

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VANESSA J. WILSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Northport, NY

*Docket No. 03-527; Submitted on the Record;
Issued May 5, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 10 percent permanent impairment to her right arm.

The case was before the Board on a prior appeal.¹ In a decision dated March 27, 2002, the Board noted that by decision dated November 2, 2000, the Office of Workers' Compensation Programs had issued a schedule award for a six percent permanent impairment to the right hand and two percent for the left hand. The medical evidence of record was not, however, of sufficient probative value to establish the degree of permanent impairment. The Board noted that the Office medical adviser did not clearly explain how the right hand impairment was calculated under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The case was remanded to the Office for further development. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

The Office referred appellant, together with medical records and a statement of accepted facts, to Dr. Richard Goodman, a Board-certified orthopedic surgeon. In a report dated June 10, 1992, Dr. Goodman diagnosed tenosynovitis of the first and second digits of the right hand. He opined that under the A.M.A., *Guides* appellant had a 10 percent permanent impairment to her right arm.

In a report dated September 17, 2002, an Office medical adviser opined that appellant had a 10 percent permanent impairment to the right arm.

By decision dated October 1, 2002, the Office issued a schedule award for 10 percent permanent impairment to the right arm. The period of the award was 31.2 weeks from June 10, 2002. The Office noted that appellant had previously received 14.64 weeks of

¹ Docket No. 01-1689 (issued March 27, 2002).

compensation for a 6 percent permanent impairment to the right hand and this amount would be deducted from the current award.

The Board finds that appellant has not established more than a 10 percent permanent impairment to the right arm.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ 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* have been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses. As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.⁴

In this case, the second opinion referral physician, Dr. Goodman, provided results on examination that indicated full range of motion with full motor power for the left hand and wrist. For the right hand, Dr. Goodman noted decreased motor power in the first and second digits of the right hand. Dr. Goodman identified Table 16-34 of the A.M.A., *Guides*, which provides a 10 percent impairment to the arm for a 10 to 30 percent loss of grip or pinch strength.⁵ The Office medical adviser concurred that Table 16-34 was appropriate in this case, also finding that the impairment was 10 percent for the right arm.

On appeal, appellant disagreed with the Office's finding, arguing that her attending physician had found a 30 percent impairment. As the Board noted in its prior appeal, the attending orthopedic surgeon, Dr. Salvatore Inserra, opined that appellant had a 30 percent impairment to the thumb, not the arm.⁶ Moreover, Dr. Inserra did not explain how the impairment was calculated and therefore his report was not sufficient to determine the degree of permanent impairment in this case.

The Board finds that the probative evidence of record consists of the reports of Dr. Goodman and the Office medical adviser. Both physicians determined that appellant's impairment should be calculated according to Table 16-34. There is no medical evidence of record establishing more than a 10 percent impairment to the right arm.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁵ A.M.A., *Guides*, Table 16-34 at 509.

⁶ The maximum impairment for the thumb is 75 weeks of compensation; a 30 percent impairment would result in 22.5 weeks of compensation, which is less than the 31.2 weeks awarded to appellant; see 5 U.S.C. § 8107(c)(6).

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the arm, the maximum number of weeks of compensation is 312 weeks. Since appellant's permanent impairment was 10 percent, she is entitled to 10 percent of 312 weeks, or 31.2 weeks of compensation.⁷ It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.⁸ In this case, the Office medical adviser concluded that the date of maximum medical improvement was the date of examination by Dr. Goodman. The schedule award therefore commenced on June 10, 2002.

The decision of the Office of Workers' Compensation Programs dated October 1, 2002 is affirmed.

Dated, Washington, DC
May 5, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁷ The amount of compensation is offset by the previously awarded 14.64 weeks of compensation for this impairment.

⁸ *Albert Valverde*, 36 ECAB 233, 237 (1984).