

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of FRED M. ROMSTEADT and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 00-1044; Submitted on the Record;
Issued March 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 10 percent permanent impairment of each arm, for which he received schedule awards.

On May 6, 1996 appellant, then a 48-year-old machinist, filed a claim for occupational disease alleging work-related numbness in both hands. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome. Appellant filed a claim for a schedule award on September 15, 1998.

In a medical report dated April 27, 1998, Dr. Scott M. Fried, appellant's treating physician and Board-certified in neurology, stated that appellant was greatly improved and had related occasional left-hand numbness. Dr. Fried also noted that other carpal tunnel diagnostic tests, including Tinel's and Phalen's signs, were negative. He noted a mildly positive Tinel's sign at the left elbow and stated that appellant had a positive electromyography (EMG) test for "bilateral cubital tunnel, low level."

On November 16, 1998 an Office medical adviser determined, after reviewing appellant's medical records, including Dr. Fried's April 27, 1998 report, and a statement of accepted facts and applying the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), that appellant had a 10 percent impairment of the left hand and 0 percent impairment of the right wrist or hand.¹

On December 3, 1998 the Office granted appellant a schedule award running from April 27 to December 1, 1998.²

¹ A.M.A., *Guides*, 57, Table 16.

² The Office did not indicate whether the award was for either upper extremity, carpal tunnel syndrome or either hand or wrist. Nor did the Office indicate the degree and nature of the permanent disability.

By letter dated December 7, 1998, appellant requested an oral hearing.

At the May 26, 1999 oral hearing, the hearing representative stated that the issues were whether appellant was entitled to more than a 10 percent impairment of the left arm and whether he was entitled to any impairment for the right arm. The hearing representative noted that because the Office, in its earlier decision, “failed to give any sort of discussion or rationale or reasoning whatsoever,” he was “doing an initial adjudication of the case.”

Submitted at the hearing was a medical report dated July 16, 1998 from Dr. David Weiss, an osteopath, who indicated a familiarity with appellant’s history of injury and provided findings. Dr. Weiss noted appellant’s subjective complaints of “pins and needles sensation in both hands on a daily basis,” numbness in the left hand, bilateral wrist pain and stiffness and preexisting neck pain.” Upon examination of appellant’s left wrist and hand, he found thenar atrophy, positive Tinel’s sign at the cubital tunnel and negative at Guyon’s canal, a negative Phalen’s sign and a negative carpal compression test. Range of motion tests “were carried through with pain.”

Upon examination of appellant’s right wrist and hand, Dr. Weiss found thenar atrophy, less than the left hand, positive Tinel’s sign in the cubital tunnel and negative at Guyon’s canal. He also noted a negative Phalen’s sign and a negative carpal compression test. Grip strength testing performed via Jamar Hand Dynamometer revealed 50 kilograms of force strength in the right hand versus 50 kilograms of force strength in the left hand. Dr. Weiss also noted impairment ratings for appellant’s ulnar nerves, right and left elbows.

Dr. Weiss diagnosed appellant with bilateral carpal tunnel syndrome as well as cumulative and repetitive trauma disorder and a preexisting degenerative disc disease. Dr. Weiss found a 30 percent impairment for entrapment of the left median nerve at the wrist, 10 percent impairment for the left ulnar nerve at the elbow and a 37 percent impairment for the left upper extremity. He also found a 20 percent impairment for entrapment of the right median nerve at the wrist, a 10 percent impairment for the right ulnar nerve at the elbow and a 28 percent impairment for the right upper extremity.

In a report dated April 26, 1999, Dr. Fried noted that appellant related occasional tingling in his left hand. He found negative Tinel’s signs at elbows, wrists and forearms, and essentially a negative Phalen’s sign. Dr. Fried noted mild tenderness on the right wrist. He stated that appellant had bilateral median neuropathy wrist secondary to work activities, with severe EMG test positively, right side greater than left, EMG test positive bilateral cubital tunnel, low level.

In a report dated August 13, 1999, an Office medical adviser and Board-certified orthopedic and hand surgeon, applied the A.M.A., *Guides*, (4th ed. 1993) to the electrodiagnostic studies dated July 22, 1996, Dr. Weiss’ July 16, 1998 report, Dr. Fried’s April 26, 1999 report and additional medical records and found that appellant had a 10 percent impairment to each upper extremity.

