U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LANG T. TRAN and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

Docket No. 98-618; Submitted on the Record;
Issued October 19, 1999

DECISION and ORDER

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

The issues are: (1) whether appellant has established that she has more than a 10 percent permanent impairment of the right upper extremity and more than a 10 percent permanent impairment of the left upper extremity, for which she has received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant had no loss of wage-earning capacity as a result of her October 20, 1994 employment-related injury.

In the present case, the Office has accepted that appellant, a distribution clerk, sustained bilateral carpal tunnel syndrome on or about October 20, 1994 in the performance of her federal employment. Appellant was disabled for intermittent periods from September 18, 1995 to March 10, 1997. From March 11 to June 6, 1997, appellant was totally disabled from work. Appropriate benefits for wage loss were paid during this time. On June 7, 1997 appellant returned to full-time work as a modified distribution clerk. In a report dated July 8, 1997, Dr. S. Kamat, a Board-certified neurologist, reported that appellant had reached maximum medical improvement. He stated that he evaluated appellant's permanent impairment pursuant to the Florida Impairment Guides. Dr. Kamat estimated that carpal tunnel syndrome on the right side was 10 percent, on the left side was 10 percent, moderate cubital tunnel syndrome was 20 percent, left shoulder pain and sprain was 3 percent, left elbow pain and sprain was 3 percent and bilateral elbow pain and sprain was 3 percent each of the upper extremities. He combined the values of the upper extremities and arrived at a 43 percent upper extremity impairment, which was equivalent to 26 percent of the whole person. On September 18, 1997 an Office medical adviser reviewed Dr. Kamat's report. He stated that pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), Table 16 at page 57, entrapment neuropathy of each wrist caused a 10 percent permanent impairment for each upper extremity. The Office medical adviser noted that appellant had multiple complaints involving other joints, but that none of these are accepted conditions. Her physician has rated her as having a 26 percent permanent impairment of the whole body based on the Florida impairment guides, but he rated each carpal tunnel syndrome as being 10 percent permanently

impaired. The Office medical adviser noted that these other joints should not be rated since they are not accepted conditions. On November 12, 1997 the Office granted appellant a schedule award for a 10 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity. The period of the reward ran from July 8, 1997 to September 17, 1998.

In a decision dated November 25, 1997, the Office determined that appellant's position of modified distribution clerk with wages of $844.20 per week effective June 7, 1997 fairly and reasonably represented her wage-earning capacity.

The Board finds that the Office properly determined that appellant has no more than a 10 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity for which she has received a schedule award.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation that are to be paid for permanent loss of use of the members of the body that are listed in the schedule. The Act does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. However, as a matter of administrative practice, the Board has stated: "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 Office has adopted and the Board has approved of the A.M.A., *Guides* as the uniform standard applicable to all claimants.[1]

If appellant's physician does not use the A.M.A., *Guides* to calculate the degree of permanent impairment, it is proper for an Office medical adviser to review the case record and to apply the A.M.A., *Guides* to the examination findings reported by the treating physician.[2] In the present case, Dr. Kamat opined that appellant had a 26 percent upper extremity impairment pursuant to the Florida impairment guides. He did not provide any measurements of appellant's right and left wrist impairment. The Board notes that an impairment to the upper extremity caused by entrapment neuropathy can be evaluated by measuring the sensory and motor deficits, or by use of Table 16 of the A.M.A., *Guides* which provides a diagnosis based impairment value for impairment due to entrapment neuropathy. The Office medical adviser was the only physician of record who calculated appellant's impairment pursuant to the A.M.A., *Guides.* The Office medical adviser properly noted that Table 16 of the A.M.A., *Guides* provided a permanent impairment value for mild median nerve entrapment neuropathy at the wrist of 10 percent. The Office medical adviser properly calculated appellant's upper extremity impairment pursuant to the A.M.A., *Guides*, and there is no medical evidence of record that appellant has more than a 10 percent permanent impairment of the right upper extremity or more than a 10 percent permanent impairment of the left upper extremity. Moreover, the Office medical adviser properly noted that the other conditions Dr. Kamat discussed were not accepted conditions by the Office. The

[1] *Lena P. Huntley*, 46 ECAB 643 (1995).

[2] *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

Office, therefore, properly granted appellant a schedule award for a 10 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity.

The Board further finds that the Office properly determined that appellant had no loss of wage-earning capacity as a result of her October 20, 1994 employment-related injury.

