U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. GARNETT and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

Docket No. 00-1783; Submitted on the Record;
Issued April 22, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a 20 percent impairment of the left upper extremity, for which he received a schedule award.

The Board has duly reviewed the case record and appellant's contentions on appeal and concludes that appellant has no greater than a 20 percent impairment of the left upper extremity.

The schedule award provisions of the Federal Employees' Compensation Act[1] and its implementing regulation[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[3]

On June 25, 1984 appellant, then a 36-year-old mailhandler, sustained employment-related cervical, thoracic and low back strains. He stopped work that day and returned on July 19, 1984. Appellant subsequently sustained a number of recurrences of disability. On August 23, 1989 he filed a claim for a schedule award and submitted a report in support thereof from Dr. Richard Cazen, an internist.[4] In a decision dated July 23, 1990, appellant was granted a

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] A.M.A., *Guides* (5th ed. 2001).

[4] Dr. Cazen diagnosed possible right carpal tunnel syndrome and C6-7 and C7-T1 nerve impingement with physical findings suggestive of median nerve involvement.

schedule award for a 27 percent impairment of the right hand, for a total of 84.24 weeks of compensation, to run from June 1, 1989 to January 11, 1991.[5] The Office based its decision on a February 22, 1990 opinion of an Office medical adviser who applied the standards of the A.M.A., *Guides* to Dr. Cazen's findings of median nerve dysfunction.[6]

On July 23, 1993 appellant filed an occupational disease claim, alleging that factors of employment caused pains in his wrists, arms and neck. On December 9, 1993 the Office accepted that he sustained employment-related bilateral carpal tunnel syndrome.[7] In January and July 1994 appellant underwent carpal tunnel release on the right and left respectively. On August 11, 1995 he filed a schedule award claim. By decision dated December 17, 1998, the Office determined that appellant was entitled to an additional 15 percent disability for permanent impairment of the right arm and a 20 percent permanent impairment of the left arm but, as he was receiving temporary total disability, he was not entitled to a schedule award at that time.

In a decision dated September 29, 1998, appellant was granted a schedule award for a 20 percent loss of use of the left arm, for a total of 62.4 weeks of compensation, to run from September 13, 1998 to November 23, 1999. On February 24, 1999 appellant returned to a restricted duty position. In a decision dated March 31, 1999, appellant was granted a schedule award for an additional 15 percent impairment of the right arm, for a total of 46.8 weeks of compensation, to run from February 28, 1999 to January 21, 2000. In a decision dated February 1, 2000, appellant was granted a schedule award for the remaining 54.40 weeks for the 20 percent loss of use of the left arm. The decision indicated that he had been previously paid for 56 days, from September 13 to November 7, 1998. The award granted on February 1, 2000 was to run from January 22, 2000 to February 6, 2001.[8] The instant appeal follows.

On appeal, appellant contends that, as his physician advised that he had an equal impairment of both upper extremities, he is entitled to an additional schedule award for his left upper extremity.

The relevant medical evidence includes[9] a February 23, 1998 report in which Dr. Gregory M. Buncke, who is Board-certified in plastic and hand surgery, advised that appellant had a permanent partial impairment of the upper extremities as a result of his employment-related condition. Dr. Buncke noted findings on examination of bilateral decreased

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[5] The initial award contained a typographical error indicating that the award was to run from June 1, 1989 to April 7, 1990. This was subsequently corrected by the Office of Workers' Compensation Programs to indicate that the schedule award was to end on January 11, 1991.

[6] At the time of the July 23, 1990 schedule award, the Office utilized the A.M.A., *Guides* (3rd ed. 1988).

[7] The record indicates that the Office adjudicated appellant's 1984 claim under file number 13-0739993 and his 1993 claim under file number 13-1023352. The claims have apparently been doubled. The record also indicates that on May 14, 1999 appellant sustained an employment-related neck strain, adjudicated by the Office under file number 13-1198214.

[8] Appellant elected to receive the March 31, 1999 and February 1, 2000 schedule awards as lump sums.

