

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA R. MILLER and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MO

*Docket No. 03-2046; Submitted on the Record;
Issued November 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she has greater than a three percent impairment of the right upper extremity and a four percent permanent impairment of the left upper extremity, for which she received a schedule award.

This is the second appeal of this case before the Board. Appellant, a 37-year-old letter carrier, filed a claim for benefits on February 18, 2000, alleging that she developed a tendinitis condition causally related to employment factors. The Office of Workers' Compensation Programs accepted a claim for bilateral de Quervain's tenosynovitis and bilateral ganglion cysts. Appellant filed a claim for a schedule award and submitted a March 29, 2002 impairment evaluation from Dr. Thomas A. Ekestrand, a Board-certified orthopedic surgeon, who accorded appellant a 15 percent impairment of the left and right upper extremities. On July 29, 2002 an Office medical adviser reviewed Dr. Ekestrand's impairment evaluation and determined that appellant had a three percent impairment for each of the upper extremities. By decision dated September 24, 2002, the Office granted appellant a schedule award for three percent permanent impairment for both upper extremities.

In a decision dated June 10, 2003,¹ the Board affirmed the three percent award for the right upper extremity and granted appellant an additional one percent impairment for the left upper extremity. The Board noted that the Office medical adviser had relied on Dr. Ekestrand's findings and calculations, which were done in conformance with the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (the A.M.A., *Guides*) and had applied them to the fifth edition of the A.M.A., *Guides*, which is the current, relevant standard used by the Office in evaluating schedule losses for all decisions rendered after February 1, 2002.² The Board further noted that the Office medical adviser had

¹ Docket No. 03-876 (issued June 10, 2003).

² See FECA Bulletin No. 01-5, issued January 29, 2001.

not included Dr. Eskestrand's impairment rating based on cumulative trauma disorder because the fifth edition of the A.M.A., *Guides* did not provide for an impairment due to cumulative trauma. The Board, however, adjusted the impairment rating due to loss of flexion from one to two percent impairment to arrive at a total impairment of four percent of the left upper extremity.

In addition, the Board stated at footnote 3 of its decision that appellant, by letter dated November 27, 2002, had requested reconsideration of her claim and submitted additional medical evidence. The Board noted that the Office had not issued a decision regarding appellant's request and stated at footnote 17 that appellant had submitted new medical evidence subsequent to the Office's September 24, 2002 decision, an October 22, 2002 report from Dr. Eskestrand in which he evaluated appellant's impairment pursuant to the fifth edition of the A.M.A., *Guides*. The Board stated that it lacked appropriate jurisdiction to consider this report for the first time on appeal.³

By letter dated June 14, 2003, appellant asked the Office to consider her still pending November 27, 2002 request for reconsideration. Appellant, referring to footnote 17 of the Board's June 10, 2003 decision, asked the Office to specifically review Dr. Eskestrand's October 22, 2002 report, which was referenced in her November 27, 2002 request. In addition, appellant asked the Office when she would receive the additional one percent award for the left upper extremity granted by the Board.

In his October 22, 2002 report, Dr. Eskestrand stated:

"With regard to impairment [appellant] is given approximately three percent upper extremity impairment for the left and right wrist. This does take into account her loss of motion but does not take into account "cumulative trauma." I would draw your attention to the [A.M.A., *Guides*], fifth edition, page 343 [T]able 13-22. Criteria for rating impairment related to chronic pain in [Class] 1 upper extremity. Although [appellant] does not have reflex sympathetic dystrophy [RSD] or causalgia, none the less, I think her condition closely resembles such diagnosis with regard to her ability to function. I would put her in [Class] 1 approximately 5 percent impairment based on her dominant right hand and approximately 2 percent for her nondominant left upper extremity. If for some reason that is not accepted then [appellant] could well be rated out by the section on carpal instability as noted on page 502 and 503. Attention is drawn to table 16-25."

In a letter/impairment evaluation dated January 31, 2003,⁴ the Office advised appellant that the Office medical adviser had reviewed the medical evidence that she submitted and had reiterated his opinion that she was not entitled to an award for any additional impairment because the fifth edition of the A.M.A., *Guides* did not provide for impairment based on cumulative

³ See 20 C.F.R. § 501.2(c).

