

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

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**THOMAS STANFORD, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cinnaminson, NJ, Employer**

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**Docket No. 04-1939**

**Issued: January 3, 2005**

*Appearances:*

*Thomas Stanford, pro se*

*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman

DAVID S. GERSON, Alternate Member

WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On July 27, 2004 appellant filed a timely appeal of a May 10, 2004 decision of an Office of Workers' Compensation Programs' hearing representative, affirming a July 7, 2003 schedule award for a five percent permanent impairment to each arm. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue in this case.

**ISSUES**

The issues are: (1) whether appellant has more than a five percent permanent impairment to each arm, for which he received a schedule award on July 7, 2003; and (2) whether appellant has established a carpometacarpal osteoarthritis as causally related to his employment injury.

**FACTUAL HISTORY**

On June 16, 2001 appellant, then a 67-year-old clerk, filed an occupational disease claim for compensation (Form CA-2) alleging that he sustained carpal tunnel syndrome (CTS) as a result of repetitive keyboarding and sorting activities. By letter dated September 25, 2001, the Office advised appellant that it accepted right CTS.

In a report dated December 12, 2001, Dr. Arun Kachroo, a neurologist, provided a history and results on examination, diagnosing severe carpal tunnel on the right and moderate carpal tunnel on the left. With respect to a permanent impairment for the right arm, Dr. Kachroo indicated that for abductor pollicis brevis muscle atrophy appellant had a 25 percent impairment to the thumb, index and middle finger, with a 12.5 percent impairment to the ring finger. He concluded that appellant had a 46 percent impairment to the hand, or 41 percent impairment to the arm. In an accompanying form report, Dr. Kachroo reported sensory loss resulting in a 50 percent impairment to the thumb and index finger; he reported hand impairments of 20 percent for the thumb, 10 percent for index and middle finger and 6 percent for the ring finger.

In a note dated June 2, 2002, an Office medical adviser indicated that a physician should look at page 495 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001). The Office referred appellant, a statement of accepted facts and medical reports to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for examination and an opinion as to the degree of permanent impairment.<sup>1</sup>

In a report dated November 8, 2002, Dr. Askin provided a history and results on examination. Dr. Askin indicated that he had reviewed the calculations of the treating physician and page 495 of the A.M.A., *Guides*, and further stated:

“In using this page, I have considered the following. He does not have clinically significant sensory loss for any digit. The only present inhibition of the thenar muscles is secondary to basal joint arthritis (a condition not accepted as work related). Furthermore, he cannot have carpal tunnel syndrome (a compression neuropathy) presently by definition, since his carpal tunnels have been decompressed. A five percent impairment of the upper extremity is appropriate if you are accepting the right carpal tunnel as work related.”

The Office referred the case to an Office medical adviser for evaluation. In a note dated June 22, 2003, the Office medical adviser indicated that, pursuant to the A.M.A., *Guides* at page 495, appellant had a five percent impairment to each arm.

By decision dated July 7, 2003, the Office issued a schedule award for a five percent permanent impairment to each arm. The period of the award was 31.2 weeks commencing November 8, 2002.

Appellant requested an oral hearing before an Office hearing representative, which was held on March 19, 2004. Appellant submitted a report dated July 28, 2003 from Dr. Matthew Garberina, an orthopedic surgeon, who stated that appellant had been treated for severe carpometacarpal osteoarthritis. Dr. Garberina stated that it was his opinion within a reasonable degree of medical certainty that appellant’s “work for the [employing establishment] could have contributed to his disease. This condition is worsened with repetitive tasks.”

By decision dated May 10, 2004, the Office hearing representative affirmed the July 7, 2003 schedule award. The hearing representative found that the medical evidence did not

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<sup>1</sup> The referral letter stated that the report was to resolve a conflict in the medical evidence.

establish more than a five percent impairment to each arm. With respect to the diagnosis of carpometacarpal osteoarthritis, the hearing representative found that Dr. Garberina did not provide a reasoned opinion on causal relationship with federal employment.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

The Board notes that the statement of accepted facts acknowledged only that a right CTS had been accepted. Since the Office issued an award for the left arm and the right arm, the Board will consider whether the evidence shows a greater impairment to either arm.

