

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

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**JULIA C. MALAMON, Appellant**

**and**

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

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**Docket No. 06-142  
Issued: March 3, 2006**

*Appearances:*  
*Thomas Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 28, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative decision, which affirmed a May 26, 2004 decision denying her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

**ISSUE**

The issue is whether appellant is entitled to a schedule award.

**FACTUAL HISTORY**

On January 16, 1999 appellant, then a 53-year-old supervisor of customer services, filed an occupational disease claim for bilateral carpal tunnel syndrome. Appellant first realized the

disease or illness was caused or aggravated by her employment on October 22, 1999.<sup>1</sup> Appellant did not stop work but retired later in 1999. The employing establishment controverted the claim. On March 9, 2001 the Office accepted appellant's claim for bilateral repetitive strain injury.<sup>2</sup> Appellant received appropriate compensation benefits.

On February 10, 2004 appellant filed a Form CA-7 claim for a schedule award.

By letter dated April 21, 2004, the Office referred appellant for a second opinion examination, together with a statement of accepted facts, a set of questions and the medical record to Dr. Kevin Hanley, a Board-certified orthopedic surgeon.

In a May 17, 2004 report, Dr. Hanley noted appellant's history of injury and treatment. He conducted a physical examination and noted that appellant had "normal grip on both sides." He also noted that appellant did not have atrophy and had a full range of motion of the elbows, shoulders and the wrists. Dr. Hanley indicated that appellant did not have muscle tenderness, sensory loss or objective findings. He advised that appellant reported some tingling with Tinel's testing, but explained that it was "minimal." Regarding diagnostic testing, he explained that the electromyography scan revealed multiple neuropathies bilaterally and that there was some slowing of the distal motor and sensory latencies consistent with carpal tunnel syndrome. Dr. Hanley indicated that the ulnar nerves were normal. He noted that carpal tunnel syndrome was "the only true condition that was diagnosed." He concluded that appellant had a normal physical examination. Dr. Hanley explained that appellant did not have any impairment or disability as a consequence of the 1986 injury and advised that she had zero percent impairment of the upper extremities directly related to any kind of strain injury. He indicated that appellant had some evidence of carpal tunnel, but could not document any finding that would serve as a basis for an impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001).

By decision dated May 26, 2004, the Office denied appellant's claim for a schedule award. The Office determined that the evidence was insufficient to establish that she sustained permanent impairment to a scheduled member due to her accepted employment injury.

By letter dated June 1, 2004, appellant's representative requested a hearing, which was held on March 30, 2005. Counsel argued that the weight of medical evidence was wrongly accorded to Dr. Hanley and that the weight of medical evidence should rest with the medical opinion of a Dr. Weiss. The record does not contain a report from a Dr. Weiss.

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<sup>1</sup> The record reflects that appellant had a March 10, 1998 claim for stress that was denied on January 6, 1999. No. 020745998. Appellant also has a December 30, 1997 claim for stress that was denied on April 6, 1998. No. 020738951. She also has an accepted claim for stress on May 26, 1994. No. 020682670. The record reflects that appellant stopped work due to her stress claim, which was denied. That claim is in a separate appeal before the Board. Docket No. 01-747. The Office approved appellant's application for disability retirement due to an unrelated condition on September 7, 1999.

<sup>2</sup> The record reflects that the Office originally denied appellant's claim, by decision dated March 9, 2000. Appellant's representative requested a hearing on March 17, 2000. By decision dated January 16, 2001, the Office hearing representative reversed the prior decision.

In a letter dated July 10, 2004, appellant contended that her examination with Dr. Hanley was cursory in nature. In a letter dated March 29, 2005, appellant documented her history of complaints with her elbows and described her job duties for the employing establishment. She also described the medical treatment that she had received from her treating physician, Dr. Scott M. Fried, an osteopath Board-certified in orthopedic surgery.

The Office also received on October 6, 2004, an October 27, 2003 report in which Dr. Fried provided several diagnoses including repetitive strain injury, with cumulative trauma disorder in the upper extremities secondary to repetitive work at the employing establishment. He did not provide any opinion with regard to permanent impairment.<sup>3</sup>

By decision dated June 3, 2005, the Office hearing representative affirmed the May 26, 2004 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulation<sup>5</sup> sets 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>6</sup>

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.<sup>7</sup> However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment.<sup>8</sup>

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<sup>3</sup> The record also contains other prior reports from Dr. Fried but none of these reports attempt to rate permanent impairment pursuant to the Office's standards for rating permanent impairment.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>7</sup> See *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

<sup>8</sup> *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000); see also *Paul A. Toms*, 28 ECAB 403 (1987).

### ANALYSIS

The Office determined that appellant was not entitled to a schedule award based upon the May 17, 2004 report of Dr. Hanley, an Office referral physician. He conducted a physical examination and determined that appellant had a normal grip, no atrophy, full range of motion of the elbows, shoulders and the wrists. He determined that appellant did not have any muscle tenderness, sensory loss or objective findings. Dr. Hanley concluded that appellant had a normal physical examination. Although he noted some tingling with Tinel's testing, he explained that it was "minimal." He also determined that diagnostic testing revealed multiple neuropathies bilaterally. Dr. Hanley explained that there was some slowing of the distal motor and sensory latencies consistent with carpal tunnel syndrome. However, he opined that appellant did not have any impairment of the accepted repetitive strain injury and had zero percent impairment of the upper extremities directly related to any kind of strain injury. He opined that he could not document any findings that would serve as a basis for an impairment rating in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

The record contains reports from Dr. Fried. However, the physician did not provide an impairment rating or otherwise provide any specific findings suggestive of permanent impairment due to that accepted condition. The Board finds that there is no other medical evidence of record, based upon a correct application of the A.M.A., *Guides*, to establish that appellant has any permanent impairment of the upper extremities due to her accepted condition. Accordingly, the Board finds that appellant is not entitled to a schedule award.<sup>9</sup>

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a schedule award.

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<sup>9</sup> On appeal, appellant's representative refers to a physician's impairment evaluation that is not contained in the record. This decision does not preclude appellant from submitting new and relevant medical evidence to the Office in support of a request for a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 3, 2005 is affirmed.

Issued: March 3, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board