

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREA S. CUNNINGHAM and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE & ACCOUNTING SERVICE, Denver, Colo.

*Docket No. 97-2599; Submitted on the Record;
Issued May 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has establish entitlement to more than 12 percent permanent impairment of her arms.

The Board has reviewed the record and finds that the case is not in posture for decision.

On November 17, 1995 appellant, then a former account technician, filed a claim alleging that she sustained carpal tunnel syndrome and tendinitis while in the performance of duty. On June 15, 1996 the Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome. On December 26, 1996 appellant filed a claim for a schedule award. On March 24, 1997 the Office issued a schedule award for 2 percent permanent impairment of the right upper extremity and 10 percent permanent impairment of the left upper extremity.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

On February 10, 1997 Dr. Edward D. Hillard, appellant's treating physician and Board-certified in orthopedic surgery, reviewed and approved impairment ratings of 2 percent for permanent impairment of her right upper extremity and 20 percent for permanent impairment of her left upper extremity based on an evaluation conducted by a physical therapist on January 29, 1997.⁴ The evaluation noted impairment of the right upper extremity due to loss of wrist motion for extension at 54 degrees, equaling a 2 percent right upper extremity impairment and an impairment of the left upper extremity due to loss of grip strength in the left hand at 60 percent equaling a 20 percent left upper extremity impairment. The clinical evaluation report noted that appellant was tested for grip strength with a handheld dynamometer on second handle setting which resulted in a finding that appellant had bilateral mild pinch weakness and significant left hand strength loss with maximal effort of 31 pounds. Bilateral range of motion evaluations revealed that appellant had normal range of motion throughout both extremities except at the wrist. A significant loss of wrist extension on the right side was also noted.

On February 27, 1997 the Office medical adviser reviewed the February 10, 1997 report but stated that the therapist "gave no assessment of reliability, e.g., was [appellant's] effort maximal." The Office medical adviser therefore recommended impairment ratings of 2 percent for the right upper extremity and 10 percent for the left upper extremity. However, the Office medical adviser's opinion was not well reasoned in that he failed to support his conclusion that appellant's left upper extremity should be reduced to 10 percent from 20 percent recommended by Dr. Hillard. Given the Office medical adviser's concern for the lack of clarity in the treating physician's report, the Office should have requested Dr. Hillard for a supplemental medical opinion identifying whether appellant made a maximum effort with respect to the dynamometer evaluations.

On remand, the Office should request a supplemental medical opinion from Dr. Hillard regarding the issue of appellant's effort with respect to the grip strength evaluation. After further development as it may find necessary the Office should issue a *de novo* decision.

³ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁴ The report was based on the A.M.A., *Guides*, (4th ed. 1993).

The decision of the Office of Workers' Compensation Programs, dated March 24, 1997, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
May 14, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member