In a decision dated and finalized on September 27, 1999, the hearing representative affirmed the Office's decision awarding appellant a 10 percent impairment of the left upper extremity and also awarded appellant a 10 percent impairment of the right upper extremity.³

On October 18, 1999 the Office awarded appellant a 10 percent impairment for his right upper extremity.

The Board finds that appellant is entitled to no more than 10 percent impairment of the left upper extremity for which he had received an impairment award, and no more than a 10 percent impairment for the right upper extremity.

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 Office has adopted and the Board has approved, of the use of the A.M.A., *Guides*⁶ as an appropriate standard for evaluating schedule losses.⁷

If appellant's physician does not use the A.M.A., *Guides* to calculate the degree of permanent impairment, it is proper for an Office medical adviser to review the case record and to apply the A.M.A., *Guides* to the examination findings reported by the treating physician.⁸ Dr. Fried had submitted a number of reports to the record, documenting appellant's improvement following the surgical procedures. Dr. Fried, however, did not use the A.M.A., *Guides* to evaluate appellant's impairment. The Office medical adviser applied the A.M.A., *Guides* to Dr. Fried's findings. Thereafter Dr. Weiss submitted a report to the record.

Dr. Weiss evaluated appellant's left median nerve at 30 percent impairment which the A.M.A., *Guides* rate as severe.⁹ However, the electrodiagnostic study of July 22, 1996 and medical reports from Dr. Fried do not support a severe diagnosis and thus Dr. Weiss' evaluation has limited probative value because he did not properly utilize the *Guides* to support his

³ The Board notes that the hearing representative stated that Dr. Weiss in his July 16, 1998 report found positive Tinel's signs in appellant's hands. However, Dr. Weiss found Tinel's sign at the cubital tunnels.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.304.

⁶ A.M.A., *Guides* (4th ed. 1993).

⁷ *Andrew Aaron, Jr.*, 48 ECAB 141 (1996).

⁸ *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

⁹ A.M.A., *Guides*, 57, Table 16.

evaluation. For example, April 27, 1998, Dr. Fried noted negative Tinel's Sign and negative Phalen's Sign for carpal tunnel syndrome in appellant's left wrist. Further, in his April 26, 1999, report, Dr. Fried again noted negative left hand Tinel's Sign and essentially negative Phalen's Sign. In addition, Dr. Weiss did not explain how the clinical findings supported a severe degree of impairment.¹⁰

With respect to the right wrist, Dr. Weiss noted a 20 percent disability rating which would be a moderate carpal tunnel syndrome finding. However, this finding is not supported by credible medical evidence in the record. For example, in his April 26, 1999 report, Dr. Fried stated that appellant had a negative Tinel's Sign and an essentially negative Phalen's Sign in the right wrist, and that an examination revealed a mild tenderness and a mildly positive Shuck test but was otherwise normal. Further, the Office medical adviser reviewed the July 22, 1996 electromyography test (EMG) studies as well as the medical reports from Dr. Fried, and properly noted that Table 16 of the A.M.A., *Guides* provided a permanent impairment value for mild median nerve entrapment neuropathy at the wrist of 10 percent.¹¹

The Office medical adviser properly calculated appellant's right and left upper extremity impairments pursuant to the A.M.A., *Guides*, based upon Dr. Fried's reports, finding that the medical evidence supported a finding of mild bilateral carpal tunnel syndrome. The medical evidence of record is not sufficiently detailed to establish that appellant has more than a 10 percent permanent impairment of either upper extremity. The Office therefore properly granted appellant a schedule award for a 10 percent permanent impairment of the left and right upper extremities.

The Board notes that there is evidence of record that appellant also has an impairment of the elbows. The record does not sufficiently establish that appellant's elbow conditions preexisted appellant's carpal tunnel injury to the wrists, or that the elbow impairments are causally related to the accepted carpal tunnel conditions.

¹⁰ See *Connie Johns*, 44 ECAB 560, 569 (1993).

¹¹ *Id.* .

The October 18 and September 27, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 5, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member