⁴ This letter and impairment evaluation reviewing Dr. Eskestrand's October 22, 2002 report was not considered by the Board in its June 10, 2003 decision because, as stated previously, the Board had no jurisdiction to consider Dr. Eskestrand's October 22, 2002 report.

trauma. The Office stated that cumulative trauma is expressed in the specific anatomic or physiologic abnormality defined as ratable under the A.M.A., *Guides*.

In decisions dated July 17 and 18, 2003, the Office granted appellant an additional one percent award for the left upper extremity, in accordance with the Board's June 10, 2003 decision. The Office noted that the Office medical adviser had reviewed Dr. Eskestrand's October 22, 2002 report and had reiterated his finding that no additional impairment could be granted due to cumulative trauma pursuant to the fifth edition of the A.M.A., *Guides*. The Office further noted that the Board had credited the Office medical adviser's denial of additional impairment based on cumulative trauma in its June 10, 2003 decision.

The Board finds that appellant has no more than a three percent impairment of the right upper extremity and a four percent permanent impairment of the left upper extremity, for which she received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act⁵ 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 loss of use.⁶ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.⁷

The Office medical adviser determined that appellant had a three percent permanent impairment of each upper extremity by taking Dr. Eskestrand's measurements and findings on examination pertaining to loss of range of motion and applying these findings to the applicable figures of the A.M.A., *Guides* to arrive at the total percentage of impairment in appellant's extremities. In its June 10, 2003 decision, the Board affirmed the Office's finding of a three percent bilateral impairment of the upper extremities, but granted her an additional one percent award of the left upper extremity for a total award of four percent of the left upper extremity. Following the Board's decision, appellant asked the Office to consider her pending November 27, 2002 request for reconsideration. She also requested that the Office consider Dr. Eskestrand's October 22, 2002 report in conjunction with her reconsideration request.

By decisions dated July 17 and 18, 2003, the Office granted appellant an additional one percent award for the left upper extremity, in accordance with the Board's June 10, 2003 decision. The Office noted that the Office medical adviser had considered Dr. Eskestrand's October 22, 2002 report and had reiterated his finding that no additional impairment could be granted due to cumulative trauma pursuant to the fifth edition of the A.M.A., *Guides*.⁸

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

⁶ 5 U.S.C. § 8107(c)(19).

⁷ 20 C.F.R. § 10.404.

⁸ As noted previously, this finding was rendered in the Office's January 31, 2003 letter to appellant.

Dr. Eskestrand's October 22, 2002 report, while rendered in accordance with the fifth edition of A.M.A., *Guides*, is of diminished probative value in that he did not provide adequate medical rationale in support of his conclusions.⁹ He had previously derived an impairment rating due to cumulative trauma, which, as the Office and the Board determined, was no longer a basis for granting impairment under the updated, fifth edition of the A.M.A., *Guides*. In his October 22, 2002 report, Dr. Eskestrand attributed additional impairment on a different basis, that of chronic pain, as enunciated in Table 13-22 at page 343 of the A.M.A., *Guides*, although he did not mention this as an impairment factor in his March 29, 2002 examination findings. In addition, this section of the A.M.A., *Guides* discusses impairments from pain due to RSD or causalgia, conditions with which appellant had not been diagnosed. Dr. Eskestrand acknowledged that appellant had not been diagnosed with these conditions, but stated that he believed appellant warranted an impairment rating under this section because her condition closely resembled these diagnoses with respect to her ability to function. He further indicated that, in the event this rating was not accepted, appellant could also be rated under Table 16-25, page 502-03, which pertains to carpal instability, another condition with which appellant has not been diagnosed. Dr. Eskestrand, however, has failed to adequately explain the manner in which his impairment rating was derived. While Dr. Eskestrand noted that he was no longer able to derive any impairment due to cumulative trauma under the fifth edition of the A.M.A., *Guides*, he attempted to render an additional impairment rating based on conditions, such as chronic pain, which were not previously diagnosed or causally related to an accepted condition. His opinion is of limited probative value for the further reason that it is speculative and equivocal in that he only noted summarily that appellant had additional impairment because her diminished functional ability was similar to that manifested by conditions with which she had not been diagnosed.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a three percent impairment of the right upper extremity and a four percent permanent impairment of the left upper extremity, for which she received a schedule award and that appellant has failed to provide probative, supportable medical evidence that she has greater than the impairment already awarded.

⁹ William C. Thomas, 45 ECAB 591 (1994).

The decisions of the Office of Workers' Compensation Programs dated July 18 and 17, 2003 are affirmed.

Dated, Washington, DC
November 3, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member