

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANA HICKS and U.S. POSTAL SERVICE,
POST OFFICE, Ventura, CA

*Docket No. 97-2718; Submitted on the Record;
Issued August 16, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant's reemployment position as a modified distribution clerk fairly and reasonably represented her wage-earning capacity; and (2) whether appellant has met her burden of proof in establishing greater than a 15 percent permanent impairment of the right arm and a 15 percent permanent impairment of the left arm for which she received a schedule award.

On September 22, 1987 appellant, then a 33-year-old clerk, filed an occupational disease claim, alleging that she sustained carpal tunnel syndrome due to factors of her federal employment. She did not stop work. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized carpal tunnel release surgery for the right and left arms in November and December 1987. Appellant returned to work in February 1988. In March 1989, the Office authorized additional surgery for excision of a hypertropic scar. Appellant resigned her position with the employing establishment on March 3, 1989. She was subsequently employed by the Ventura County government in California. Appellant filed claims for continuing compensation beginning in May 1989. The Office paid appellant appropriate compensation for all periods of temporary total disability related to her accepted employment injury.

On July 16, 1992 the Office referred appellant for rehabilitation services. On August 14, 1992 Edward L. Bennett was assigned as appellant's rehabilitation counselor. On July 9, 1996 appellant returned to work as a modified distribution clerk.

By decision dated August 20, 1996, the Office issued appellant a schedule award for a 15 percent permanent impairment of her right arm and a 15 percent permanent impairment of her left arm. The period of the award ran from July 9, 1996 to April 25, 1998 for total of 93.60 weeks of compensation.

In a decision dated September 16, 1996, the Office advised appellant that she had been reemployed as a modified distribution clerk effective July 9, 1996. The Office determined that this position fairly and reasonably represented her wage-earning capacity and was suitable for her accepted medical condition of bilateral carpal tunnel syndrome. The Office did compensate appellant for any further wage-loss compensation effective July 9, 1996.

The Board finds that the Office properly determined appellant's reemployment as a modified distribution clerk fairly and reasonably represented her wage-earning capacity.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation. Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions given the nature or the employee's injuries, and the degree of physical impairment, his or her usual employment, the employee's age and vocational qualifications and the availability of suitable employment.¹ Section 8115(a) of the Federal Employees' Compensation Act provides that in determining compensation for partial disability, the wage-earning capacity of an employee is determined by his or her actual earnings if his or her actual earnings fairly and reasonably represent his or her wage-earning capacity.² Generally, wages earned are the best measure of wage-earning capacity and, in the absence of evidence showing that they do not fairly and reasonably represent the injured employee's wage-earning capacity, must be accepted as such measure.³

In the present case, appellant was reemployed by the employing establishment and has actual earnings from her work as a modified distribution clerk. On the job offer from the employing establishment, it indicated that appellant's salary on the date of injury was that of a Grade-5 Step G employee and the position of modified distribution clerk which she accepted July 1996 was for the same grade and step. Therefore, appellant was reemployed at the same grade and step and same pay rate she was receiving before her accepted employment injuries. Based on the evidence of record, appellant's actual earnings as modified distribution clerk fairly and reasonably represent her wage-earning capacity.

The Board further finds that appellant has not established greater than a 15 percent permanent impairment of the right and left arms, respectively, for which she received a schedule award.

Section 8107 of the Act⁴ and its implementing regulation⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of

¹ See generally, 5 U.S.C. § 8115(a), *The Law of Workers' Compensation* § 57.22 (1989); see also *Bettye F. Wade*, 37 ECAB 556 (1986).

² 5 U.S.C. § 8115(a); *Clarence D. Ross*, 42 ECAB 556 (1991).

³ *Hubert F. Myatt*, 32 ECAB 1994 (1981).

⁴ 5 U.S.C. § 8107(c).

⁵ 20 C.F.R. § 10.304.

use, of specified 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* (4th ed. 1993) have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.⁶

In a report dated May 26, 1996, Dr. William Starr, a Board-certified plastic surgeon specializing in hand surgery, examined appellant to provide an impairment rating. Dr. Starr noted that appellant had a three centimeter flat nontender scar crossing her right wrist and a five centimeter nontender scar crossing her left wrist. He found no evidence of muscle or skin atrophy, normal pseudomotor functions in all digits of both hands and negative testing for Tinel's and Phalen's signs and Frankelsteins' and Goins tests. Dr. Starr found a loss of function due to pain, discomfort and sensory alteration in both wrists, no loss of function due to limitation of motion or ankylosis or additional factors such as causalgia instability. He also noted borderline slight left median sensory conduction delay left carpal tunnel without evidence of sensory conductive block, normal motor conduction, normal right median motor and sensory nerve conduction and no evidence of right neuropathy at the wrist.

In a report dated July 28, 1996, an Office district medical director reported that he applied the A.M.A., *Guides* to the results provided by Dr. Starr. He found no impairment for limitation of motion, atrophy or weakness. Based on Table 16 of the A.M.A, *Guides* which provided for a 10 percent impairment rating for mild median nerve compression and 20 percent impairment rating for moderate median nerve compression,⁷ the Office district medical director found a 15 percent impairment of both the right and left arms. This determination was based on Dr. Starr's electrodiagnostic studies which revealed no ongoing denervation and only slight evidence of sensory change on the left side commensurate with postoperative carpal tunnel syndrome. This report by the district medical director which is in accordance with the A.M.A, *Guides* and provides a proper rationale for the conclusions reached regarding the rate of impairment, constitutes the weight of the medical evidence. As the record is devoid of any evidence demonstrates any additional impairment to either arm other than that provided by Dr. Starr, appellant has not established that she sustained greater than a 15 percent permanent impairment of both arms for which she received a schedule award.

⁶ *Quincy E. Malone*, 31 ECAB 846 (1980).

⁷ Table 16, Upper Extremity Impairment due to Entrapment Neuropathy, A.M.A, *Guides* (4th ed. 1995) p.3/57.

The decisions of the Office of Workers' Compensation Programs dated September 16 and August 20, 1996 are hereby affirmed.

Dated, Washington, D.C.
August 16, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member