

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOIS P. SKOKOS and U.S. POSTAL SERVICE,
POST OFFICE, Asbury Park, N.J.

*Docket No. 97-1733; Submitted on the Record;
Issued March 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has more than a 20 percent impairment of the right upper extremity, for which she received a schedule award.

The Board has duly reviewed the evidence contained in the case record and finds that the case is not in posture for decision.

On February 7, 1992 appellant, then a 39-year-old letter carrier, sustained an employment-related right wrist strain/sprain. The Office of Workers' Compensation Programs later accepted that she also sustained employment-related right carpal tunnel syndrome for which she underwent surgical release. On March 5, 1995 she filed a claim for a schedule award and, by decision dated December 19, 1995, the Office granted her a schedule award for a 20 percent permanent impairment of the right upper extremity for the period January 23, 1995 to April 3, 1996 for a total of 62.4 weeks of compensation. Following appellant's request, a hearing was held on August 13, 1996. In a January 24, 1997 decision, an Office hearing representative affirmed the prior decision. The instant appeal follows.¹

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of

¹ The Board notes that the record contains an occupational disease claim, Form CA-2, filed April 9, 1994, in which appellant alleges that she sustained employment-related right ulnar neuropathy, and an April 22, 1994 occupational disease claim, in which she alleges that she sustained employment-related left carpal tunnel syndrome. At the hearing, appellant's counsel also asserted that her left shoulder condition was employment related. It does not appear that the Office has developed these claims under the present Office file number A2-646603. The only issue adjudicated by the Office and before the Board on this appeal is the schedule award for the right upper extremity.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

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*⁴ (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.⁵

The relevant medical evidence includes a January 23, 1995 report from Dr. David Weiss, appellant's treating osteopathic physician who stated that he utilized the fourth edition of the A.M.A., *Guides*. Regarding appellant's grip strength, he noted that appellant was right hand dominant and advised that testing using the Jamar Dynamometer revealed four kilograms of force strength in the right hand.⁶ He stated that he utilized Table 32, page 65, in concluding that appellant's loss of grip strength in the right upper extremity constituted a 30 percent impairment. Dr. Weiss' report was reviewed by an Office medical adviser who, in a report dated July 5, 1995, advised that he utilized Table 16, page 57 of the A.M.A., *Guides* in concluding that, based on moderate median nerve entrapment, appellant had a permanent impairment of 20 percent. At the hearing appellant submitted a March 6, 1996 report from Dr. Floyd Krengel, an osteopathic physician, who cited to the A.M.A., *Guides*, and concluded that appellant had a 30 percent impairment of the right wrist and hand. In discussing appellant's right wrist and hand, Dr. Krengel advised that flexion and extension of the right wrist were reduced by 15 degrees and that grip strength was decreased. By report dated November 27, 1996, Dr. Neven A. Popovic an Office medical adviser, stated that Dr. Krengel's findings regarding loss of motion and grip strength could not be used because his conclusions failed to comport with the A.M.A., *Guides*. Dr. Popovic concurred with the determination of a 20 percent impairment based on a moderate median nerve entrapment applying Table 16 at page 57 of the A.M.A., *Guides*.

Initially, the Board finds that Dr. Krengel's findings regarding loss of motion are insufficient for an impairment rating for schedule award purposes as it is impossible to discern how he reached his conclusion. Likewise, in his July 5, 1995 report, the Office medical adviser, provided no explanation for his finding of a 20 percent impairment other than to indicate that his conclusion was based on Dr. Weiss' January 23, 1995 report and Table 16 of the A.M.A., *Guides*. Dr. Weiss, however, provided a specific explanation of appellant's grip strength utilizing the A.M.A., *Guides* for his conclusion that appellant had a 30 percent impairment of the right upper extremity. Dr. Popovic also applied the A.M.A., *Guides* in reaching his determination that appellant sustained a 20 percent impairment of her right upper extremity.

⁴ A.M.A., *Guides* (4th ed. 1993).

⁵ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ Dr. Weiss also provided measurements and opinions regarding appellant's right shoulder and left upper extremity that are not relevant to the instant case.

The Board finds that there is presently a conflict in medical opinion between Dr. Weiss and Dr. Popovic as to the extent of impairment to appellant's right upper extremity. For this reason the case will be returned to the Office for referral to an impartial medical specialist.⁷

The decision of the Office of Workers' Compensation Programs dated January 24, 1997 is hereby set aside and remanded to the Office for further development in conformance with this decision of the Board.

Dated, Washington, D.C.
March 23, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁷ See 5 U.S.C. § 8123(a).