The Act provides for payment of loss of wage-earning capacity, as follows:

> "If the disability is partial, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability, which is known as his basic compensation for partial disability."[3]

Regulations implementing the Act further provide that "an injured employee who is unable to return to the position held at the time of injury (or to earn equivalent wages) but who is not totally disabled for all gainful employment is entitled to compensation computed on loss of wage-earning capacity."[4] An employee who is partially disabled as a result of an employment injury is, therefore, entitled to a loss of wage-earning capacity determination if she has met the threshold requirement of establishing that she is unable to return to her former employment or to earn equivalent wages.

In the instant case, appellant sustained bilateral carpal tunnel syndrome on or about October 20, 1994. Due to appellant's physical restrictions caused by this injury, appellant accepted the position of modified distribution clerk, level 5, step M ($36,293.00 base salary per year effective June 7, 1997), in lieu of her date-of-injury position of distribution clerk, level 5, step J ($34,192.00 base salary per year effective September 18, 1995). The record reflects that although the job offer was based on a level 5, step M, by the time appellant returned to work she was entitled to another step increase. Thus, appellant was brought back as a level 5, step N. Appellant has alleged that her base salary is higher due to night differential and Sunday premiums added to the base salary.

By decision dated August 15, 1997, the Office determined that appellant's return to work on June 7, 1997 with weekly earnings of $788.88 per week reasonably represented her wage-earning capacity. However, in a telephone conference on September 30, 1997, the Office was advised that the weekly earnings which were reported to the Office were incorrect. The Office was advised that when appellant returned to work on June 7, 1997, she was earning 40 hours of premium pay for night differential and Sunday pay for 16 hours per week. The Office, therefore, determined that appellant's earnings upon return to work on June 7, 1997 were $844.20 per week and not the previous calculated $788.88. Accordingly, the Office modified the August 15, 1997 wage-earning decision to reflect that appellant did not have a wage loss upon her return to work June 7, 1997. A work sheet reflecting computations for how the pay rate for September 18, 1995

[3] 5 U.S.C. § 8106(a).

[4] 20 C.F.R. § 10.303.

was computed; the computations for actual earnings effective June 7, 1997 and, pay rate for date of disability began position, effective June 7, 1997; along with previous adjustments needed based on correct pay rate effective September 18, 1995 was provided.

In an October 22, 1997 letter, the Office issued a notice of proposed termination of compensation based on evidence that appellant did not sustain a wage loss upon her return to work June 7, 1997.

By decision dated November 25, 1997, the Office determined that appellant's position of modified distribution clerk with wages of $844.20 per week effective June 7, 1997 fairly and reasonably represented her wage-earning capacity. In accordance with the provisions of 5 U.S.C. §§ 8106 and 8115, the Office adjusted appellant's compensation stating that "[e]ffective the date of your reemployment, your compensation payments will be based on 66-2/3 or 75 percent of the difference between your pay rate as determined for compensation purposes and your ability to earn wages in your new position." The Office enclosed a computation work sheet and a certification checklist reflecting no loss of wage-earning capacity.

To determine a loss of wage-earning capacity of an employee, the Office divides the amount of earnings an injured employee currently receives by the current earnings of his or her date-of-injury position. The applicable regulation governing the Office provides that "[t]he comparison of earnings and 'current' pay rate for the job held at the time of injury need not be made as of the beginning of partial disability."[5] The regulation provides that "*[a]ny convenient date* may be chosen by the Office for making the comparison as long as the two wage rates are in effect on the date used for the comparison."[6] (Emphasis added.)

In this case, appellant had no loss of wage-earning capacity at the time she was transferred to her new position of modified distribution clerk on June 7, 1997.[7] As the regulation allows the Office to choose "any convenient date" to evaluate loss of wage-earning capacity, the Office may properly choose the date appellant began her new position. Moreover, in arriving at its wage-earning capacity calculations, the Office properly took into account the pay differentials for night pay and Sunday premium pay in making the adjustments for all payments for the period September 18, 1995 through November 8, 1998. Effective November 9, 1998, the Office computed appellant's scheduled payments using the adjusted pay rate of $788.90 instead of the previous pay rate of $756.02. Therefore, the Board finds that the Office properly calculated appellant's wage-earning capacity on the date she began her new position and that appellant has not sustained a compensable loss of wage-earning capacity.

[5] 20 C.F.R. § 10.303(b).

[6] *Id.*

[7] *Domenick Pezzetti*, 45 ECAB 787 (1994).

The decisions of the Office of Workers' Compensation Programs dated November 25 and 12, 1997 are hereby affirmed.

Dated, Washington, D.C.
October 19, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member