

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AIME BOUGERE and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 99-1096; Submitted on the Record;
Issued August 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a four percent permanent impairment of her right upper extremity for which she received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than a four percent permanent impairment of her right upper extremity for which she received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that she sustained an injury in the performance of duty as alleged and that her disability, if any, was causally related to the employment injury.³ Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*, 4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

In this case, the Office accepted that, as a result of her employment duties, appellant developed bilateral elbow tendinitis, bilateral cubital tunnel syndrome and right carpal tunnel syndrome. By award of compensation dated August 25, 1998, the Office awarded appellant a schedule award for a four percent permanent impairment of her right upper extremity.⁶

In support of her claim for a schedule award, appellant submitted a medical report dated July 30, 1998 from Dr. Andres H. Keichian, a Board-certified neurologist, to whom she had been referred by her treating physician for the purpose of obtaining a permanent impairment rating. He noted appellant's history of both right and left carpal tunnel release surgery and right ulnar transposition and her continuing complaints of some pain over the right elbow area. Dr. Keichian noted that Tinel's signs were negative for the medial nerve at the wrist and right ulnar nerve at the elbow. He noted that no focal atrophy or fasciculations were present, muscle tone was noncontributory, muscle strength was proportionate to contraction with weakness and deep tendon reflexes in the upper extremities were 2+ and symmetric. Dr. Keichian further noted that appellant showed no deficit in neuropathic or radicular distribution and that two points of discrimination were present over the hands at 5 mm. He stated that, with respect to appellant's right elbow, testing revealed 142 degrees of flexion, 0 degrees extension, 78 degrees pronation and 94 degrees supination and that testing of the left elbow revealed 155 degrees of flexion, -5 degrees of extension, 80 degrees pronation and 72 degrees supination. Dr. Keichian concluded that applying these results to the fourth edition of the A.M.A., *Guides*, pages 40-41, Figures 32 and 35, equated to a 0 percent impairment of the elbows. He stated that range of motion testing of appellant's right wrist revealed 57 degrees of flexion, 53 degrees of extension, 14 degrees of radial deviation and 25 degrees of ulnar deviation and that testing of the left wrist revealed 80 degrees of flexion, 67 degrees of extension, 17 degrees of radial deviation and 40 degrees of ulnar deviation. Dr. Keichian then applied these measurements to Figures 26, 28 and 29 at pages 36-38, of the A.M.A., *Guides*, to conclude that appellant had a 3 percent permanent impairment of both wrists due to loss of range of motion.⁷

On August 24, 1998 at the request of the Office, Dr. H. Mobley, an Office medical adviser and Board-certified internist, reviewed Dr. Keichian's July 30, 1998 report as it pertained to appellant's right upper extremity. He noted Dr. Keichian's findings on physical examination, and applied the range of motion results obtained by Dr. Keichian for flexion, extension, radial deviation and ulnar deviation to Figures 26 and 29 on pages 36 and 38 of the A.M.A., *Guides*. Dr. Mobley concluded that, based on the test results, appellant demonstrated a four percent permanent impairment of the right upper extremity and explained that the one percent difference between his conclusion and that of Dr. Keichian was due to a difference in the interpretation of the wrist range of motion tables of the fourth edition of the A.M.A., *Guides*. Dr. Mobley concluded that no consideration was given for pain because Dr. Keichian did not describe it as clinically significant.

⁶ At the time she filed her Form CA-7 claim for a schedule award on December 19, 1996, the Office had only accepted appellant's claim for right carpal tunnel syndrome.

⁷ Dr. Keichian concluded that he was not able to assign any impairment based on loss of grip strength due to appellant's failure to pass the validity test.

The Board has held that, if an examining physician does not properly use the A.M.A., *Guides* to calculate the degree of permanent impairment, it is proper for an Office medical adviser to review the record and apply the A.M.A., *Guides* to the examination findings reported by the examining physician.⁸ As the Office medical adviser properly applied the relevant portions of the A.M.A., *Guides* to the physical findings described in Dr. Keichian's report and provided full rationale for his conclusions and as there is no rationalized medical evidence in the record supporting more than a four percent permanent impairment of appellant's right upper extremity, the Board finds that appellant has no more than a four percent permanent impairment of her right upper extremity.

Finally, the Board notes that, in a letter received by the Office on October 27, 1998, appellant referenced her accepted left arm conditions and requested a schedule award for her left upper extremity. As the Office has not yet issued a decision with respect to whether appellant has any permanent impairment of her left upper extremity, for which she would be entitled to a schedule award, the Board cannot consider this issue in connection with the instant appeal.⁹

The decision of the Office of Workers' Compensation Programs dated August 25, 1998 is hereby affirmed.

Dated, Washington, D.C.
August 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁸ *Lena P. Huntley*, 46 ECAB 643 (1995).

⁹ *See Douglas E. Billings*, 41 ECAB 880 (1990).