

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN M. CURATOLA and U.S. POSTAL SERVICE,
POST OFFICE, Portland, ME

*Docket No. 01-1584; Submitted on the Record;
Issued February 14, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant has a greater than 13 percent impairment of both upper extremities (10 percent to the left upper extremity and 3 percent to the right upper extremity) for which she has received a schedule award.

On November 12, 1998 the Office of Workers' Compensation Programs accepted appellant's claim for right shoulder sprain sustained on September 2, 1998. On March 11, 1999 the Office accepted appellant's claim for right lateral epicondylitis and left shoulder strain sustained on December 29, 1998.

By decision dated May 16, 2000, the Office awarded appellant an increased two percent impairment for both upper extremities.

On January 18, 2001 appellant filed a claim for a schedule award. In an attached narrative, appellant stated that her impairment had increased.

By decision dated March 30, 2001, the Office awarded appellant a 13 percent impairment of both upper extremities (10 percent to the left upper extremity and 3 percent to the right upper extremity).

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulations² 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.³ However, neither the Act nor the regulations specify the manner in

¹ 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404.

³ 5 U.S.C. § 8107(c)(19).

which the percentage of impairment shall be determined.⁴ The method used in making such determinations rests in the sound discretion of the Office.⁵

For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted and the Board has approved the use of the appropriate edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.⁶

In support of her claim, appellant submitted a report dated January 2, 2001 from Dr. Vincent P. Herzog, an osteopath, who stated that he had examined appellant that day and reported findings. Dr. Herzog noted that appellant's complaints of pain in her neck and both shoulders and reported "bothersome paresthesias" especially at night in the right hand. He found that appellant's strength was 4 plus 5 at bilateral upper extremities without focal weakness, reflexes were 2 by 4 at upper extremities, there was a normal touch and pinprick throughout except for right medial distribution. Dr. Herzog also noted a markedly positive Tinel's sign and a positive Phalen's test at 10 seconds on the right. He further noted that impingement testing was markedly positive, right greater than left, that her right epicondyle was tender, that she had muscular tenderness and discomfort at bilateral flexor forearms and that her shoulder girdles had a severe trigger point phenomenon. Dr. Herzog found that her right upper extremity averaged flexion of 115 degrees, extension of 52 degrees, internal rotation of 50 degrees, external rotation of 80 degrees, adduction of 35 degrees and abduction of 135 degrees. On the left side he found flexion of 45 degrees, extension of 60 degrees, internal rotation of 50 degrees, external rotation of 80 degrees, adduction of 60 degrees and abduction of 145 degrees. Using the A.M.A., *Guides* (4th ed. 1993) right shoulder range of motion deficits equals 5 percent whole person impairment and left side equals 4 percent whole person impairment. Using the Combined Values Chart, Dr. Herzog found that appellant had a nine percent whole person impairment.⁷

In a report dated February 27, 2001, the Office medical adviser reviewed Dr. Herzog's report and used the A.M.A., *Guides* (5th ed. 2001) to rate her impairment. His findings were as follows:

"Using Table 16-40, page 476, for left shoulder flexion to 145 degrees, there is 3 percent impairment and for extension to 60 degrees, none. Using [F]igure 16-43, page 477, for abduction to 145 degrees, there is 2 percent impairment and for adduction to 60 degrees, none. Using [F]igure 16-46, page 479, for internal rotation to 50 degrees, there is 2 percent and for external rotation to 80 degrees,

⁴ A. George Lampo, 45 ECAB 441, 443 (1994).

⁵ George Williams, 44 ECAB 530 (1993).

⁶ Thomas J. Engelhart, 50 ECAB 319 (1999).

⁷ In a report January 18, 2001, Dr. Herzog assigned appellant a 10 percent permanent impairment based on her carpal tunnel syndrome as it related to her upper extremities. However, the Office did not accept this condition as work related.

none. These figures are added and result in 7 percent impairment of the left upper extremity due to abnormal motion.

“Using Table 61-15, page 492, the maximum left upper extremity impairment due to shoulder pain is 5 percent. Table 16-10, [G]rade 3, p. 482 allows 60 percent for pain which interferes with same activities. 60 percent of 5 percent results in 3 percent impairment of the left upper extremity due to shoulder pain.

