

**United States Department of Labor
Employees' Compensation Appeals Board**

KATHLEEN J. SCHULTZ, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Toledo, OH, Employer**

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**Docket No. 04-428
Issued: March 26, 2004**

Appearances:
Kathleen J. Schultz, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 11, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs, decision dated January 10, 2003, finding that appellant had a one percent permanent impairment of the right upper extremity. Under 20 C.F.R. §§ 501(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she has greater than a one percent permanent impairment of her right upper extremity, for which she received a schedule award.

FACTUAL HISTORY

Appellant, a 52-year-old letter carrier, filed a Form CA-2 claim for benefits on July 11, 1999, alleging that she sustained a herniated disc at the C5-6 level caused by handling heavy bundles of mail. The Office accepted the claim for cervical strain at the C5-6 level and retroactively authorized surgery, which she underwent on July 17, 1999 for cervical excision at the C5-6 level. Appellant was off work until September 7, 1999, when she returned to limited duty. The Office paid her appropriate compensation.

On March 7, 2002 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right upper extremity. In a report dated June 22, 2001, Dr. Jeffrey F. Wirebaugh, Board-certified in family practice, stated that appellant had permanent numbness over the little finger side of the right palm and in the little finger itself. He advised that appellant had a loss of strength of her right upper extremity and right hand with severe restrictions for any over-the-head activity or lifting away from the body. Dr. Wirebaugh found that appellant had a 15 percent impairment of the whole person based on her history of cervical disc disease, fusion surgery, pain, loss of motion and radicular symptoms.

In a memorandum dated September 12, 2001, an Office medical adviser stated that Dr. Wirebaugh needed to render an impairment evaluation based upon the American Medical Association *Guides to the Evaluation of Permanent Impairment* (fifth edition) [the A.M.A., *Guides*]. By letter dated September 18, 2001, the Office asked him to submit an assessment of permanent impairment pursuant to the A.M.A., *Guides*, with specific reference to page 482, Table 16-10 and page 484, Table 16-11 as guidelines for his rating.¹ Dr. Wirebaugh did not respond to this request.

The Office referred appellant for an examination and impairment evaluation with Dr. Frederick J. Shiple, III, a Board-certified orthopedic surgeon. In a report dated January 3, 2002, he found that appellant had a one percent impairment of the right upper extremity pursuant to the A.M.A., *Guides*. He stated:

“[Appellant] has zero upper extremity impairment due to motor loss of both right and left upper extremities using Table 16-11, page 484. She has zero upper extremity impairment due to sensation [deficit] of the left upper extremity using Table 16-10, page 482. The percent of right upper extremity impairment due to sensory deficit is determined to be one percent. This was obtained by applying a 20 percent sensory deficit from Table 16-10, page 482 (Grade IV) multiplied by the maximum upper extremity impairment of Table 16-13, page 489 of five percent (C8) to establish a one percent right upper extremity impairment. Combining the zero percent left and one right upper extremity impairment, this gives a permanent impairment rating of one percent in total.”

In a memorandum/impairment evaluation dated February 13, 2002, an Office medical adviser reviewed Dr. Shiple’s findings and conclusions and determined that appellant had a one percent permanent impairment for loss of use of the right upper extremity. On March 15, 2002 the Office granted her a schedule award for a one percent permanent impairment of the right upper extremity for the period January 3 to 24, 2002, for a total of

¹ The Office medical adviser stated that upper extremity impairment secondary to a cervical spine problem must be related to a cervical nerve root deficit which could be right, left or both and needed to be identified by the examiner. The examiner needed to determine the sensory and motor deficit of each of the involved cervical nerves by grading the sensory deficit of each nerve root utilizing Table 16-10 at page 482, and by utilizing Table 16-11 on page 484 to grade the motor deficit for each involved nerve root. The Office medical adviser stated that the sensory and the motor deficit for each nerve root is obtained by multiplying the grading results obtained for each nerve root by the maximum deficit of the involved cervical nerve as it appeared in Table 16-13 at page 489. He stated that the sensory and motor deficits should be combined to obtain the total deficit for the affected nerve root; combining the total deficit of all the involved nerve roots of one extremity would result in the total percentage impairment for that extremity.

3.12 weeks of compensation. By letter dated April 12, 2002, appellant requested an oral hearing, which was held on September 26, 2002.

By decision dated January 10, 2003, an Office hearing representative affirmed the Office's March 10, 2002 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² 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.³ 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.⁴

ANALYSIS

In this case, the Office medical adviser determined that appellant had a 1 percent permanent impairment of the right upper extremity by adopting Dr. Shiple's findings that she sustained impairment due to a 20 percent sensory loss in the C8 area. The Office medical adviser relied on the clinical findings of Dr. Shiple, who calculated the level of sensory loss of the C8 nerve root at 20 percent of the maximum 5 percent impairment for sensory deficit or pain on the right side and derived a 1 percent impairment based on Tables 16-13 and 16-10 of the A.M.A., *Guides*.⁵ Table 16-13 provides that the maximum impairment for C8 sensory deficit is five percent; the severity of the impairment is then graded according to Table 16-10. Dr. Shiple and the Office medical adviser graded the impairment at 20 percent of the maximum, for a 1 percent impairment.⁶ Dr. Shiple noted that appellant had 0 percent sensory loss on the left side using Table 16-10 and 0 impairment due to motor loss of both right and left upper extremities using Table 16-11.⁷

The attending physician, Dr. Wirebaugh, found that appellant had a 15 percent impairment of the whole person based on her history of cervical disc disease, fusion surgery, pain, loss of motion and radicular symptoms due to cervical spine disorder. These ratings,

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

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides*, 489, Table 16-13 and 482, Table 16-10.

⁶ A Grade 4 impairment is described as "distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity." A.M.A., *Guides*, 482. The impairment range for Grade 4 is 1-25 percent of the maximum impairment.

⁷ A.M.A., *Guides*, 484, Table 16-11 grades the severity of impairments due to motor deficit.

however, are of limited probative value because they were not rendered in accord with the A.M.A., *Guides*. Dr. Wirebaugh did not identify specific tables in the A.M.A., *Guides*; moreover, schedule awards are not based on whole person impairments.⁸ The Office advised Dr. Wirebaugh, in its September 18, 2001 letter, that he could perform an impairment evaluation, pursuant to the applicable tables in the A.M.A., *Guides*, for a schedule award for impairment of the affected member of appellant's anatomy resulting from the accepted condition. Dr. Wirebaugh, however, did not respond to this request. Therefore, the rating assigned by him does not provide a basis for a schedule award under the Act.

The Board concludes that the Office medical advisor correctly applied the A.M.A., *Guides* in determining that appellant has no more than a one percent permanent impairment for loss of use permanent impairment of the right upper extremity, for which she has received a schedule award from the Office. There is no other medical evidence in the record which contradicts this finding and appellant has failed to provide probative, supportable medical evidence that she has greater than the one percent impairment already awarded. The Board therefore affirms the Office's January 10, 2003 decision.

CONCLUSION

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

⁸ *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 26, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member