

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN L. SMULLIN and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, WA

*Docket No. 99-2272; Submitted on the Record;
Issued September 26, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

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

The Office of Workers' Compensation Programs accepted that on May 11, 1998 appellant, then a 42-year-old letter carrier, sustained cervical and right shoulder strains. Thereafter the Office accepted that on July 9, 1998 appellant developed bilateral carpal tunnel syndrome, right greater than left, for which she subsequently underwent a right carpal tunnel release.

The two case records were combined and appellant was referred, together with a statement of accepted facts, questions to be addressed, and the complete case record, for a second opinion evaluation to determine her entitlement to a schedule award.

By report dated April 13, 1999, Dr. William S.T. Mayhall, a Board-certified orthopedic hand surgeon, reviewed appellant's factual and medical history, including her September 18, 1998 right carpal tunnel release, and her current symptoms, recorded his physical examination findings and results, including shoulder and wrist ranges of motion and motor strength testing,¹ and opined as follows:

“[A]ccording to the A[merican] M[edical] A[ssociation], *Guides to the Evaluation of Permanent Impairment*, Fourth Edition ... [o]f significance i[s] the lack of motor strength in the thenar musculature. In my opinion it would be

¹ Abnormal findings were noted as including shoulder flexion of 160/180 degrees, internal rotation of 65/70 degrees, adduction of 42/45 degrees, wrist extension of 55/60 degrees, radial deviation of 10/15 degrees, ulnar deviation of 25/30 degrees, thenar muscle strength of 4/5 bilaterally without gross atrophy and local right wrist tenderness to the Phalen's test.

appropriate to rate [appellant] on the basis of that. The median nerve (motor) below the mid-forearm is 10 percent. She has a 4/5 power, thus she has a 2.5 percent loss in regard to the right median motor. This rounds to the nearest even integer to 2 percent. On the left she has a similar finding in her unoperated carpal tunnel syndrome and she will receive a similar finding on both sides. Thus, she has a 2 percent impairment of the right upper extremity in regard to her carpal tunnel syndrome and a 2 percent impairment in regard to her left carpal tunnel syndrome.

“In regard to her cervical condition, there are no objective cervical spine residuals. In regard to her shoulder condition, she has a mild loss of shoulder abduction. According to Figure 41, page 344, she receives a 1 percent upper extremity loss, due to loss of abduction. She received a 1 percent loss in regard to her internal rotation from Figure 44, page 344, thus, overall she would receive a 2 percent loss in regard to the shoulder on the right.

“Combining the 2 percent for the right shoulder and 2 percent for the right carpal tunnel syndrome, she has a 4 percent impairment to the right upper extremity. There is a 2 percent impairment to the left upper extremity.”

On May 17, 1999 the Office referred appellant's record and Dr. Mayhall's report to an Office medical adviser, Dr. Sandblom, for a determination of her bilateral permanent impairment.

Dr. Sandblom reviewed appellant's records and Dr. Mayhall's report and opined:

“Dr. Mayhall has based his rating of bilateral carpal tunnel syndrome on reduced strength of 4/5 thenar muscles bilaterally. He has found normal sensation. Therefore, from Table 12, page 49, he has determined there would be 25 percent motor impairment of both median nerves at the wrist, and from Table 15, page 54, this equates to a 2.5 percent impairment [of] each upper extremity. He has rounded this down to 2 percent right and 2 percent left upper extremities. This would be appropriate from his rating strategy, since 4/5 strength actually encompasses 1-25 percent motor deficit and therefore 0.1 to 2.5 percent impairment of the upper extremity for median nerve below the mid forearm. I would accept this rating from the information we have. Dr. Mayhall also finds an impairment rating for loss of range of motion of the right shoulder, 1 percent for reduced abduction (flexion 160 degrees), and 1 percent for reduced internal rotation (65 degrees).... If the shoulder strain is accepted as a permanent work-related condition, the overall impairment of the right upper extremity would be 4 percent. Date of maximal improvement would be April 13, 1999.”

On May 24, 1999 appellant filed a claim for recurrence of disability commencing May 22, 1999. As no formal final decision has been rendered on this claim by the Office, it is not now before the Board on this appeal.²

By decision dated June 17, 1999, the Office granted appellant a schedule award for a 4 percent permanent impairment of her right upper extremity and a 2 percent permanent impairment of her left upper extremity for the period April 13 to August 22, 1999 for a total of 18.72 weeks of compensation.³

The Board finds that appellant has no greater than a four percent permanent impairment of her right upper extremity and a two percent permanent impairment of her left upper extremity, for which she has received schedule awards.

A claimant seeking compensation under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.⁵ Under section 8107 of the Act⁶ and section 10.404 of the implementing federal regulations,⁷ schedule awards are payable for the permanent impairment of specified body members, function or organs.⁸ 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 to the Evaluation of Permanent Impairment* as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁹

In the instant case, the second opinion specialist, Dr. Mayhall, in an extensive, detailed and well-rationalized report based on a complete and accurate factual and medical history,

² See 20 C.F.R. § 501.2(c).

³ Although the Office referred to the impairment awards as being for the "arms," the Board notes that these impairment ratings were actually reported by both physicians in terms of "upper extremity" impairment, inclusive of appellant's right shoulder, and not just limited to appellant's arms. The Board further notes, in response to appellant's arguments on appeal, that, although the Office noted in its formal award decision that the award was for a period of 78.72 weeks of compensation, this was a typographical error, as the supporting material containing the calculations of the impairment award clearly indicate that the award was for a period of 18.72 weeks only, as indicated by the period April 13 to August 22, 1999.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (April 1, 1999).

⁸ 5 U.S.C. § 8107(a). It is thus the claimant's burden of establishing that she sustained a permanent impairment of a scheduled member or function as a result of her employment injury; see *Raymond E. Gwynn*, 35 ECAB 247 (1983) (addressing schedule awards for members of the body that sustained an employment-related permanent impairment); *Philip N.G. Barr*, 33 ECAB 948 (1982) (indicating that the Act provides that a schedule award be payable for a permanent impairment resulting from an employment injury).

⁹ See, e.g., *Francis John Kilcoyne*, 38 ECAB 168 (1987).

properly applied and utilized the A.M.A., *Guides* and determined that appellant, based upon his examination and testing results, had a four percent permanent impairment of her right upper extremity and a two percent permanent impairment of her left upper extremity, causally related to her accepted employment-related conditions.

Thereafter, an Office medical adviser, Dr. Sandblom, reviewed Dr. Mayhall's extensive report and conclusions and he agreed with Dr. Mayhall's impairment determinations, explaining in even greater detail how the impairment ratings were determined, and why Dr. Mayhall's determination method was appropriate to appellant's impairments. Citing to the applicable sections of the A.M.A., *Guides*, Dr. Sandblom concurred with the ratings of a four percent permanent impairment of her right upper extremity and a two percent permanent impairment of her left upper extremity.

As no other probative medical evidence was submitted to the record which supported any greater degree of permanent impairment, appellant has not established her entitlement to any greater schedule award.¹⁰

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 17, 1999 is hereby affirmed.

Dated, Washington, DC
September 26, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹⁰ Following the issuance of the June 17, 1999 decision, the Office received further medical evidence from appellant. As this evidence was not before the Office at the time of its most recent merit decision, it is not now before the Board on this appeal; see 20 C.F.R. § 501.2(c).