

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GAIL BROWNE and U.S. POSTAL SERVICE,  
SUPPORT SERVICES OFFICE, Philadelphia, PA

*Docket No. 01-88; Submitted on the Record;  
Issued September 9, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant is entitled to more than a 20 percent permanent impairment of both the right and left upper extremities for which she received a schedule award.

The Board finds that appellant is not entitled to more than a 20 percent permanent impairment of both the right and left upper extremities for which she received a schedule award.

On June 3, 1992 appellant, then a 41-year-old contract technician, filed an occupational disease claim alleging that the aches and pain in her hands, wrists and arms were caused by factors of her federal employment.

The Office of Workers' Compensation Programs accepted appellant's claim for chronic tenosynovitis of both wrists and bilateral carpal tunnel syndrome. The Office authorized left carpal tunnel release on August 13, 1993 and right carpal tunnel release on April 9, 1998.

On January 4, 1998 appellant filed a claim for a schedule award.

The Office received the January 11, 1999 treatment notes of Dr. Donald F. Leatherwood, an orthopedic surgeon and appellant's treating physician, revealing that she had a 10 percent permanent impairment of the right upper extremity.

On January 26, 1999 an Office medical adviser reviewed Dr. Leatherwood's treatment notes and stated that he did not mention the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The Office medical adviser concurred with Dr. Leatherwood's finding that appellant had a 10 percent permanent impairment of the right upper extremity based on Table 16, page 3/57 of the fourth edition of the A.M.A., *Guides*. The Office medical adviser stated that appellant reached maximum medical improvement on January 9, 1999.

By decision dated February 26, 1999, the Office granted appellant a schedule award for a 10 percent permanent impairment of the right upper extremity due to mild entrapment neuropathy following carpal tunnel release.

The Office received a June 9, 1999 letter from appellant's counsel contending that she was entitled to a schedule award for a 40 percent permanent impairment of the left upper extremity based on the finding of Dr. Michael Helzner, an orthopedic surgeon and appellant's treating physician. Appellant's counsel also contended that the Office failed to grant a schedule award for her left upper extremity. In a July 7, 1999 response letter, the Office explained why appellant was granted a schedule award for a 10 percent permanent impairment of the right upper extremity. Further, the Office recommended that she submit a claim for a schedule award for her left upper extremity.

In a September 3, 1999 letter, appellant requested reconsideration of the Office's February 26, 1999 decision. She also requested a schedule award for her left upper extremity. Appellant's request was accompanied by a July 7, 1999 report from Dr. David Weiss, a Board-certified orthopedic surgeon, finding that she had a 20 percent permanent impairment of the right upper extremity and a 39 percent permanent impairment of the left upper extremity based on the fourth edition of the A.M.A., *Guides*.

On September 13, 1999 an Office medical adviser reviewed appellant's medical records including, Dr. Weiss' report. The Office medical adviser noted that Dr. Weiss' loss of grip strength finding was contrary to the previous electromyogram (EMG) and nerve conduction velocity (NCV) study.<sup>1</sup> The Office medical adviser recommended that appellant undergo a second opinion examination that included an EMG and NVC study to determine the extent of her impairment.

The Office referred appellant along with medical records, specific questions and a statement of accepted facts to Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, for a second opinion examination.

Dr. Mandel submitted a September 29, 1999 report finding that appellant had a 20 percent permanent impairment of the right upper extremity and a 20 percent permanent impairment of the left upper extremity based on the fourth edition of the A.M.A., *Guides*.

On November 1, 1999 an Office medical adviser reviewed Dr. Mandel's report and concurred with his findings.

In a November 5, 1999 decision, the Office reviewed the merits of appellant's claim and modified its previous decision in finding that appellant was entitled to a schedule award for a 20 percent permanent impairment of the right upper extremity and a 20 percent permanent impairment of the left upper extremity based on Dr. Mandel's findings.

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<sup>1</sup> Page 3/64 of the fourth edition of the A.M.A., *Guides* provides that since measurements for loss of strength are subjective they are not assigned a large role. The A.M.A., *Guides* further provide that loss of strength may be rated separately in "rare cases" when the examiner believes the patient's loss of strength represents an impairment factor that has not been considered adequately.

By decision dated December 22, 1999, the Office granted appellant a schedule award for a 20 percent permanent impairment of both her right and left upper extremity. In a December 29, 1999 letter, she requested an oral hearing before an Office hearing representative.

In a June 29, 2000 decision, the hearing representative affirmed the Office's December 22, 1999 decision.

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, Dr. Weiss, appellant's treating physician, determined that an impairment of appellant's left upper extremity was due to a lack of thumb opposition citing Figure 16, Table 7, page 3/29, sensory deficit of the median nerve citing Figure 45, page 3/50, Table 15, page 3/54 and Table 11A, page 3/48 and loss of grip strength citing Tables 32 and 34, page 3/65. Dr. Weiss then relied on the Combined Values Chart to determine that appellant had a 30 percent permanent impairment of the left upper extremity. Regarding her right upper extremity, Dr. Weiss determined that she had a 20 percent permanent impairment due to loss of grip strength citing Tables 32 and 34, page 3/65. Dr. Weiss' report makes a general reference that he applied the above figures and tables and fails to set forth his calculations of impairment or explain his application of the A.M.A., *Guides* to his calculations. Therefore, the Board finds that Dr. Weiss' report is of diminished probative value.

Dr. Mandel, the second opinion physician, determined that appellant had a 20 percent impairment of both the right and left upper extremity based on a 10 percent impairment related to the median nerve dysfunction using Table 16, page 3/57 and a 10 percent impairment based upon loss of grip strength using Table 34, 3/65. Page 56 of the fourth edition of the A.M.A., *Guides* provides that in calculating the impairment of the upper extremity due to mild carpal tunnel syndrome no additional impairment is allotted for loss of grip strength. Inasmuch as Table 16 cannot be applied with loss of grip strength measurements, Dr. Mandel's report departs from the protocols of the A.M.A., *Guides*.

The Office medical adviser reviewed Dr. Mandel's report and determined that appellant had a 20 percent impairment of both her right and left upper extremities. The Office medical adviser found that she had a moderate degree of severity of entrapment neuropathy of the wrist and applied Table 16, page 3/57 of the A.M.A., *Guides* to his finding. The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the description of the impairment provided by Dr. Mandel. There is no evidence of record that appellant has more than a 20

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

percent permanent loss of use of her right and left upper extremities for which she has received a schedule award.

The June 29, 2000 and December 22 and November 5, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
September 9, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member