U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTE DuBOSE and DEPARTMENT OF DEFENSE,
DEFENSE PERSONNEL SUPPORT CENTER, Philadelphia, PA

Docket No. 98-1342; Submitted on the Record;
Issued April 11, 2000

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained more than a 20 percent impairment to the left upper extremity or 20 percent to the right upper extremity for which she received a schedule award.

On April 18, 1989 appellant, then a 48-year-old sewing machine operator, filed a notice of traumatic injury and claim for continuation of pay/compensation, alleging that she suffered a strain in her left hand as a result of pulling lining through a sleeve. On July 17, 1990 appellant, filed a notice of recurrence of disability and claim for pay/compensation (Form CA-2a) noting a gradual increase in pain of the left and right hand. On August 6, 1990 appellant, filed a claim for compensation on account of traumatic injury (Form CA7). By letter dated August 30, 1990, the employing establishment controverted appellant's claim for recurrence. The employing establishment noted that appellant's original injury was to her left hand, but she is claiming a recurrence in her right hand. By decision dated November 15, 1990, the Office of Workers' Compensation Programs denied appellant's claimed recurrence, finding that appellant had not established that the condition in her right hand was causally related to her injury in her left hand.

On May 7, 1992 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) for carpal tunnel syndrome. She noted that her previous claim had been erroneously based on a traumatic injury, whereas she was suffering from an occupational disease.

On August 13, 1992 appellant's claim for occupational disease was approved for bilateral carpal tunnel syndrome.

In a medical report dated July 19, 1995, Dr. Nicholas P. Diamond, an osteopath, examined appellant and reviewed various medical reports. Dr. Diamond diagnosed appellant as suffering from cumulative trauma disorder, bilateral carpal tunnel syndrome and chronic pain

syndrome. He noted that appellant still suffered from residuals of her work-related injury of April 18, 1989. Dr. Diamond continued:

> "Examination of the patient's bilateral wrists revealed tenderness noted over the palmar aspect bilaterally. There is tenderness noted over the dorsal aspect bilaterally. There is a positive Tinel['s] [s]ign noted. There is a positive Carpal Compression [t]est noted. There is a positive Phalen['s] [s]ign noted bilaterally. Range of motion revealed dorsi-flexion of 35/75 degrees on the right with pain and 40/75 degrees on the left, palmar flexion of 45/75 degrees on the right with pain and 55/75 degrees on the left, radial deviation of 10/20 degrees on the right with pain and 10/20 degrees on the left, ulnar deviation of 20/35 degrees on the right with pain and 20/35 degrees on the left. There is a positive bilateral Pronator Compression Sign noted.
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> "Examination of the patient's right hand revealed tenderness noted over the thenar eminence on the right hand only. Grip strength testing performed via Jamar Hand Dynamometer reveals 2 kg. of force strength in the right hand versus 6 kg. of force strength in the left hand. The patient is right hand dominant. There is no opposition weakness noted. Pinch key unit revealed 3 kg. of force strength on the right versus 7 kg. of force strength on the left. Fist presentation is good.
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> "Neurological examination, the sensory examination revealed a decreased sensation to pin prick involving the bilateral upper extremities, right greater than left (hands) thumb and index finger and palms. Motor strength testing revealed a grade of 4/5 involving the bilateral upper extremities. The deep tendon reflexes are +2 and symmetrical."

Dr. Diamond proceeded to apply the above findings to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (3d ed. rev., 1991). He determined that, in appellant's right hand she had impairments of 4.5 percent dorsi flexion, 2.5 percent palmar flexion,[1] 2 percent radial deviation, 2 percent ulnar deviation[2] and entrapment median nerve at the wrist of 20 percent.[3] Dr. Diamond added these figures together and concluded that appellant had a 31 percent impairment of the right upper extremity. With regard to the left hand, he found 4 percent dorsi flexion, 1 percent palmar flexion, 2 percent radial deviation, 2 percent ulnar deviation, and 20 percent entrapment median nerve at wrist and concluded that appellant suffered from a 29 percent impairment to her left upper extremity.

On August 30, 1995 Dr. Raymond E. Silk, a Board-certified surgeon, who previously treated appellant, but last saw her on June 6, 1991, stated that, based on Dr. Diamond's physical findings, he agrees with his assessment that appellant probably had a 29 percent impairment of the upper extremities.

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[1] A.M.A., *Guides*, 37, Table 27.

[2] A.M.A., *Guides*, 38, Table 29.

[3] A.M.A., *Guides*, 57, Table 16.

On May 31, 1996 the Office requested that the Office medical adviser review Dr. Diamond's report, and compute the percentage of impairment, noting that the claim had already been accepted for bilateral carpal tunnel syndrome.

