated that the ulnar nerve entrapment at the elbow was mildly severe and that appellant had a 10 percent impairment. The Office medical adviser concluded that based on the Combined Values Chart on page 322, appellant had a 28 percent impairment of the right upper extremity. The Board has reviewed the Office medical adviser's calculations of the right 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 28 percent impairment of the right upper extremity for which she has received a schedule award.

1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

The Board, however, finds that appellant has more than an 18 percent permanent impairment of the left upper extremity, for which she has received a schedule award.

Calculating the same impairment percentages for the left upper extremity that he used in determining that appellant had a 32 percent impairment of the right upper extremity, Dr. McCloy determined that appellant had a 32 percent impairment of the left upper extremity based on the Combined Values Chart. In his May 28, 1996 medical report, the Office medical adviser stated that based on Table 16 of the A.M.A., *Guides*, the median nerve entrapment at the wrist was mildly severe, and thus, appellant had a 10 percent impairment of the left upper extremity. The Office medical adviser further stated that for ulnar nerve entrapment at the elbow, appellant had a 10 percent impairment. The Office medical adviser concluded that based on the Combined Values Chart, appellant had an 18 percent impairment of the left upper extremity. 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 a 19 percent impairment of the left upper extremity. Therefore, appellant is entitled to a schedule award for a 19 percent impairment of the left upper extremity.

The June 11, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed in part regarding the Office's finding that appellant was entitled to a 28 percent permanent impairment of the right upper extremity. The decision is affirmed as modified to reflect that appellant has a 19 percent permanent impairment of the left upper extremity. Upon return of the case record, the Office should issue a schedule award which reflects this greater percentage of impairment.

Dated, Washington, D.C.
August 10, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member