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<b>BEVERLY J. HARRIS, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 03-2297</b>
	)	<b>Issued: June 21, 2004</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>San Francisco, CA, Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

On September 22, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated June 5, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

On May 23, 1991 appellant, then a 34-year-old distribution clerk, filed a notice of occupational disease alleging that her bilateral wrist tendinitis was caused by her federal employment. On July 18, 1991 the Office accepted bilateral tendinitis of the wrists (de Quervain's syndrome).

On March 28, 2002 Dr. Leslie Michelle Israel, appellant's treating osteopath, Board-certified in preventive medicine, advised that appellant had a positive Finkelstein's test.<sup>1</sup> On May 5, 2002 appellant filed a claim for a schedule award, and the Office referred her to Dr. Jerrold Sherman, a Board-certified orthopedic surgeon, for an impairment evaluation.

On June 4, 2002 Dr. Sherman stated that he examined appellant that day and noted a familiarity with her history of injury. He noted appellant's complaints of constant left wrist pain which worsens upon use and intermittent right wrist pain which occur after vigorous use. Upon examination, he noted a negative Tinel's sign, Phalen's test and Finkelstein's test, and no tenderness over either wrist. He advised that her wrists were normal in appearance and had full and painless range of motion. Dr. Sherman added that appellant had no complaints of pain during strength testing. In an attached form, he advised that appellant had mild wrist pain which did not interfere with activity nor cause sensory loss. Bilateral wrist range of motion findings consisted of the following: dorsiflexion of 60 degrees, palmar flexion of 70 degrees, radial deviation of 20 degrees and ulnar deviation of 30 degrees. Dr. Sherman advised that the bilateral de Quervain's syndrome had resolved and that she had reached maximum medical improvement in March 1995.

On June 30, 2002 an Office medical adviser reviewed Dr. Sherman's report and determined that, based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001), appellant had a zero percent impairment rating for her right and left upper extremities.

By decision dated July 11, 2002, the Office denied appellant's claim for schedule award compensation on the grounds that the medical evidence established that the accepted injury had resolved without neurological or mechanical deficit.

On August 1, 2002 the Office issued a notice of proposed termination of compensation benefits on the grounds that the medical evidence established that she had no residuals of her accepted injury. The Office noted that it had referred the report of Dr. Sherman to Dr. Israel for review and comment.<sup>2</sup>

By letter dated August 2, 2002, appellant requested an oral hearing before an Office hearing representative. In a report dated October 22, 2002, Dr. Israel stated her disagreement with Dr. Sherman's opinion that appellant's condition had resolved, noting that in spite of wearing bilateral wrist splints for two to three hours a day she remained symptomatic with continuous fine manipulation tasks such as writing and using a mouse. She advised that appellant was deemed permanent and stationery in 1995 with the need for future medical treatment. Dr. Israel further noted that appellant had flare-ups three to four times a year, and advised that her Finkelstein's tests were positive. She then noted her disagreement with Dr. Sherman's finding that appellant's condition had resolved.

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<sup>1</sup> On May 23 and July 23, 2002 Dr. Israel again advised that appellant had a positive Finkelstein's test.

<sup>2</sup> No final decision on appellant's proposed termination is in the record. At the time of her March 24, 2003 hearing, appellant was employed by the postal service as a distribution clerk.

On December 2, 2002 Dr. Israel noted appellant's positive Finkelstein's test bilaterally. In a report dated March 20, 2003, Dr. Israel released appellant to return to light duty that day. Appellant's permanent restrictions were no repetitive gripping/grasping, no holding mail over one hour, and no casing flats or mail roundups. She was also limited to 20 minutes of typing and mousing at a time. Appellant could case mail for up to four hours a day but not on a continuous basis.

A hearing was held on March 24, 2003 at which time the hearing representative advised that she would keep the record open for 30 days so appellant could submit an impairment evaluation from Dr. Israel.<sup>3</sup> In a report dated April 12, 2003, Dr. Israel stated that appellant had a diagnosis of bilateral de Quervain's tenosynovitis which was deemed permanent in 1995. She noted appellant's work restrictions were no repetitive gripping or grasping. She noted that those restrictions are "considered a 30 percent rating."

In a decision dated June 5, 2003, the Office hearing representative affirmed the Office's July 11, 2002 decision denying appellant's claim for schedule award compensation. The hearing representative noted that the reports of Dr. Sherman and the Office medical adviser established that appellant had no impairment of her wrists based on her work-related injury. She also noted that Dr. Israel's report while finding a 30 percent impairment did not include objective findings to support a disability, nor did the report include references to the A.M.A., *Guides* to support her determination that appellant had a 30 percent impairment.

### **LEGAL PRECEDENT**

The schedule award provisions of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulation<sup>5</sup> 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 top the percentage of loss.<sup>6</sup> However, neither the Act nor its regulations specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>7</sup>

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<sup>3</sup> The hearing representative stated that appellant would need a report from Dr. Israel "that [i]s going to talk about an actual impairment rating."

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.304.

<sup>6</sup> 5 U.S.C. § 8107(c)(19).

<sup>7</sup> *James R. Doty*, 52 ECAB 163 (2000).

### ANALYSIS

The Board finds that the weight of the medical evidence rests with the well-reasoned opinion of Dr. Sherman, an Office second opinion physician and a Board-certified orthopedic surgeon, whose report accurately reflected appellant's medical and employment history. Further, he fully explained the basis for his conclusion that appellant's bilateral de Quervain's syndrome had resolved. He noted a negative Tinel's sign, Phalen's and Finkelstein's test, and noted no tenderness over either wrist. Dr. Sherman noted range of motion findings of the wrists as follows: 70 degrees of flexion,<sup>8</sup> 60 degrees of dorsiflexion,<sup>9</sup> 30 degrees of ulnar deviation,<sup>10</sup> and 20 degrees of radial deviation.<sup>11</sup> The Office medical adviser reviewed Dr. Sherman's report against the A.M.A., *Guides* and determined that appellant had a zero percent impairment.

In support of her claim for an impairment rating, appellant submitted an April 12, 2003 report from Dr. Israel, her treating osteopath. However, Dr. Israel did not support her 30 percent impairment rating with references from the A.M.A., *Guides* and thus her report is of limited probative value.<sup>12</sup>

### CONCLUSION

In this case, Dr. Sherman, an Office second opinion physician and a Board-certified orthopedic surgeon, provided a thorough and well-reasoned report finding that appellant had no residuals of her work-related injury. As there is no evidence of record to contradict the Office medical adviser's rating, the Board concludes that the Office properly determined that appellant had no ratable impairment of her right and left wrists.

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<sup>8</sup> A.M.A., *Guides* at 467, Figure 16-28.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 469, Figure 16-31.

<sup>11</sup> *Id.*

<sup>12</sup> See *supra* note 4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 5, 2003 be, and hereby is, affirmed.

Issued: June 21, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member