“Using the Combined Values Chart p. 604, 7 percent impairment due to abnormal motion combined with 3 percent due to pain results in 10 percent impairment of the left upper extremity.

“Using Table 16-15, the maximum right upper extremity impairment due to elbow pain is 5 percent. Table 16-10, [G]rade 3 allows 60 percent for pain which interferes with activities. 60 percent of 5 percent results in 3 percent impairment of the right upper extremity. There is no additional impairment for abnormal motion.

“The date of maximum medical improvement for the right and left upper extremities is January 2000.”

In this case, appellant’s treating physician used the A.M.A., *Guides* (4th ed. 1993) to rate her bilateral upper extremities impairments. In this case, Dr. Herzog opined that appellant’s impairment rating based on her bilateral upper extremities was nine percent for the whole person. Whole person impairment ratings do not entitle claimants to a schedule award under the Act.⁸ However, the Office medical adviser properly relied on the A.M.A., *Guides* (5th ed. 2001) to review the case record to the examination findings reported by the treating physician.⁹

The Office medical adviser was the only physician of record who calculated properly appellant’s impairment pursuant to the A.M.A., *Guides*.¹⁰ The Office medical adviser properly noted that there was a 3 percent impairment for left shoulder based on flexion to 145 degrees, 0 percent based on 60 degrees of extension,¹¹ a 2 percent impairment based on 145 degrees of abduction, 0 percent impairment based on 60 degrees of adduction,¹² 2 percent based on

⁸ *Terry E. Mills*, 47 ECAB 309, 312 (1996) (finding that the Act does not provide for a schedule award for impairment to the body as a whole because that type of impairment is not specifically enumerated).

⁹ FECA Bulletin 01-05 (January 29, 2001) required use of the A.M.A., *Guides* (5th ed. 2001) in evaluating impairments in all medical evaluations performed on and after February 1, 2001; *see also Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

¹⁰ The Board notes that Dr. Herzog’s reliance of the 4th edition of the A.M.A., *Guides* was proper inasmuch as his report was dated January 2001. The 5th edition of the A.M.A., *Guides* was required on all evaluations performed on or after February 1, 2001. The date of the Office medical adviser’s evaluation was February 27, 2001.

¹¹ A.M.A., *Guides*, (5th ed. 2001) 476, Figure 40.

¹² *Id.* at 477, Figure 43.

50 degrees of internal rotation and 0 percent based on 80 degrees of external rotation.¹³ He then properly noted that those figures are added and result in a seven percent impairment of the left upper extremity due to abnormal motion. He then noted that the maximum left upper extremity impairment due to shoulder pain is 5 percent;¹⁴ he also classified appellant's pain at Grade 3 at 60 percent, which interferes with same activities.¹⁵ The physician then found that 60 percent of 5 percent results in 3 percent impairment of the left upper extremity due to shoulder pain.

Using the Combined Values Chart¹⁶ the Office medical adviser combined 7 percent impairment due to abnormal motion combined with 3 percent due to pain resulted in a 10 percent impairment of the left upper extremity.

Using Table 15, the maximum right upper extremity impairment due to elbow pain is 5 percent.¹⁷ He again classified appellant's pain at Grade 3 at 60 percent which interferes with same activities. 60 percent of 5 percent results in 3 percent impairment of the right upper extremity.

The Office medical adviser properly calculated appellant's right and left upper extremity impairments pursuant to the A.M.A., *Guides* and there is no medical evidence of record that appellant has more than a 13 percent impairment of both upper extremities (10 percent to the left upper extremity and 3 percent to the right upper extremity) for which she has received a schedule award.¹⁸

¹³ *Id.* at 479, Figure 46.

¹⁴ *Id.* at 492, Table 15.

¹⁵ *Id.* at 482, Table 10.

¹⁶ *Id.* at 604.

¹⁷ *Id.* at 492, Table 15.

¹⁸ The Board notes that Dr. Herzog evaluated appellant for an impairment rating of her carpal tunnel syndrome. However, that condition was not accepted by the Office.

The March 30, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 14, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member