On July 24, 1996 the Office medical adviser referred appellant to Dr. Todd Marc Kelman, an osteopath, for second opinion. Dr. Kelman found that appellant had 50 percent dorsiflexion (extension) and 50 percent palmar flexion (flexion) in both her right hand and left and that ulnar deviation was normal at 30 degrees and radial deviation was normal at 20 degrees for both hands. He further concluded that range of motion in appellant's shoulder and elbow, including thumbs and fingers, was within normal limits. Dr. Kelman diagnosed appellant as suffering from "bilateral carpal tunnel syndrome secondary to trauma disorder." He concluded:

> "On today's examination [appellant] does demonstrate some mild restriction, dorsi flexion of both the right and left wrist, as well as palmar flexion. (Carpal tunnel syndrome does not cause this in itself and the usual things that cause restriction of motion are synovitis of the wrist joint or degenerative process). Also noted is that [appellant] has altered sensation in the median nerve distribution of both hands and provocative tests were consistent with median nerve compression at the wrist. There was no thenar atrophy or weakness of the abductor clinically. Today's examination does substantiate [appellant's] subjective complaints, which is consistent with carpal tunnel syndrome."

Using the A.M.A., *Guides* Dr. Kelman opined that appellant suffered from a 20 percent entrapment median nerve at wrist in both the left and right upper extremities, which equaled a 20 percent total upper extremity impairment on each side.[4]

On March 11, 1997 the Office medical adviser reviewed Dr. Kelman's opinion and found that pursuant to the A.M.A., *Guides* Dr. Kelman's report was consistent with showing a 20 percent impairment of the right arm and a 20 percent impairment of the left arm.

By decision dated March 24, 1997, the Office awarded appellant compensation based on a 20 percent permanent loss of both the right and left arm.

By letter dated April 2, 1997, appellant requested a hearing, which was held on October 27, 1997. At the hearing, appellant stated that she worked full time for the employing establishment as a sewing machine operator that she started having problems with her hands and wrists, that surgery has been recommended but that she is afraid of surgery, that she is now employed with a different employer cleaning that she had pains in her left hand and wrist, that the index finger and second finger on her right hand was very numb and that she wears wrist splints most of the time

In a decision dated December 29, 1997, the hearing representative affirmed the March 24, 1997 decision. The hearing representative found that appellant had not established

[4] A.M.A., *Guides*, 57, Table 16.

that she sustained greater than 20 percent impairment to the left arm or 20 percent impairment to the right arm. The hearing representative noted that, although Dr. Kelman reported that appellant demonstrated mild restriction of range of motion of both wrists, the carpal tunnel syndrome did not cause this itself and that he did not relate the loss of motion to appellant's carpal tunnel syndrome. The hearing representative found that Dr. Kelman accurately applied the A.M.A., *Guides* and that he provided a rationalized explanation on why he did not incorporate loss of range of motion in his rating and that Dr. Diamond had not provided such rationale for his rating which did incorporate range of motion.

Under section 8107 of the Federal Employees' Compensation Act[5] and section 10.304 of the implementing regulations,[6] schedule awards are payable for permanent impairment of specified body members, functions or organs. 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 for all claimants, the Office has adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[7]

In the instant case, Dr. Diamond utilized the A.M.A., *Guides* and determined that appellant had a 29 percent impairment to her left upper extremity and a 31 percent impairment to her right upper extremity. He arrived at this conclusion by adding the measurement for impairments of flexion and extension to the measurements of radial and ulnar deviation, pursuant to the A.M.A., *Guides.* However, Dr. Diamond also added to this figure the amount of upper extremity impairment due to entrapment neuropathy.[8] This was error. The A.M.A., *Guides* specifically state:

> "Impairment of the hand and upper extremity secondary to entrapment neuropathy may be derived by measuring the sensory and motor deficits as described in preceding parts of this section."

An alternative method is provided in Table 16, page 57. The evaluator *should not* use both methods.[9]

Therefore, as Dr. Diamond improperly added the two numbers together, in contrary to violation of the rules stated in the A.M.A., *Guides*, his opinion is of diminished weight.

However, Dr. Kelman's opinion that appellant had a 20 percent impairment of the right arm and a 20 percent impairment of the left arm is consistent with the A.M.A., *Guides*. In his opinion, Dr. Kelman opined that appellant had altered sensation in the median nerve distribution

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.304.

[7] *James R. Bradford*, 48 ECAB 320, 324 (1997); *Henry G. Flores, Jr.*, 43 ECAB 901 (1992).

[8] A.M.A., *Guides*, 57, Table 16.

[9] A.M.A, *Guides*, 56 (emphasis in original).

of both hands and provocative tests were consistent with median nerve compression at the wrist." Pursuant to the A.M.A., *Guides*,[10] a moderate impairment of the median nerve in appellant's wrist would equal a 20 percent impairment, which is the amount of impairment Dr. Kelman found.

Therefore, the Board finds that the well-rationalized opinion of Dr. Kelman represents the weight of the evidence since it was calculated in accordance with the A.M.A., *Guides* and that the hearing representative properly awarded appellant benefits based on a 20 percent impairment to the left upper extremity and a 20 percent impairment to the right upper extremity.

Accordingly, the decisions of the Office of Workers' Compensation dated December 29 and March 24, 1997 are affirmed.[11]

Dated, Washington, D.C.
April 11, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[10] A.M.A., *Guides*, 57, Table 16.

[11] The Board notes that subsequent to the issuance of the December 29, 1997 decision, the Office received additional medical evidence. The Board cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).