

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCES FUNK and U.S. POSTAL SERVICE,
NORTHERN VIRGINIA DIVISION, Merrifield, Va.

*Docket No. 96-1757; Submitted on the Record;
Issued June 15, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she has greater than a three percent impairment of the right hand or seven percent impairment of the left hand for which she received schedule awards.

The Board has duly reviewed the case record in the present appeal and finds that this case is not in posture for decision.

The facts in this case indicate that appellant, a retired computer operator, sustained employment-related bilateral carpal tunnel syndrome and stenosing tenosynovitis of the left long finger for which she had surgery.¹ On February 2, 1993 she filed a claim for a schedule award. By decision dated December 15, 1993, the Office of Workers' Compensation Programs granted her a schedule award for a seven percent permanent impairment for partial loss of use of the left hand for trigger finger for the period April 23 to August 23, 1993 for a total of 17 weeks of compensation. By decision dated June 9, 1994, the Office found that appellant had no ratable impairment of the right hand and no greater than a seven percent impairment of the left hand.² Appellant requested a hearing that was held on October 11, 1994. In a June 19, 1995 decision, an Office hearing representative remanded the case to the Office to determine the degree of impairment due to bilateral carpal tunnel syndrome and stenosing tenosynovitis of the left long finger. Following additional development, by decision dated March 18, 1996, the Office granted appellant a schedule award for a three percent permanent impairment for partial loss of use of the right hand for the period February 19 to April 10, 1996 for a total of 7.32 weeks of compensation. The Office found that she had no additional impairment of the left hand.

¹ The record indicates that these claims were doubled by the Office.

² In reference to the left hand, the Office stated that under the Federal Employees' Compensation Act a seven percent impairment of the third finger is equal to 1.75 weeks of compensation whereas a seven percent impairment of the hand is equal to 17 weeks of compensation. In this case, appellant was awarded 17 weeks of compensation for impairment of the left hand on December 15, 1993.

Under section 8107 of the Act³ and section 10.304 of the implementing federal regulations,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. 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*⁵ (hereinafter A.M.A., *Guides*) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

The relevant medical evidence includes a September 26, 1995 report in which Dr. Peter S. Trent, a Board-certified orthopedic surgeon, found decreased range of motion of the right middle finger. Electromyographic testing (EMG) of the upper extremities dated October 12, 1995 was consistent with delayed right median motor latency across the wrist and delayed bilateral median and ulnar sensory latencies across the wrist. Dr. Trent submitted an October 27, 1995 report advising that appellant had a 10 percent impairment of the upper extremity due to decreased strength and a 10 percent impairment due to sensory deficit, pain and discomfort. The record indicates that the Office was unsuccessful in its attempt to secure additional information from Dr. Trent and on February 9, 1996 referred appellant, along with the medical record, a statement of accepted facts and a set of questions to Dr. Jeffrey L. Lovallo, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding appellant's upper extremities. In a February 19, 1996 report, Dr. Lovallo noted that he reviewed "100 pages of past medical history," including Dr. Trent's EMG findings, and evaluated appellant utilizing the A.M.A., *Guides*. He found full range of motion of wrists, thumbs, and fingers of both extremities and concluded that appellant's only disability was secondary to loss of strength with a three percent permanent partial disability of the right upper extremity and a two percent disability of the left.

In an undated report, an Office medical adviser stated:

"There may be some slight impairment but it is not really demonstrated in the file -- already received 7 [percent] for 'left hand[,] present is only 2 [percent] of LH—none of this -- on RH -- 3 [percent] of RH is given -- without definite citation from A.M.A., *Guides* -- it is stated that this is because of 'grip strength' but this is not cited properly. Please note A.M.A., *Guides* p.64 on significance of GS."

Section 3.1k of the A.M.A., *Guides* provides information regarding determination of the extent of loss of function due to sensory deficits or pain and motor deficits of the upper extremity.⁷ Initially, the Board notes that in its letter of referral to Dr. Lovallo dated February 9,

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.304.

⁵ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

⁶ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁷ A.M.A., *Guides* at 46.

1996, the Office merely stated that he was to evaluate appellant for bilateral carpal tunnel syndrome and did not indicate that she had an accepted stenosing tenosynovitis of the left middle finger. Furthermore, it is unclear from the record whether the Office provided Dr. Lovallo with the amended statement of accepted facts, dated April 20, 1994 which includes information regarding appellant's accepted conditions or an earlier version dated August 15, 1991 which merely describes appellant's job duties as a computer operator. Moreover, while Dr. Lovallo indicated that he utilized the A.M.A., *Guides*, as recognized by the Office medical adviser, his report did not contain specific citations, and the record contains an October 12, 1995 EMG that indicates that appellant demonstrated upper extremity findings which may demonstrate that appellant has a further impairment of the upper extremities due to pain and motor deficit over the median and ulnar nerves. While Dr. Lovallo mentioned the EMG findings, he did not indicate that he took these findings into consideration in his conclusion regarding appellant's disability. For these reasons the case will be remanded to the Office for further development. On remand, the Office should refer appellant, together with the case record and an appropriate statement of accepted facts, to Dr. Lovallo or another appropriate Board-certified specialist for an examination and a detailed, rationalized medical opinion to determine, according to the A.M.A., *Guides*, the percentage of permanent impairment attributable to appellant's accepted bilateral carpal tunnel syndrome and stenosing tenosynovitis of the left middle finger.

The decision of the Office of Workers' Compensation Programs dated March 18, 1996 is hereby set aside and the case remanded for further development and a *de novo* decision.

Dated, Washington, D.C.
June 15, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member