Appellant submitted a report from Dr. Kachroo dated December 12, 2001 with respect to an arm impairment, but this report is of diminished probative value. With respect to a permanent impairment from carpal tunnel syndrome, the A.M.A., *Guides* provide three possible scenarios: (1) with positive clinical findings of medical nerve dysfunction and electrical conduction delays, the impairment due to residual CTS is rated according to sensory or motor deficits from applicable tables; (2) with normal sensibility and opposition strength with abnormal sensory or motor latencies or abnormal electromyogram testing of the thenar muscles, a residual CTS is still present and an impairment rating not to exceed five percent may be justified; (3) with normal sensibility, opposition strength and nerve conduction studies, no objective basis for an impairment rating exists.<sup>4</sup> To the extent that Dr. Kachroo was attempting to apply the first scenario, he did not explain how he calculated his sensory deficit or motor weakness impairments. The A.M.A., *Guides* provide specific methods for determining sensory and motor impairments to the digits,<sup>5</sup> and Dr. Kachroo did not identify the specific figures or tables used as the basis for his impairment ratings and explain how the clinical findings were applied to these figures or tables.

The Office referred appellant to Dr. Askin for evaluation. Although the referral letter stated that it was to resolve a conflict in the medical evidence, there was no conflict under

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<sup>2</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>3</sup> A. George Lampo, 45 ECAB 441 (1994).

<sup>4</sup> A.M.A., *Guides*, 495.

<sup>5</sup> *Id.* at 445-50.

5 U.S.C. § 8123(a). This section requires a disagreement between an attending physician and an Office physician, but in this case the Office medical adviser had not rendered an opinion as to the degree of permanent impairment. The referral to Dr. Askin is as a second opinion referral physician.<sup>6</sup>

In his November 8, 2002 report, Dr. Askin noted the provisions of the A.M.A., *Guides* and found that the first scenario was inappropriate in this case. He noted the lack of significant sensory loss in any digit and that appellant had carpal tunnel decompression surgery. Dr. Askin applied the second scenario, which allows up to a five percent arm impairment for a residual CTS. Although Dr. Askin appeared to be referring to the right arm, he did provide examination for the left arm and indicated that appellant had obtained better relief on the left than the right.

The Office medical adviser opined that appellant had a five percent impairment to each arm, based on page 495 of the A.M.A., *Guides*. This finding is in accord with the medical evidence of record. There is no probative evidence of a greater impairment to either arm. As noted above, Dr. Kachroo did not provide sufficient explanation to support his 41 percent impairment rating to the right arm.

The Board accordingly finds that the probative medical evidence of record does not establish more than a five percent permanent impairment to each arm. A schedule award is payable in weeks of compensation as 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. Appellant is therefore entitled to 10 percent, or 31.2 weeks of compensation from the date of maximum medical improvement.

### **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under the Act<sup>7</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

Appellant submitted a report dated July 28, 2003 from Dr. Garberina with a diagnosis of carpometacarpal osteoarthritis, and the Office made a finding that the condition was not causally related to employment. Dr. Garberina did not provide a complete factual and medical background, and his opinion that appellant's work could have contributed to the condition is speculative and unaccompanied by medical reasoning. It is well established that medical opinions based on an incomplete history or opinions that are speculative in character are of

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<sup>6</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

diminished probative value.<sup>9</sup> The Board finds that the report of Dr. Garberina is not sufficient to establish the diagnosed condition of carpometacarpal osteoarthritis as employment related.

### **CONCLUSION**

The probative medical evidence of record does not establish more than a five percent permanent impairment to the right and left arms, for which appellant received a schedule award on July 7, 2003. The Board further finds that appellant did not establish carpometacarpal osteoarthritis as causally related to his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 10, 2004 is affirmed.

Issued: January 3, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>9</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).