U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER P. SENERCHIA and U.S. POSTAL SERVICE,
WEST WARWICK POST OFFICE, West Warwick, R.I.

Docket No. 96-796; Submitted on the Record;
Issued January 22, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to a schedule award for a permanent impairment of his upper extremities.

The Board has duly reviewed the case record in the present appeal and finds that appellant is not entitled to a schedule award for a permanent partial impairment of his upper extremities.

On September 13, 1994 appellant, a letter carrier, filed an occupational disease claim (Form CA-2) alleging that he first became aware that his wrist condition was caused or aggravated by his employment on August 1, 1994. Appellant stated that he noticed that when he used his hands repetitively, for example, when he filed mail, he experienced tingling and numbness in his thumb, two fingers and hand. Appellant further stated that he experienced temporary relief when he shook his hand or taped his fingers together. Appellant also stated that he experienced sharp pain in his wrists when lifting and twisting them, and when wrinkling paper into a ball. Additionally, appellant stated that both hands were in the same condition.

By letter dated May 17, 1995, the Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome.

On June 26, 1995 appellant filed a claim for a schedule award (Form CA-7).

By decision dated November 21, 1995, the Office denied appellant's claim for a schedule award.

By letter dated December 12, 1995 and submitted to the Branch of Hearings and Review, appellant requested an appeal of the Office's decision accompanied by additional evidence.

On June 3, 1996 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that on May 10, 1995 he experienced pain in both wrists and hands due to constant use

of his hands, when filing and fingering mail, writing and driving for a long period of time, and handling bulk mail. On April 2, 1997 the Office accepted appellant's recurrence of disability.

By decision dated May 5, 1997, the Office denied appellant's request for modification based on a merit review of the claim accompanied by a memorandum.[1]

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation,[3] 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 of loss of use.[4] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[5]

The Federal (FECA) Procedure Manual provides that the Office should advise any physician evaluating permanent impairment to use the A.M.A., *Guides*.[6] The procedure manual further states that injuries can leave objective or subjective impairments which cannot easily be measured by the A.M.A., *Guides*, such as, *inter alia*, pain, atrophy and loss of sensation and that such effects should be explicitly considered.[7]

In an August 1, 1995 response to the Office's July 17, 1995 letter advising him to determine the extent of permanent partial disability using the fourth edition of the A.M.A., *Guides* and the date of maximum medical improvement, Dr. A. Robert Buonanno, a Board-certified orthopedic surgeon and appellant's treating physician, determined that the date of maximum medical improvement was January 5, 1995, that appellant had full range of motion and that appellant had a zero percent impairment of the upper extremities. In an accompanying

[1] The Board finds that the Office's May 5, 1997 decision is null and void. The record reveals that the Office issued its decision while appellant's appeal was pending before the Board. The Board has held that the Office doesn't have jurisdiction to issue a decision on a petition for reconsideration while the case is pending before the Board on the same issue; *see Russell E. Lermon*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

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

[3] 20 C.F.R. § 10.304.

[4] 5 U.S.C. § 8107(c)(19).

[5] *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (March 1995).

[7] *Id.* at Chapter 1.808.6(a)(2).

work capacity evaluation for musculoskeletal conditions, Dr. Buonanno indicated no reaching above the shoulder, no heavy lifting over 20 pounds and no repetitive use of the hands. Dr. Buonanno also indicated that appellant may work eight hours per day with the above restrictions.

In an October 5, 1995 report, Dr. Barry W. Levine, a Board-certified internist and an Office medical adviser, opined that both of appellant's wrists had full range of motion and that there were no complaints or findings of pain, weakness or sensory loss. Dr. Levine further opined that February 15, 1995 was the date of maximum medical improvement for appellant's right hand and that April 17, 1995 was the date of maximum medical improvement for appellant's left hand. Dr. Levine determined that appellant had no impairment based on the fourth edition of the A.M.A., *Guides*.

The Board finds that appellant has not established entitlement to a schedule award as he has submitted no medical reports from a physician explaining how, pursuant to the A.M.A., *Guides*, his accepted bilateral carpal tunnel syndrome caused any permanent impairment to a schedule member of the body.[8]

Dated, Washington, D.C.
January 22, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[8] The Board notes that on appeal, appellant submitted new evidence. The Board, however, is precluded from reviewing evidence submitted for the first time on appeal. Appellant may resubmit this new evidence to the Office with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138(b); *see* 20 C.F.R. § 501.2(c).