

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY DIANE MONTGOMERY and DEPARTMENT OF THE AIR
FORCE, TINKER AIR FORCE BASE, OK

*Docket No. 99-1063; Submitted on the Record;
Issued May 23, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to more than a six percent permanent impairment for the loss of use of both upper extremities, for which she has already received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant is not entitled to more than a six percent permanent impairment for the loss of use of both upper extremities, for which she has already received a schedule award.

On November 14, 1994 appellant, then a 35-year-old jet engine mechanic, filed a traumatic injury claim (Form CA-1) alleging that on November 7, 1994 she pulled her neck and upper back muscles while in the performance of duty. Appellant stopped work on November 7, 1994 and returned to work on November 14, 1994.

The Office of Workers' Compensation Programs accepted appellant's claim for a cervical strain.

On August 14, 1995 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on August 2, 1995. Appellant stopped work on August 3, 1995.

In a December 26, 1995 decision, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to the November 7, 1994 employment injury. In a January 8, 1996 letter, appellant requested an oral hearing before an Office hearing representative accompanied by medical evidence.

In an August 6, 1996 decision, the hearing representative reversed the Office's decision.

By letter dated August 27, 1996, the Office further accepted appellant's claim for cervical disc displacement.

On March 18, 1997 appellant filed a claim (Form CA-7) for a schedule award accompanied by a March 14, 1997 medical report of Dr. Stephen Cagle, a Board-certified neurosurgeon and appellant's treating physician, finding that she had a 12½ percent impairment of the whole body.

By letter dated April 8, 1997, the Office advised Dr. Cagle to determine, *inter alia*, the extent of impairment of appellant's upper extremities which may have been caused by the employment injury based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In response to the Office's letter, Dr. Cagle submitted a June 3, 1997 medical report finding that appellant had an additional six percent impairment of the whole person.

On November 5, 1997 an Office medical adviser reviewed appellant's medical records and a statement of accepted facts and determined that appellant had a six percent permanent impairment of both upper extremities.

On January 2, 1998 the Office granted appellant a schedule award for a six percent permanent impairment for the loss of use of both upper extremities for the period June 3 through October 12, 1997.¹

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation,³ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁴ 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 under the law for 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

¹ The Board notes that subsequent to the Office's January 2, 1998 decision granting appellant a schedule award for a six percent loss of use of both upper extremities, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1).

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.304.

⁴ 5 U.S.C. § 8107(c)(19).

A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵

In support of her claim for a schedule award, appellant submitted Dr. Cagle's March 14, 1997 medical report. In this report, he noted appellant's complaints of neck and back pain, and his findings on physical and objective examination. Dr. Cagle stated that he did not have a lot to add to his previous letter dated December 20, 1995.⁶ He opined that he thought appellant's 12½ percent impairment of the whole body was current. Dr. Cagle failed to indicate which table of the fourth edition of the A.M.A., *Guides* he utilized to determine that appellant had a 12½ percent impairment. Inasmuch as Dr. Cagle's 12½ percent whole body impairment rating was not fully explained, it is entitled to little weight. Further, a schedule award under the Act is not payable for the body as a whole. Rather, schedule awards are payable for loss of use of those parts of the body which are specifically enumerated in the Act and its implementing regulations.⁷

In a June 3, 1997 supplemental medical report submitted in response to the Office's April 8, 1997 letter, Dr. Cagle noted appellant's medical treatment for her cervical disc condition, work status and physical restrictions. He again noted his previous impairment rating of 12½ percent of the whole body. Dr. Cagle stated that, in addition, appellant had C5-6 deficit of sensation and pain bilaterally. He determined that appellant had a six percent impairment of the whole person based on Table 13, page 51. He stated that this rating was in addition to his previous impairment rating of 12½ percent. Dr. Cagle concluded that appellant had reached maximum medical improvement at that time.

An Office medical adviser reviewed appellant's medical records, including Dr. Cagle's March 14 and June 3, 1997 medical reports and determined that appellant had a six percent impairment of both upper extremities. Regarding appellant's right upper extremity, the Office medical adviser determined that for sensory deficit and pain at C-5, appellant had a five percent impairment based on Table 13, page 51 of the fourth edition of the A.M.A., *Guides*. Based on Table 11, page 48, the Office medical adviser classified appellant's sensory deficit and pain as Grade 3 which resulted in a 60 percent sensory deficit. The Office medical adviser multiplied 5 percent by 60 percent totaling a 3 percent impairment. Regarding appellant's left upper extremity, the Office medical adviser calculated the same figures for appellant's sensory deficit and pain, and utilized the same tables as he used to calculate an impairment rating for appellant's right upper extremity to determine that appellant had a three percent impairment. The Office medical adviser noted that Dr. Cagle had included an impairment of the cervical spine and correctly stated that the Office's regulations provide schedule awards for certain members of the body and that the spine was not a listed schedule member. He concluded that no impairment was recommended for the spine.

⁵ See *James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ In a December 20, 1995 letter, Dr. Cagle found that appellant had a 12½ percent impairment of the whole body based on the fourth edition of the A.M.A., *Guides*.

⁷ See *Jerry E. Mills*, 47 ECAB 309 (1996).

Inasmuch as the Office medical adviser properly applied the fourth edition of the A.M.A., *Guides*, the medical evidence of record does not support a finding that appellant is entitled to an additional schedule award at this time.

The January 2, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 23, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member