

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALDINE SILERTO and U.S. POSTAL SERVICE,  
POST OFFICE, Jersey City, NJ

*Docket No. 99-2051; Submitted on the Record;  
Issued August 29, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has any permanent impairment of her upper extremities for which she is entitled to a schedule award.

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

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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*, 4<sup>th</sup> ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> 5 U.S.C. § 8107(a).

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

In this case, the Office accepted that appellant, a 45-year-old mailhandler, developed both left shoulder bursitis and bilateral carpal tunnel syndrome in the performance of duty.<sup>6</sup> Appellant underwent authorized carpal tunnel release surgery on her left hand on April 19, 1995, and on her right hand on July 25, 1995. On May 9, 1996 appellant filed a claim for a schedule award for her bilateral carpal tunnel syndrome. In a decision dated April 4, 1997, the Office denied appellant's claim on the grounds that the medical evidence of record established that appellant had not yet reached maximum medical improvement. Appellant requested an oral hearing. In a decision dated September 25, 1997, an Office hearing representative found the case not in posture for a decision, and remanded the case with instructions to refer appellant for a second opinion evaluation. Following review of the second opinion physician's report, and referral to an Office medical examiner, by decision dated January 27, 1998, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence of record failed to establish any ratable permanent impairment as a result of the accepted conditions. Appellant requested an oral hearing, which was held on October 26, 1998. In a decision dated February 11, 1999, an Office hearing representative denied appellant's claim for a schedule award.

In support of her claim for a schedule award, appellant submitted medical reports from Dr. William Oppenheim, a Board-certified orthopedic surgeon and treating physician. In his October 5, 1995 report, Dr. Oppenheim noted that appellant had undergone bilateral carpal tunnel release surgery, but had not achieved an optimal result, and still suffered from pain and decreased strength. Dr. Oppenheim recommended that appellant undergo at least six weeks of occupational therapy. In his March 15, 1996 report, Dr. Oppenheim noted that the recommended occupational therapy had produced no significant benefit, and that the only remaining options available to appellant were injections or additional surgery, which appellant declined to undergo. Appellant also submitted a report dated February 28, 1996 from Dr. David Weiss, an osteopath from whom appellant sought a second opinion for the purpose of obtaining the necessary information to support her claim for a schedule award.<sup>7</sup> In his report, Dr. Weiss noted appellant's complaints of continued pain, burning sensation and pins and needles sensation bilaterally, and her assertion that she continued to experience difficulty performing some of the activities of daily living, especially those requiring grip strength. Dr. Weiss further noted that there was tenderness over the palmar aspect bilaterally, with positive Tinel's and Phalen's sign bilaterally and positive carpal compression on the left. Range of motion testing revealed dorsiflexion to 75 degrees bilaterally, palmar flexion to 75 degrees bilaterally, radial deviation of 20 degrees bilaterally, with pain, and ulnar deviation of 35 degrees bilaterally. Grip strength, measured using the Jamar Hand Dynamometer, was reported as decreased at 10 kilograms of force strength bilaterally. Appellant was noted to be right hand dominant. Dr. Weiss stated that appellant had reached maximum medical improvement and diagnosed cumulative trauma disorder, bilateral carpal tunnel syndrome, left greater than right, and status post bilateral carpal tunnel syndrome release. Dr. Weiss concluded that, correlating his findings with Tables 32 and 34 on page 65 of the fourth edition of the A.M.A., *Guides*, appellant's bilateral diminished grip strength equated to a 20 percent permanent impairment of each upper extremity.

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<sup>6</sup> Appellant's separate claim for left shoulder bursitis was doubled with the instant claim.

<sup>7</sup> Dr. Oppenheim notified the Office that he did not perform permanent partial impairment ratings.

On October 23, 1997 the Office referred appellant to Dr. Jeffrey H. Charen, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Charen examined appellant and performed nerve conduction testing, noting that appellant had full range of motion of the hands and wrists, with slight weakness on resisted palmar abduction of the thumb, and moderate weakness on abduction of the left little finger. In his report dated December 5, 1997, Dr. Charen discussed the results of his evaluation, noting that appellant had reached maximum medical improvement and that she had “persistent disability in both her hands related to carpal tunnel syndrome.” He noted that this could possibly be improved by repeat carpal tunnel release surgery, but that appellant did not want this surgery performed. In response to an inquiry from the Office, Dr. Charen submitted a supplemental report in which he stated that appellant’s “wrist range of motion was normal with flexion and extension of the wrists being approximately 60 degrees of flexion and extension bilaterally.” Dr. Charen’s reports do not contain any discussion of appellant’s grip strength.

In a memorandum dated January 26, 1998, an Office medical adviser, having reviewed Dr. Charen’s reports at the Office’s request, stated that 60 degrees of flexion and extension bilaterally equated to a 0 percent permanent impairment of each upper extremity.

Section 8123 of the Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>8</sup>

The Board finds that there is a conflict in medical opinion between appellant’s physician and the Office medical examiner. Dr. Weiss opined that appellant had a 20 percent impairment of each upper extremity due to decreased grip strength, pursuant to the A.M.A., *Guides*, while the Office medical adviser opined that appellant has a zero percent permanent impairment of her upper extremities. Therefore, this case must be remanded for further development of the medical evidence. Upon remand, the Office shall refer appellant to an impartial medical specialist to resolve whether appellant has any permanent impairment of her upper extremities, pursuant to the A.M.A., *Guides*, for which she is entitled to receive a schedule award. After such further development, as is necessary, the Office shall issue a *de novo* decision.

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<sup>8</sup> Shirley L. Steib, 46 ECAB 309 (1994).

The decision of the Office of Workers' Compensation Programs dated February 11, 1999 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.  
August 29, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member