U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGUS LEONARD and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

Docket No. 02-2003; Submitted on the Record;
Issued February 3, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On June 15, 2000 appellant, then a 55-year-old letter carrier, filed a notice of occupational disease alleging that he suffered from pain in the left shoulder and both hands as a result of his work duties. Appellant did not stop work.

In a report dated September 28, 2000, Dr. Chet J. Janecki noted that appellant was seen for left shoulder pain, bilateral numbness and tingling pain in the hands. Range of motion findings was listed for the cervical spine, left shoulder, bilateral hands and wrists. The diagnoses were: (1) cervical spondylosis; (2) subacromial bursitis and tendinitis and possible partial tear of the rotator cuff; (3) left shoulder, bilateral carpal tunnel syndrome; and (4) triggering and tenosynovitis of the long finger of the left hand. Dr. Janecki approved appellant for limited-duty work only.

Appellant underwent endoscopic carpal tunnel release of the left wrist on November 20, 2000. The same procedure was performed on the right wrist on December 18, 2000.

The Office of Workers' Compensation Programs accepted the claim for bilateral shoulder strains and bilateral carpal tunnel syndrome.

On March 5, 2001 appellant had surgery of the left shoulder consisting of arthroscopy and rotator cuff debridement. He then returned to light duty effective March 24, 2001. His work restrictions were 2 hours sorting mail with the right arm and no use of the left arm, no over shoulder work and a 10-pound lifting restriction.

Appellant filed a (CA-7) claim for a schedule award on June 23, 2001.

In a letter dated July 9, 2001, the Office requested a medical report from Dr. Janecki addressing whether appellant had reached maximum medical improvement. The physician was asked to provide an opinion as to percentage of appellant's permanent impairment due to her work-related conditions under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On September 4, 2001 the employing establishment offered appellant a position as a modified city carrier. Appellant accepted the job on September 6, 2001.

In a report dated June 11, 2001, Dr. Janecki stated that appellant had reached maximum medical improvement in terms of his wrist. He rated appellant's left hand impairment as 20 percent and right hand impairment as 20 percent under the fifth edition of the A.M.A., *Guides*.

In a progress note dated September 28, 2001, Dr. Janecki noted that appellant was status post arthroscopy of the left shoulder. Range of motion for the shoulder was 150 degrees of forward elevation, 140 percent of abduction. External rotation was 35 degrees and internal rotation was 35 degrees. Dr. Janecki also noted that lateral impingement was positive. The diagnostic impression was: (1) status post subacromial decompression, left shoulder; (2) resolving exacerbation of adhesive capsulitis; and (3) some residual stiffness to his shoulder. He opined that appellant had reached maximum medical improvement. Dr. Janecki opined that appellant's impairment for the upper extremity was 15 percent under the fifth edition of the A.M.A., *Guides*.

In a decision dated February 21, 2002, the Office terminated compensation after finding that the position of modified distribution clerk fairly and reasonably represented his wage-earning capacity.

In a March 7, 2002 progress note, Dr. Janecki noted that appellant returned with continuing symptoms of his hands associated with bilateral carpal tunnel syndrome. Range of motion of the wrist was flexion to 60 degrees, extension to 60 degrees, pronation to 85 degrees, supination to 85 degrees, radial deviation to 10 percent and ulnar deviation to 30 percent. There were mild positive Tinel's and Phalen's tests bilaterally. Dr. Janecki indicated that appellant was scheduled to have electrodiagnostic studies. He stated that appellant had reached maximum medical improvement with respect to the bilateral carpal tunnel syndrome. Grip strengths were noted as being approximately equal, "30 kg [kilograms] on the right and 20 kg on the left." He opined that appellant had 20 percent impairment of the left hand and 20 percent impairment of the right hand. The calculations were determined based on loss of grip strength measurements at Table 16-32 and Table 16-34, page 509 of the fifth edition of the A.M.A., *Guides*. Dr. Janecki also indicated that an addendum to the impairment ratings would be added once he received the results of appellant's electrodiagnostic studies.

The Office referred the medical file to an Office medical adviser for review. In a May 16, 2002 report, the Office medical adviser opined that Table 16-32 and Table 16-34 as referenced by Dr. Janecki were not to be used for determining impairment related to carpal tunnel syndrome. He stated that, under Table 16-15, the maximum for motor deficit is 10 percent, while under Table 16-11 the limit would be 25 to 50 percent. The Office medical

adviser concluded that appellant had five percent impairment of the right upper extremity and five percent impairment of the left upper extremity.

In a June 12, 2002 decision, the Office issued a schedule award for nine percent permanent impairment of the left upper extremity. The period of award is September 28, 2001 to April 12, 2002.

The Board finds that this case is not in posture for a decision.

The schedule award provisions of the Federal Employees' Compensation Act[1] and its implementing federal regulation,[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[3] 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.[4]

The Office medical adviser applied Dr. Janecki's physical findings to Table 16-32 and Table 16-34 of the A.M.A., *Guides* to find that appellant has only 9 percent impairment of the upper extremity. First, the Office medical adviser does not state his basis for finding only 9 percent impairment, when he notes that the maximum impairment for motor deficit of the median nerve under Table 16-15 is 10 percent. Second, the Office medical adviser did not explain why appellant did not sustain impairment of both extremities given that the Office accepted this claim for bilateral carpal tunnel syndrome for which surgery was performed. The Office medical adviser's opinion appears to be limited to motor deficit impairment of one upper extremity.

The Board finds that a conflict exists in the record between Dr. Janecki and the Office medical adviser as to the percentage of appellant's permanent impairment due to bilateral carpal tunnel syndrome. Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.[5] Inasmuch as a conflict exists in this record, the Office is instructed on remand to send appellant for an impartial medical evaluation with a qualified physician to ascertain the degree of permanent impairment for appellant's accepted condition of bilateral carpal tunnel syndrome. After such further

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] 5 U.S.C. § 8107(c)(19).

[4] *See* 20 C.F.R. § 10.404 (1999).

[5] *Marsha R. Tison*, 50 ECAB 535 (1999); *Richard L. Rhodes*, 50 ECAB 259 (1999).

development of the medical record as the Office deems necessary, the Office shall issue a *de novo* schedule award decision.

The June 12, 2002 decision of the Office of Workers' Compensation Programs is vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
February 3, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member