[9] The record also includes medical reports that date prior to appellant's carpal tunnel release surgery. They are, therefore, not relevant to an impairment rating for his upper extremities subsequent to the surgery.

grip strength, decreased sensation in the median nerve distribution, and decreased range of motion of the metacarpophalangeal joint of the thumb. He then provided measurements for dorsiflexion of 45 degrees bilaterally, palmar flexion of 55 degrees on the left and 60 degrees on the right, radial deviation of 20 degrees on the left and 10 degrees on the right and ulnar deviation of 45 degrees bilaterally. Dr. Buncke further opined that appellant had no additional factors of disability and had attained maximum medical improvement in July 1995.

By report dated June 19, 1998, an Office medical adviser reviewed Dr. Buncke's findings and determined that under Table 16 of the A.M.A., *Guides*[10] appellant demonstrated a moderate degree of impairment due to entrapment neuropathy of the median nerve, which totaled 20 percent in each upper extremity. He determined that appellant reached maximum medical improvement on July 31, 1995 and further advised that appellant had received a schedule award in the past for a 27 percent impairment of the right upper extremity based on a cervical condition. He therefore utilized the Combined Values Chart,[11] and found that appellant's total impairment of the right upper extremity equaled 40 percent. Appellant was therefore entitled to an additional 15 percent for the right upper extremity.

In this case, the Board finds that Dr. Buncke, as supported by the Office medical adviser, properly determined that appellant had a 20 percent bilateral upper extremity impairment. While appellant received a 27 percent schedule award for his right upper extremity in 1990, this was based on findings of cervical impingement. The Office subsequently accepted that he sustained employment-related bilateral carpal tunnel syndrome for which he underwent surgical release. Dr. Buncke then evaluated his degree of impairment. Office procedures provide that if a claimant sustains an increased impairment subsequent to receiving a schedule award, which is due to work-related factors, an additional award will be payable if supported by the medical evidence. In such case, the original award is undisturbed and the new award has its own date of maximum medical improvement, percent and period of award.[12]

The A.M.A., *Guides* provide that there are two ways to determine permanent partial impairment from median nerve entrapment at the wrist but that only one method is to be used.[13] The first method involves determination of sensory deficit and motor deficit. This method involves measuring sensory and motor deficits and using the appropriate tables to determine a permanent partial impairment. The second method is to use Table 16 on page 57 to estimate the permanent partial impairment due to the severity of involvement at each nerve entrapment site. In this case, the Office medical adviser reviewed Dr. Buncke's findings and permissibly utilized Table 16 of the A.M.A., *Guides* and determined that appellant demonstrated a moderate degree of impairment due to entrapment neuropathy of the median nerve, which totaled 20 percent in

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[10] A.M.A., *Guides, supra* note 3 at 57.

[11] A.M.A., *Guides, supra* note 3 at 322-24. The A.M.A., *Guides* note that the method for combining impairments is based on the idea that a second or succeeding impairment should apply not to the whole, but only to the part that remains after the first impairments have been applied.

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Payment of Schedule Awards*, Chapter 2808.7(b)(2) (March 1995); *see Paul R. Reedy*, 45 ECAB 488 (1994).

[13] A.M.A., *Guides, supra* note 3 at 56.

each extremity. Appellant's 1990 schedule award for the right upper extremity was granted for his accepted cervical condition. The 1998, 1999 and 2000 awards were granted for his bilateral carpal tunnel syndrome.[14] Appellant, therefore, failed to establish that he is entitled to more than the 20 percent impairment of the left upper extremity, for which he received schedule awards.

The decision of the Office of Workers' Compensation Programs dated February 1, 2000 is hereby affirmed.

Dated, Washington, DC
April 22, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] Regarding grip strength measurements, the Board notes that the A.M.A., *Guides* specifically advise that these are influenced by subjective factors and, as such, the A.M.A., *Guides* does not assign a large role to such measurements. A.M.A., *Guides*, *supra* note 3 at 64.