

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA D. FOSTER and SMITHSONIAN INSTITUTE,
NATIONAL ZOOLOGICAL PARK, Washington, DC

*Docket No. 99-1150; Submitted on the Record;
Issued August 17, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than 10 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 20 percent permanent impairment of her right upper extremity.

Appellant, a secretary, filed a notice of occupational disease on July 22, 1996 alleging on July 3, 1996 she became aware that she had developed carpal tunnel syndrome in her right wrist due to factors of her federal employment. The Office of Workers' Compensation Programs accepted her claim for right carpal tunnel syndrome on July 11, 1997 and authorized surgical release. Appellant underwent surgery on June 3, 1997. She requested a schedule award on May 29, 1998. By decision dated December 1, 1998, the Office granted appellant a schedule award for 10 percent permanent impairment of her right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² 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 adopted the American Medical Association's, *Guides to the Evaluation of Permanent Impairment*³ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁴

¹ 5 U.S.C. § 8107.

² 20 C.F.R § 10.304.

³ A.M.A., *Guides* 4th ed. (1993).

⁴ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

In this case, appellant's attending physician, Dr. Raymond D. Drapkin, a Board-certified orthopedic surgeon, completed a note on July 10, 1998 and stated that appellant had reached maximum medical improvement. He stated that appellant had symptoms of numbness and loss of strength in her right hand. Appellant had positive Tinel's sign and Phalen's test. Dr. Drapkin stated that he could not compare grip as appellant also had carpal tunnel syndrome on the left. He found that as a result of the injury to her carpal tunnel she had 20 percent impairment in accordance with Table 16 of the A.M.A., *Guides*. Dr. Drapkin stated that appellant's weakness was a 15 percent impairment in accordance with Tables 32 and 34 of the A.M.A., *Guides* for a total impairment rating of 35 percent. He repeated these findings on August 7 and September 11, 1998. Dr. Drapkin stated that appellant had sensory changes with diminished sensation in the median nerve distribution in the thumb, index and long fingers. He stated that she had numbness and pain.

The Office referred the medical evidence to the Office medical adviser for correlation with the A.M.A., *Guides*. On October 13, 1998 the Office medical adviser stated that appellant had 10 percent permanent impairment due to mild residuals of median nerve entrapment in accordance with Table 16 of the A.M.A., *Guides*.

Table 16 of the A.M.A., *Guides* provides that ulnar nerve entrapment at the wrist is 10 percent impairment due to mild upper extremity impairment and 30 percent impairment due to moderate upper extremity impairment.⁵ Dr. Drapkin opined that appellant had between a mild and moderate impairment rating of 20 percent. In support of his conclusion he noted appellant had sensory changes with diminished sensation in the median nerve distribution in the thumb, index and long fingers as well as pain. The Office medical adviser did not offer any reasoning for his conclusion that appellant's ulnar nerve entrapment was only a mild impairment rather than the slightly higher impairment rating offered by Dr. Drapkin. Therefore, the Board finds that the weight of the medical opinion evidence rests with Dr. Drapkin's evaluation of appellant's ulnar nerve entrapment.

The Board further notes that the A.M.A., *Guides* provide that if a physician utilizes Table 16 to determine the upper extremity impairment he or she should not also utilize the tables regarding loss of grip strength.⁶ Therefore, in accordance with the A.M.A., *Guides* and the weight of the medical opinion evidence, appellant has no more than 20 percent permanent impairment of her right upper extremity.

The September 11, 1998 of the Office of Workers' Compensation Programs is hereby affirmed as modified finding that appellant has 20 percent permanent impairment of her right upper extremity.

Dated, Washington, D.C.

August 17, 2000

⁵ A.M.A., *Guides*, 57, Table 16.

⁶ A.M.A., *Guides*, 56-57.

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member