U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDRE BROWN and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Indianapolis, IN

Docket No. 99-2346; Submitted on the Record;
Issued October 5, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a 15 percent permanent impairment of his right arm.

On January 25, 1997 appellant, than a 42-year-old mailhandler, filed a claim for pain in both wrists and elbows. He indicated that he cancelled mail with a hand roller in a repetitive motion and taped torn mail. He stated that he filed the claim when his condition became intolerable. The Office of Workers' Compensation Programs accepted appellant's claim for right lateral epicondylitis and right cubital tunnel syndrome. Appellant underwent surgery on May 26, 1998 for a decompression of the cubital tunnel of the right elbow. In a March 2, 1998 decision, the Office issued a schedule award for a five percent permanent impairment of the right arm. In a July 16, 1999 decision, the Office issued a schedule award for an additional 10 percent permanent impairment of the right arm.

The Board finds that appellant has no more than a 15 percent permanent impairment of the right arm.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The

[1] 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.304.

American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.[4]

In a November 26, 1997 report, Dr. James W. Strickland, a Board-certified orthopedic surgeon, indicated that appellant had soreness over the triceps insertion of the right elbow which would increase with repetitive motion. He recommended restrictions of no lifting over 50 pounds and avoidance of activities that require strong repetitious pushing, pulling, grasping or twisting with the right arm. Dr. Strickland commented that the criterion for a permanent impairment rating was "fuzzy." He noted that appellant had a full range of motion and good strength in the right arm. Dr. Strickland stated that appellant's main problem was persistent discomfort, particularly in the posterior aspect of the elbow. He concluded that it would be fair to assess a five percent permanent impairment of the right upper extremity due to the discomfort of the right elbow. The Office based the March 2, 1998 decision on this report.

In a May 17, 1999 report, Dr. Strickland stated that appellant continued to do well one year after his surgery. He related that all ulnar nerve symptoms secondary to the nerve compression at the elbow and subsequent surgical procedure had completely resolved with no sensory deficit. Dr. Strickland noted appellant still had aching around the inner aspect of the elbow associated with heavy use of the right arm but was performing well within the physical restrictions provided to the employing establishment. He reported that, at the time of the last examination, appellant's grip strength on the right was 65 pounds or 28 kilograms compared to 55 pounds or 26 kilograms in the left, nondominant hand. Dr. Strickland stated that appellant's schedule award should be based on the loss of strength. He indicated that appellant's 28 kilogram grip strength on the right side would equal 57 percent of normal grip strength. Dr. Strickland referred to the A.M.A., *Guides*[5] and concluded that appellant had a 20 percent permanent impairment of the right arm due to loss of strength.

An Office medical adviser reviewed Dr. Strickland's report and in a July 11, 1999 memorandum, noted that appellant's left hand was also weaker than the average contained in the A.M.A., *Guides*. He also pointed out that only one strength measurement was taken and that the A.M.A., *Guides* recommended minimum of three consistent measurements. He indicated that a better method of rating was to use the table in the A.M.A., *Guides* on entrapment neuropathy in the arm.[6] He stated that ulnar nerve compression at the elbow with mild symptoms equaled a 10 percent permanent impairment of the arm. He recommended that this impairment should be combined with the previous 5 percent permanent impairment of the arm due to lateral epicondylitis for a total 15 percent permanent impairment of the arm. The Office based its July 16, 1999 decision on the Office medical adviser's memorandum.

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[3] (4th ed. 1993).

[4] *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

[5] A.M.A., *Guides*, p. 65, Table 34.

[6] A.M.A., *Guides*, p. 57, Table 16.

The Board notes that Dr. Strickland based his schedule award calculations on one grip test strength of appellant's right arm. The A.M.A., *Guides*, however, state that the test for grip strength is to repeated three times. The results are averaged and then compared either to the opposite arm, which is usually normal, or to the appropriate tables in the A.M.A., *Guides*.[7] Dr. Strickland's reported results of grip strength testing, therefore, do not comply with the guidelines of the A.M.A., *Guides*. The Office medical adviser properly used the A.M.A., *Guides* to conclude that appellant had a 10 percent permanent impairment for entrapment neuropathy, or a total of 15 percent permanent impairment of the right arm. When the treating physician does not properly use the A.M.A., *Guides* in determining permanent impairment, it is appropriate for the Office medical adviser to apply the A.M.A., *Guides* to the findings presented by the treating physician.[8] As the Office medical adviser's report is the only evaluation that conforms to the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[9]

The decision of the Office of Workers' Compensation Programs, dated July 16, 1999, is hereby affirmed.

Dated, Washington, DC
October 5, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[7] A.M.A., *Guides*, pp. 64-65.

[8] *Lena P. Huntley*, 46 ECAB 643 (1995).

[9] *Michael C. Norman*, 42 ECAB 768 (1991).